

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

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EAST CAMPUS REALTY, LLC,

Plaintiff,

Case No. CI 17-\_\_\_\_\_

v.

BMK RENOVATIONS LLC, WESLEY  
KLAUS, and STEPHANIE KLAUS,

Defendants.

---

**COMPLAINT**

COMES NOW Plaintiff, East Campus Realty, LLC, by and through counsel, and for its Complaint against Defendants, BMK Renovations LLC, Wesley Klaus, and Stephanie Klaus, alleges and states as follows:

**PARTIES, JURISDICTION & VENUE**

1. Plaintiff, East Campus Realty, LLC ("Plaintiff"), is a Nebraska limited liability company with its principal place of business in Omaha, Douglas County, Nebraska.

2. Defendant, BMK Renovations, LLC ("BMK"), is a Nebraska limited liability company doing business as Lenny's Sub Shop in Omaha, Douglas County, Nebraska.

3. Defendants, Wesley Klaus and Stephanie Klaus ("Klauses"), are husband and wife and residents of Omaha, Douglas County, Nebraska.

4. This Court has jurisdiction over the subject matter of this action pursuant to NEB. REV. STAT. § 24-302.

5. Venue of this action is proper in Douglas County, Nebraska, pursuant to NEB. REV. STAT. § 25-403.01(1).

## **FACTUAL BACKGROUND**

6. Plaintiff incorporates paragraphs 1 through 5 as though fully set forth herein.

7. Plaintiff is the owner of Space 4, Building 6, in the shopping center known as Midtown Crossing at Turner Park in Omaha, Nebraska ("Leased Premises").

8. On or about June 1, 2012, Plaintiff, as landlord, and BMK, as tenant, entered into a lease agreement for approximately 1,817 square feet of gross rentable area of the Leased Premises ("Lease"). A true and correct copy of the Lease is attached hereto and incorporated herein as Exhibit "A".

9. On or about June 1, 2012, the Klauses, and each of them, personally guaranteed BMK's obligations under the Lease when they signed and delivered a guaranty to Plaintiff ("Guaranty"). A true and correct copy of the Guaranty is attached as Exhibit "F" to the Lease, which Lease was previously attached hereto as Exhibit "A".

10. BMK's members are the Klauses.

11. BMK operated a business known as Lenny's Sub Shop at the Leased Premises.

12. On or about January 11, 2017, Plaintiff's agent provided written notice to BMK notifying BMK that it was in material breach of the Lease for failing to pay all amounts then due and owing to Plaintiff under the same ("First Notice"). A true and correct copy of the First Notice is attached hereto and incorporated herein as Exhibit "B".

13. BMK failed to cure its breach of the Lease by paying all amounts then due and owing to Plaintiff as set out in the First Notice.

14. On or about January 24, 2017, Plaintiff's agent caused a second written notice to be sent to BMK notifying BMK that it continued to be in material breach of the Lease for failing to pay all amounts due and owing to Plaintiff under the same ("Second Notice"). A true and correct copy of the Second Notice is attached hereto and incorporated herein as Exhibit "C".

15. Pursuant to the Second Notice, Plaintiff notified BMK and the Klauses that it was exercising its option to accelerate all amounts due and owing for the full term of the Lease, and made demand upon BMK and the Klauses in the amount of \$263,308.93.

16. BMK ceased business operations in January 2017.

17. BMK abandoned the Leased Premises in January 2017.

18. Notwithstanding the First Notice, Second Notice, and Plaintiff's demands, BMK and the Klauses have failed and refused to pay Plaintiff all sums due and owing for the full term of the Lease, and to otherwise comply with the terms of the Lease, including conducting continuous business operations during the full term of the Lease and abandoning the Leased Premises.

#### **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

19. Plaintiff incorporates paragraphs 1 through 18 as though fully set forth herein.

20. BMK is in material breach of the Lease due to the following:

(a) Failing to pay Plaintiff all amounts due and owing under the Lease, including amounts due for rent and tenant improvements;

(b) Failing to conduct continuous business operations during the required hours as more fully set forth in the Lease; and

(c) Abandoning the Leased Premises in January 2017.

21. As a result of BMK's material breach of the Lease, Plaintiff has been damaged in an amount not less than \$263,308.93.

22. Plaintiff has performed all of its obligations under the Lease, and there is no condition precedent to BMK's obligations to perform under the Lease.

WHEREFORE, Plaintiff prays for judgment to be entered in its favor and against BMK in an amount not less than \$263,308.93, plus interest on the judgment as provided for by law, plus the costs of this action, and for such other and further relief as the Court deems equitable and just.

**SECOND CAUSE OF ACTION: BREACH OF GUARANTY**

23. Plaintiff incorporates paragraphs 1 through 22 as though more fully set forth herein.

24. Payment and performance of BMK's obligations under the Lease is personally guaranteed by the Klauses, and each of them, pursuant to the terms of the Guaranty.

25. As set forth above, BMK is in material breach of the Lease.

26. Pursuant to the terms of the Guaranty, the Klauses are liable, jointly and severally, to Plaintiff for all amounts due and owing for the full term of the Lease.

WHEREFORE, Plaintiff prays for judgment to be entered in its favor and against the Klauses, jointly and severally, in an amount not less than \$263,308.93, plus interest

on the judgment as provided for by law, plus the costs of this action, and for such other and further relief as the Court deems equitable and just.

Dated this 22<sup>nd</sup> day of February, 2017

EAST CAMPUS REALTY, LLC, Plaintiff,

By: /s/ Nicholas A. Buda  
Nicholas A. Buda (NE# 25051)  
of BAIRD HOLM LLP  
1700 Farnam Street  
Suite 1500  
Omaha, NE 68102-2068  
Phone: 402-344-0500  
Email: nbuda@bairdholm.com

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**MIDTOWN CROSSING AT TURNER PARK**

**LEASE**

**BY AND BETWEEN**

**EAST CAMPUS REALTY, LLC**

**AND**

**BMK, LLC**

**DATED** June 1, 2012

LEASE BETWEEN EAST CAMPUS REALTY, LLC  
AND  
BMK, LLC

GENERAL PROVISIONS OF THE LEASE  
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**Attachments**

Special Provisions Rider  
Exhibit A – Drawing Showing Location of Premises  
Exhibit B – Construction Exhibit  
Exhibit C – Rules  
Exhibit D – Exclusives  
Exhibit E – Prohibited Uses  
Exhibit F – Guaranty of Lease  
Exhibit G – Tenant's Signage

### RETAIL LEASE

THIS RETAIL LEASE ("Lease") is entered into this 18<sup>th</sup> day of June, 2012, by and between East Campus Realty, LLC, a Nebraska limited liability company ("Landlord"), and BMK, LLC, a Nebraska limited liability company ("Tenant").

#### ARTICLE 1: BASIC PROVISIONS

- 1.1. **CENTER:** Midtown Crossing at Turner Park in Omaha, Nebraska.
- 1.2. **TENANT:** Trade Name: Lenny's Sub Shop;  
Fed. Tax I.D. #:27-2882592;  
Office Address: 4829 Pine St., Omaha, NE 68106
- 1.3. **PREMISES:** Address: Building 6, Space 4 which consists of approximately 1,817 square feet of Gross Rentable Area, the approximate location of which is shown on Exhibit A.
- 1.4. **TERM:**
- A. **Length:** Five (5) Lease Years, as defined in Section 2.18.
- B. **Commencement Date:** The earlier of the date 60 days following the Delivery Date or the date Tenant opens for business in the Premises as shall be set forth on a written declaration or certificate executed by Landlord and Tenant, upon demand of either of them.
- C. **Expiration Date:** The date 5 Lease Years following the Commencement Date, unless sooner terminated or extended pursuant to the terms hereof.
- D. **Extension Options:** One (1) option of Five (5) years.
- 1.5. **RENT:**  
(See Article 4)
- A. **Minimum Rent:**
- | <u>Period</u>   | <u>Per Sq. Ft.<br/>Amount</u> | <u>Monthly Amount</u> | <u>Annual Amount</u> |
|-----------------|-------------------------------|-----------------------|----------------------|
| Lease Years 1-2 | \$16.00                       | \$2,422.67            | \$29,072.04          |
| Lease Years 3-4 | \$18.00                       | \$2,725.50            | \$32,706.00          |
| Lease Year 5    | \$20.50                       | \$3,104.04            | \$37,248.50          |
| Option Term     | \$24.00                       | \$3,634.00            | \$43,608.00          |
- B. **RENT ABATEMENT:** See Section 4.1.

- 1.6. **INITIAL RECEIPTED SUMS:** A. \$2,725.50 as non-interest bearing Security Deposit (See Article 6).
- 1.7. **PERMITTED USE:** Tenant shall use the Premises for the operation of a quick service Lenny's Sub Shop restaurant with carry-out and on-premises dining, catering and at Tenant's option, delivery service offering a menu of submarine sandwiches served on bread that is baked on-premises, other deli sandwiches, Philly cheese steaks, salads, snack foods, desserts, beverages, breakfast items as well as other items determined by Franchisor (as defined in Section 19.9) and typically sold in other Lenny's Sub Shop restaurants and for no other use or purpose, subject to the terms and conditions hereinafter set forth, including, without limitation, Section 10.1.
- 1.8. **INTENTIONALLY DELETED**
- 1.9. **GUARANTOR(S):** Wesley Klaus and Stephanie Klaus, husband and wife residing in Omaha, Nebraska
- 1.10. **MINIMUM REQUIRED HOURS:** noon to 6:00 p.m. Sunday  
11:00 a.m. to 9:00 p.m. Monday through Saturday
- 1.11. **RENT PAYMENT ADDRESS:** East Campus Realty, LLC, c/o Mutual of Omaha Insurance Company, Mutual of Omaha Plaza, Omaha, Nebraska 68175, Attn: Executive Vice President, Corporate Services, or to such other address as Landlord may from time to time designate in writing.
- 1.12. **RENT PAYABLE TO:** East Campus Realty, LLC, or such other party as Landlord may from time to time designate in writing.
- 1.13. **INSURANCE LIMITS:** Commercial General Liability \$1,000,000 per occurrence, \$2,000,000.00 aggregate, and \$3,000,000 umbrella/excess coverage, subject to adjustment pursuant to Section 15.1.

The foregoing provisions shall be interpreted and applied in accordance with the other provisions of this Lease set forth below. The terms in this Article 1, and the terms defined in Article 2, shall have the meanings specified therefor, herein or therein, when used as capitalized terms in other provisions of this Lease, otherwise the terms in this Lease and the Exhibits attached hereto and made a part hereof, shall have the meanings specified therefor, herein or therein, when used as capitalized terms in other provisions of this Lease or in the Exhibits attached hereto and made a part hereof.

## **ARTICLE 2: ADDITIONAL DEFINITIONS**

- 2.1 "ADA" shall have the meaning set forth in Article 34.
- 2.2 "Anchor Tenant Premises" shall mean the premises in Buildings 2 and 4 leased to Prairie Life Midtown Fitness, LLC.
- 2.3 "Assignment" shall have the meaning set forth in Section 19.1.
- 2.4 "Building" shall mean the building in the Center in which the Premises are located. When used in the plural tense, "Buildings" refers to buildings in the Center, and references to Buildings by number refer to the Buildings as numbered on the site plan attached hereto as Exhibit A.

- 2.5 "Center" shall mean the shopping center, business park, commercial district or other designated property owned or operated by Landlord within geographic areas defined by Landlord from time to time, generally depicted on Exhibit A attached hereto, including (without limitation) all buildings, improvements and parking facilities (including any off-site or satellite parking facilities), private drives, sidewalks and alleys, but excluding residential apartment and residential condominium units and common areas and common elements which exclusively serve residential apartment or residential condominium units, if any, public streets, rights-of-way, utility lines, easements and public parks adjacent to the Center. The Center may also include an offsite roadway to the north. The Center shall also include any and all fountains, statuary, monument markers and entryways, towers, kiosks, murals and art works (if any), together with all private courtyards, lawns, median strips and parks within geographic areas defined by Landlord from time to time.
- 2.6 "Common Areas" shall mean all areas of the Center which are now or hereafter made available by Landlord from time to time for the general use or benefit of Landlord, Tenant, other tenants at the Center, other parties to whom the right to use the Common Areas has been or is hereafter granted, and their employees and invitees, as such areas currently exist and as they may be changed from time to time. Without limiting the generality of the foregoing, the Common Areas may include, as designated by Landlord from time to time, any parking areas and structures (whether in tiers or at, above or below grade), mall enclosures and roofs covering Center buildings, entrances, sidewalks, streets or roadways, passageways, concourses, courts, arcades, service corridors, loading platforms and truck docks, delivery areas, escalators and elevators, ramps, stairs, landscaped and vacant areas, public bathrooms, information and telephone booths, directory signs and equipment, common lighting facilities, drainage areas, lounges and shelters, package pick-up stations, drinking fountains, public comfort and first aid stations, public meeting rooms, auditoriums, bus stops, taxi stands, and all furniture, decorations, fixtures, improvements, Systems and Equipment, and other facilities, located in or serving any of the foregoing, except to the extent reserved for use by one or more designated tenants.
- 2.7 "Customer Parking Fees" shall have the meaning set forth in Article 37.
- 2.8 "Declaration" shall have the meaning set forth in Section 39.13
- 2.9 "Delivery Date" shall be the date on which Landlord delivers possession of the Premises to Tenant, by notice or otherwise, so that Tenant may commence Tenant's Work (as defined in Exhibit B) in the Premises).
- 2.10 "Default" shall have the meaning set forth in Section 20.1.
- 2.11 "Default Rate" shall mean eighteen percent (18%) per annum from the original due date and continuing until all delinquent sums are paid in full.
- 2.12 "Gross Rentable Area" of the Premises shall mean the aggregate main floor areas measured to the extreme exterior faces of the exterior walls, but only to the interior face of interior Building walls such as stair well and elevator walls that serve the entire Building, and only to the centerline of any common party walls between two leasable areas, excluding the mezzanines and upper floors, if any, with no reductions or exclusions for stairways, elevators, escalators, support columns, floor openings, interior partitions or other improvements or equipment of any kind. Any changes in the Gross Rentable Area of the Premises occurring during any calendar month shall become effective on the first day of the following month. The Gross Rentable Area of the Center shall mean all similar areas within the Center owned by Landlord and constructed for occupancy by tenants, and the mezzanine and upper floor retail areas in Building 6 currently operated by Marcus Theatres, but will not include any outdoor patio area provided for the exclusive use of a tenant under the terms of a lease of interior building space in the Center and not included in the calculation the Gross Rentable Area leased to a tenant under the terms of a tenant's lease. The Gross Rentable Area of the Center is subject to change in the event that Landlord expands or reduces the size of

the Center. Prior to the Commencement Date, Tenant may, at its option, engage, at Tenant's sole cost and expense, an independent certified architect or surveyor to measure the actual Gross Rentable Area of the Premises. Tenant's architect or surveyor shall determine the Gross Rentable Area by measuring from the outside of any exterior walls to the center of any interior demising walls. If the architect's or surveyor's measurement of the Gross Rentable Area (which measurement must be certified in writing to Landlord) differs by more than two percent (2%) from the Gross Rentable Area set forth in Section 1.3 of this Lease, the Rent and any other charges determined on the basis of the rentable square footage of the Premises, Tenant's Proportionate Share and the amount of the Tenant improvement allowance, if any, shall be adjusted accordingly, subject to Landlord's right to verify Tenant's measurement. Landlord shall have the right to remeasure the Premises to verify the accuracy of Tenant's measurement within sixty (60) days after Tenant notifies Landlord that the Gross Rentable Area shown in Section 1.3 of this Lease differs from the Gross Rentable Area determined by Tenant's architect or surveyor by more than two percent (2%). In the event that Landlord's remeasurement differs from the remeasurement done by Tenant, then Landlord and Tenant shall do the following: (i) reach an agreement as to the measurement which will control within thirty (30) days after Landlord notifies Tenant of the results of Landlord's measurement (and the Rent and any other charges determined on the basis of the rentable square footage of the Premises, Tenant's Proportionate Share and the amount of the Tenant improvement allowance, if any, shall be adjusted accordingly); or (ii) appoint, within twenty (20) days after the expiration of such 30 day period, an independent certified architect or surveyor mutually agreeable to both parties ("Final Measurer") who shall remeasure the Gross Rentable Area of the Premises. The cost of the remeasurement by the Final Measurer shall be shared equally between Landlord and Tenant, and the Rentable Area determined by the Final Measurer shall control (and the Rent and any other charges determined on the basis of the rentable square footage of the Premises, Tenant's Proportionate Share and the amount of the Tenant improvement allowance, if any, shall be adjusted accordingly). In no event will the remeasurement process herein provided delay or affect the length of the Term or any obligations of the parties as set forth in this Lease. If Tenant does not exercise the remeasure right as herein provided, the Gross Rentable Area of the Premises as shown in Section 1.3 of this Lease shall control, unless the parties shall agree otherwise in writing.

- 2.13 "Gross Sales" shall mean the entire amount of the actual sale price, whether for cash, credit or otherwise, of all sales of goods and services and all other income and receipts whatsoever of all business conducted at, on or from the Premises, including, without limitation, (i) mail, telephone, facsimile, Internet, and other orders received or filled at the Premises, including, but not limited to, catalogue sales; (ii) deposits not refunded to purchasers; (iii) orders taken at the Premises although filled elsewhere; (iv) gross receipts from vending and game machines (not to be construed to authorize vending or game machines unless specifically set forth in Article One); (v) sale price of gift and merchandise certificates; (vi) payments from other parties for shelf or advertising space at or respecting the Premises; (vii) the full value of all consideration other than money received; (viii) all other gross income or receipts from any business or operation at, on or from the Premises; and (ix) Gross Sales by any subtenant, concessionaire or licensee. However, Gross Sales shall not include (but Tenant shall keep separate records therefor as part of Tenant's Records): (a) returns to shippers or manufacturers, (b) proceeds from the sale of used trade fixtures, (c) any cash or credit refunds made upon any sale in or from the Premises where the merchandise is returned by the purchasers, (d) any sales or excise tax imposed by any duly constituted governmental authority (provided that no income or franchise tax, capital stock tax, tax based upon gross receipts, assets or net worth, or similar tax shall be deducted from Gross Sales), and (e) the exchange of merchandise made solely for the convenient operation of the business of Tenant and not for the purposes of consummating a sale that has theretofore been made in or from the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would be made in or from the Premises. No deduction shall be allowed for any uncollected or uncollectible amounts or reserves therefor, nor for cost of products or services sold, or other costs, charges or expenses of purchasing, financing, selling, transportation, overhead or taxes except as expressly provided herein. Trade-ins shall not reduce the sale price of the item sold for purposes hereof. Layaway, credit and installment sales shall be included in the month in which the goods or services are

delivered or provided, or in which any portion of the payment is received, whichever first occurs, regardless of when or whether full payment is received.

- 2.14 "Hazardous Substance" shall have the meaning set forth in Article 31.
- 2.15 "HVAC" shall mean heating, ventilating and air-conditioning.
- 2.16 "Landlord's Insurance" shall mean insurance maintained by Landlord applicable to the Center, which may include, without limitation, commercial liability insurance for personal injury, death, property damage, defamation and false arrest, "all risk" insurance on the Center, including, without limitation, earthquake, flood, boiler and rent loss coverage, automobile, worker compensation and employer liability insurance.
- 2.17 "Law" or "Laws" shall mean all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedents in the state in which the Center is located, and decisions of federal courts applying the Laws of such state, at the time in question.
- 2.18 "Lease Year" shall mean a period of twelve (12) full, consecutive calendar months, except as provided below. If the Commencement Date occurs on a date other than the first day of the month, then the first Lease Year shall include the partial month between the Commencement Date and the last day of the month during which the Commencement Date occurs, and the Minimum Rent and other charges payable during such partial month shall be appropriately prorated based on the number of days in such month.
- 2.19 "Lender" shall mean the holder of any mortgage, deed of trust or security interest at the time in question, and where a ground lease is used as a security device, such term shall refer to the ground lessor.
- 2.20 "Minimum Rent" shall have the meaning set forth in Section 4.1.
- 2.21 "Operating Costs" shall mean all expenses, costs and amounts of every kind and nature which Landlord shall pay during any Lease Year in connection with the maintenance, repair, replacement, management and operation of the Center, including all facilities, improvements and areas determined by Landlord from time to time to comprise the Center.
- 2.22 "Parking Fee" shall have the meaning set forth in Article 37.
- 2.23 "Parking Garage" shall have the meaning set forth in Article 37.
- 2.24 "Required Hours" shall have the meaning set forth in Section 10.2.
- 2.25 "Rent" shall have the meaning set forth in Section 7.1.
- 2.26 "Rider" shall mean the Special Provisions Rider attached to this Lease and made an integral part of this Lease.
- 2.27 "Rules" shall have the meaning set forth in Article 32.
- 2.28 "Sublease" shall have the meaning set forth in Section 19.1.
- 2.29 "Systems and Equipment" shall mean any plant, machinery, transformers, ducts, cables, wires and other equipment, facilities and systems designed to supply light, heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or



portion of any electrical, gas, steam, plumbing, water, sewer, sprinkler, communications, alarm, security or fire/life/safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment for the Premises or Center, as applicable.

- 2.30 "Taxes" shall mean users fees, taxes, assessments, special assessments, substitution taxes, gross receipts taxes, taxes on rents and other governmental charges, whether levied by federal, state, county, municipal or any other taxing authority which are charged against the Center, or are charged to the Center and other property and are allocated to the Center pursuant to a recorded instrument containing easements, restrictions and/or covenants, or by Landlord pursuant to Article 5, real property, street lights, fixtures, personal property, rents on the right or privilege of owning or leasing real estate or collecting rents thereon, and any other taxes, assessments and fees attributable to the Center or its operation, whether now or hereafter assessed, and any fees and other costs associated with any action taken by Landlord to protest any such fees, taxes, assessments or charges, it being understood that Tenant shall not contest Taxes. In addition to the foregoing "Taxes" shall also include, without limitation:

(i) general ad valorem real estate taxes levied against the Center. General ad valorem real estate taxes which become delinquent in a calendar year will be considered to be current for that calendar year and for the first and last calendar years of the Term shall be prorated on a daily basis for purposes of calculating Tenant's Proportionate Share;

(ii) special assessments imposed upon the Premises or Center by a governmental authority for improvements directly or indirectly benefiting the Premises or Center, including, without limitation, assessments for utility improvements serving the Premises or Center, transportation assessments, impact fees for public improvements, and benefit assessments for such things as flood control, street and sidewalk improvements, and refuse and sewer treatment (excluding, however, other capital expenditures relating to new improvements, the net effect of which is to finance or construct other commercial developments for or on behalf of Landlord, or which expand or increase the Gross Rentable Area of the Center, and sewer hook-up fees or similar charges assessed to one specific user);

(iii) taxes which may, or are required to, be paid in installments over a period longer than one (1) year and shall be deemed paid in installments over the maximum period permitted by the taxing authority, with Tenant's obligation to pay Tenant's Proportionate Share of such taxes for any one (1) tax fiscal year applying only to those installments which actually become due and payable (i.e., failing which, payment of the same would become delinquent), together with the interest charged thereon by the taxing authority, during that same fiscal year, excluding, however, any portion of taxes or installments thereof which actually become due and payable during any period prior or subsequent to the Term; and

(iv) substitution taxes, including, without limitation, any fee, charge or levy which is enacted on a Substitution Basis (as defined below), following a change in a method of taxation or assessment related to real property, or the granting of tax benefits or reductions for the property, including, without limitation, payments in lieu of taxes following approval of plans for tax increment financing, urban redevelopment or other tax benefits (a change in such methods may refer to an event or combination of events by which real estate taxes, assessments or valuations are "frozen" [i.e., no longer increased], and/or reduced or "rolled back," and/or future increases are limited in amount, by statute). If, following such change and as a result thereof, there shall be levied, assessed or imposed: (a) a tax on the rents received from the Premises; (b) a license fee or other tax measured by or based wholly or partially upon the Premises or any portion thereof, and which taxes are expressly declared by the taxing legislation, legislative history or taxing authority to be imposed as a result of the foregoing limitations on real estate taxes, or in substitution therefor, then such resultant enactment shall be on a "Substitution Basis"

- 2.31 "Tenant's Financial Statements" shall have the meaning set forth in Section 39.16.

- 2.32 "Tenant's Fixed Operating Costs Contribution" shall be equal to: (a) during the calendar year in which Tenant's Fixed Operating Costs Contribution commences pursuant to Article 5, an amount equal to \$5.00 per square foot of Gross Rentable Area in the Premises; (b) as of January 1 of the next calendar year, an amount equal to \$5.25 per square foot of Gross Rentable Area in the Premises; and (c) as of January 1 during each subsequent calendar year during the Term (including the Renewal Terms, if exercised by Tenant), an amount equal to 105% of Tenant's Fixed Operating Costs Contribution for the immediately preceding calendar year.
- 2.33 "Tenant's Proportionate Share" shall be a fraction the numerator of which is the Gross Rentable Area of the Premises set forth in Article 1 (or as adjusted pursuant to Section 2.7) and the denominator of which is the total Gross Rentable Area of the Center, excluding the Gross Rentable Area of any Anchor Tenant Premises. Tenant's Proportionate Share is subject to change in the event that Landlord expands or reduces the size of the Anchor Tenant Premises or the Center. Landlord may elect, from time to time, to have Taxes or Landlord's Insurance or Uncontrollable Operating Costs for any portion of the Center calculated and paid separately from the remainder of the Center. Upon such election by Landlord, Tenant's Proportionate Share of Taxes or Landlord's Insurance or Uncontrollable Operating Costs shall be calculated without reference to any excluded portion of the Center (notwithstanding that Tenant's Proportionate Share for other purposes hereunder may then be calculated on a basis which includes such excluded portion).
- 2.34 "Tenant's Records" shall have the meaning set forth in Section 4.3.
- 2.35 "Tenant's Work" shall have the meaning set forth in Exhibit B.
- 2.36 "Term" shall have the meaning set forth in Article 3.
- 2.37 "Unavoidable Delays" shall mean delays due to strikes, lockouts, labor troubles, inability to procure labor or materials or reasonable substitutes therefor, failure of power, governmental requirements, restrictions or Laws, fire or other casualty damage, war or civil disorder, or other causes beyond the reasonable control of the party delayed; provided, however, Unavoidable Delays hereunder shall not include delays resulting from changes in economic or market conditions, or financial or internal problems of the parties or problems that can be satisfied by the payment of money.
- 2.38 "Work" shall have the meaning set forth in Section 9.1.

### **ARTICLE 3: PREMISES, TERM AND COMMENCEMENT DATE**

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for a term ("Term") commencing on the Commencement Date and ending on the Expiration Date set forth in Article 1, unless sooner terminated as provided herein, subject to the provisions herein contained. Landlord and Tenant shall confirm in writing any adjustment to the Commencement Date upon written request by either party.

### **ARTICLE 4: RENT**

4.1. **Minimum Rent.** For the use and availability of the Premises, Tenant shall pay Landlord on or before the first day of each month throughout the Term of this Lease Minimum Rent (prorated on a daily basis for any partial month) as set forth in Section 1.5.A. Anything in this Lease to the contrary notwithstanding, Tenant shall have no liability for Minimum Rent for the first ninety (90) days of the Term; provided, however, that the entire amount of the monthly installment of Minimum Rent otherwise due and payable for the first ninety (90) days of the Term shall be reinstated and shall become immediately due and payable upon any Default by Tenant under this Lease, which reinstatement shall not be deemed liquidated damages or a penalty.

4.2 **Records.** Tenant shall keep accurate records ("Tenant's Records") of all Gross Sales each day of the Lease Term, which records and all supporting documentation shall be verifiable under generally accepted accounting practices, consistently applied, and shall include (but not be limited to) such documentation as: (a) daily cash register tapes or copies of numbered sales slips; (b) daily sales reports; (c) journals of original entry, including the sales journal, purchase journal, cash receipts journal, cash disbursements journal and general ledger; (d) bank statements and deposit slips; (e) local, state and/or federal sales and income tax returns; (f) certified statements of annual sales; (g) annual profit and loss statements; (h) originals of all mail and telephone orders taken at or delivered to the Premises; (i) settlement and gross receipt reports and sheets of transactions with subtenants, concessionaires, licensees, contractors and other occupants of the Premises; and (j) other records which would normally be examined by an accountant pursuant to generally accepted accounting and auditing standards in performing audits of Tenant's Gross Sales. For purposes of establishing the records required to be kept pursuant to this Lease, Tenant agrees to install in the Premises and to consistently use cash registers or point-of-sale computers for all transactions in order to produce daily cash register tapes and/or other verifiable documentation of sales. Tenant further agrees to retain and preserve all of the above described records for at least three (3) years following the expiration of the Lease Years to which they relate, or, if any audit is required or a controversy should arise between the parties, until such audit or controversy is terminated, even though such retention period may be after the expiration of the Term or earlier termination of this Lease.

4.3 **Reports.** Tenant shall submit to Landlord, at the place where the Rent is then payable, an annual statement of Gross Sales on a form acceptable to Landlord, within sixty (60) days after the end of each Lease Year. Said statement shall show the total amount of Gross Sales for such Lease Year and shall be certified to be true, complete and correct by an executive officer of Tenant.

#### **ARTICLE 5: TAXES, LANDLORD'S INSURANCE AND OPERATING COSTS**

In addition to Minimum Rent, commencing on the first day of the second (2<sup>nd</sup>) Lease Year, Tenant agrees to pay Tenant's Fixed Operating Costs Contribution. In addition to the foregoing, commencing on the Commencement Date, Tenant agrees to pay Tenant's Proportionate Share of Taxes, Landlord's Insurance and "Uncontrollable Operating Costs" (taking into account any contribution to Taxes, Landlord's Insurance or Uncontrollable Operating Costs made by the operator of any Anchor Tenant Premises) prorated on a daily basis for any partial Lease Year. For purposes hereof, "Uncontrollable Operating Costs" shall mean costs associated with snow and ice removal and related activities. Tenant's Proportionate Share of Taxes, Landlord's Insurance and Uncontrollable Operating Costs shall be estimated at the beginning of the Term and annually thereafter within ninety (90) days after the end of each calendar year. During any calendar year during which Tenant is liable for Tenant's Fixed Operating Costs Contribution, Tenant shall pay the same in equal monthly installments on or before the first day of each month throughout the Lease Term. Commencing on the Commencement Date, Tenant shall pay the estimate of Tenant's Proportionate Share of Taxes, Landlord's Insurance and Uncontrollable Operating Costs in equal monthly installments on or before the first day of each month throughout the Lease Term; provided, that the amount of installments for Taxes, Landlord's Insurance and Uncontrollable Operating Costs may be changed upon not less than thirty (30) days notice if Landlord's estimate thereof changes. Within ninety (90) days after the end of each calendar year, Landlord shall determine the actual amount of Taxes, Landlord's Insurance and Uncontrollable Operating Costs for the previous calendar year (and Tenant's Proportionate Share thereof) and shall furnish an itemized statement of such costs in writing to Tenant. If the relevant taxing authority levies Taxes against the Center which are combined with other taxes (including fees, assessments and other charges of the type included in the definition of Taxes in Section 2.30) levied against the other portions of the Midtown Crossing at Turner Park mixed-use project of which the Center is a part, Landlord shall allocate an equitable portion of the total combined tax levy to the Center, and Landlord's determination shall be conclusive provided that it is made in good faith and not arbitrarily. If the estimated monthly payments made by Tenant for the previous calendar year exceed the actual amount of Tenant's Proportionate Share of Taxes, Landlord's Insurance, and Uncontrollable Operating Costs, Landlord shall rebate the excess to Tenant; but if the actual amount of Tenant's Proportionate Share of Taxes, Landlord's Insurance and Uncontrollable Operating Costs exceeds the estimated monthly payments made by Tenant for the previous calendar year, Tenant shall pay the difference within thirty (30) days after the annual adjustment billing by Landlord. Tenant's obligation to pay Tenant's Proportionate Share of Taxes, Landlord's Insurance and Uncontrollable Operating Costs in excess of those estimated shall survive the expiration of this Lease, together with Tenant's obligation to pay all other accrued sums due hereunder. Landlord and Tenant acknowledge and agree that

the Fixed Operating Costs Contribution has been freely negotiated and agreed upon between the parties and is not subject to dispute, review, challenge or audit at law or in equity.

#### **ARTICLE 6: SECURITY DEPOSIT**

Concurrently with the execution of this Lease, Tenant shall deliver to Landlord the Security Deposit (as set forth in Section 1.6(B)) as security for the prompt and complete performance of all of the terms, covenants and agreements contained in this Lease. Landlord shall retain the Security Deposit without interest to Tenant, and may commingle it with other accounts, and under no circumstances shall the Security Deposit be construed or held as a trust of any kind. In the event Tenant defaults under this Lease, Landlord may, at its option, expend, apply or retain the whole or any part of the Security Deposit for the payment of any sum of money required to be paid by Tenant under this Lease, including, but not limited to, Minimum Rent, Operating Costs, utilities, audit fees, late charges, the costs of repairs or clean-up costs for damage to or cleaning of the Premises, damages, repairs, amounts required to discharge any construction, mechanic's or materialman's lien or any other obligation that may become due and payable by Tenant under the terms of this Lease. If all or any part of the Security Deposit is so applied, Tenant also shall deposit with Landlord, upon demand, a sum sufficient to replenish the amount of the Security Deposit to the full original amount. If all or any part of the Security Deposit shall be applied to cure a default on the part of Tenant, such application shall not constitute a waiver of such default or deprive Landlord of any other remedy that may be available on account of such default, nor shall the amount so applied be considered liquidated damages to any extent. In the event Tenant shall fully and faithfully comply with all of the covenants and conditions of this Lease, then the Security Deposit shall be returned to Tenant within ninety (90) days after expiration or earlier termination of this Lease in compliance with this Lease and upon written request by Tenant. Tenant acknowledges that the Security Deposit is not a prepayment of Rent or any other charges and that Landlord shall not be obligated to apply the Security Deposit to any unpaid Rent or charges, but may do so in its discretion.

#### **ARTICLE 7: PAYMENT OF RENT, OTHER CHARGES AND PRORATIONS**

**7.1 Rent.** Minimum Rent, Tenant's Fixed Operating Costs Contribution, Tenant's Proportionate Share of Uncontrollable Operating Costs, Taxes and Landlord's Insurance and any other amounts which Tenant is or becomes obligated to pay Landlord under this Lease are sometimes herein referred to collectively as "Rent," and all remedies applicable to the non-payment of Rent shall be applicable thereto. Rent shall be paid without any prior demand or notice therefor, and shall in all events be paid without any deduction, recoupment, set-off or counterclaim, and without relief from any valuation or appraisal laws. Tenant shall pay any rent tax, sales tax, service tax, transfer tax, value added tax or any other applicable tax on the Rent, utilities or services herein or otherwise respecting this Lease or any other document entered in connection herewith, to the extent the same are not included in Operating Costs. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant.

**7.2 Late Charges and Interest.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or any other sums due under this Lease will cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which are presently difficult to ascertain. Accordingly, if any payment of Minimum Rent, other Rent as described above, or any other amount due from Tenant under this Lease shall not be received by Landlord when due, then, in addition to the required payment, Tenant shall also pay to Landlord a late charge equal to five (5%) percent of the amount past due, plus interest from the due date at the Default Rate until payment is received by Landlord. Acceptance of such late charges and interest payments shall not be deemed consent by Landlord to late payments, nor a waiver of Landlord's right to insist upon timely payments at any time, nor a waiver of any remedies to which Landlord is entitled as a result of the late payment of Rent.

**7.3 Prorations.** If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Minimum Rent, Tenant's Proportionate Share of Taxes, Landlord's Insurance and Uncontrollable Operating Costs, Tenant's Fixed Operating Costs Contribution and any other amounts payable on a monthly basis shall be prorated on a per diem basis for such partial calendar months. If the Minimum Rent is scheduled to increase under Article 1 other than on the first day of a calendar month, the amount for such month shall be prorated on a per diem basis to reflect the number of days of such month at the then current and increased rates, respectively. If the Term commences other than on January 1, or ends other than on December 31, Tenant's obligations to pay its Proportionate Share of actual Taxes, Landlord's Insurance and Uncontrollable

Operating Costs, Tenant's Fixed Operating Costs Contribution and any other amounts payable hereunder for such first or final calendar years shall be prorated on a per diem basis to reflect the portion of such years included in the Term.

#### **ARTICLE 8: CONDITION OF PREMISES: OPENING FOR BUSINESS**

Notwithstanding any other provisions of this Lease, Landlord and Tenant agree to perform their respective obligations set forth in Exhibit B attached hereto and by this reference incorporated herein (the "Construction Exhibit"). To the extent any provisions of the Construction Exhibit conflict with the provisions of Article 9 hereof, the provisions of the Construction Exhibit shall control. Subject to Landlord's compliance with its obligations under the Construction Exhibit, Tenant agrees to accept the Premises, Center and any Systems and Equipment serving the Premises on the Delivery Date "as is," without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements except as set forth in the Construction Exhibit, and to open the Premises for business to the public on or before the date 60 days following the Delivery Date, fully in compliance with all provisions of this Lease, including, without limitation, Article 10. During any period that Tenant shall be permitted to enter the Premises prior to the Commencement Date, Tenant shall comply with all terms and provisions of this Lease, except those provisions requiring the payment of Rent.

#### **ARTICLE 9: TRADE FIXTURES, ALTERATIONS AND LIENS**

**9.1 Approval.** Tenant shall not attach any fixtures, equipment or other items to the Premises or make any additions, changes, alterations or improvements to the Premises or the Systems and Equipment serving the Premises (all such work referred to collectively herein as the "Work"), without the prior written consent of Landlord which may be granted or withheld in Landlord's sole discretion. The procedure for obtaining Landlord's approval of Tenant's Initial Work (as defined in the Construction Exhibit) shall be as set forth in the Construction Exhibit.

**9.2 Conditions.** Landlord reserves the right to impose reasonable requirements as a condition of such consent or otherwise in connection with the Work, including, without limitation, requirements that Tenant: (i) submit for Landlord's prior written approval detailed plans and specifications prepared by licensed and competent architects and engineers; (ii) submit for Landlord's prior written approval the names, addresses and background information concerning all contractors, subcontractors and suppliers; (iii) obtain and post permits, bonds and additional insurance; (iv) submit contractor, subcontractor and supplier lien waivers; and (v) comply with such other requirements as Landlord reasonably may impose concerning the manner and times in which such Work shall be done and other aspects of the Work. If Landlord consents or supervises, or recommends any suppliers, contractors, architects or engineers, the same shall not be deemed a warranty as to the adequacy of the design, workmanship or quality of materials, or compliance of the Work with any Laws. Landlord's review of any of the foregoing shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, compliance with Laws or other like matters. Accordingly, notwithstanding that any of the foregoing are reviewed by Landlord or its space planner, architect, engineers and consultants and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any of the foregoing and Tenant's waiver and indemnity set forth in this Lease shall specifically apply thereto.

**9.3 Performance of Work.** All Work shall be performed (i) in a thoroughly first class, professional and workmanlike manner; (ii) only with materials that are new, high quality and free of material defects; (iii) in accordance with plans and specifications approved by Landlord in advance in writing; (iv) not to adversely affect the Systems and Equipment, roof, exterior walls, or any other structural element of the Building; (v) diligently to completion and so as to cause the least possible interference with other tenants and the operation of the Center; (vi) in accordance with Landlord's Design Criteria, which has previously been delivered to Tenant, and construction requirements; and (vii) in compliance with all Laws and other provisions of this Lease, including, without limitation, the Rules attached hereto as Exhibit C. If Tenant fails to perform the Work as required herein or the materials supplied fail to comply herewith or with the specifications approved by Landlord, and Tenant fails to cure such failure within forty-eight (48) hours after written notice by Landlord (except that notice shall not be required in emergencies), Landlord shall have the right to stop the Work until such failure is cured (which shall not be in

limitation of Landlord's other remedies and shall not serve to abate the Rent or Tenant's other obligations under this Lease).

**9.4 Liens.** Tenant shall keep the Center, Premises and its interest in this Lease free from any mechanic's, materialman's or similar liens or encumbrances, and any claims therefor, in connection with any Work. Tenant shall give Landlord notice at least ten (10) days prior to the commencement of any Work (or such additional time as may be necessary under applicable Law, to afford Landlord the opportunity of posting and recording appropriate notice of non-responsibility). Tenant shall remove any such claim, lien or encumbrance by bond or otherwise within thirty (30) days after notice by Landlord. If Tenant fails to do so, Landlord may pay the amount or take such other action as Landlord deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Landlord shall be deemed additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Center or Premises to any such notices, liens or encumbrances, whether claimed by operation of statute or other Law or express or implied contract. Any claim to a lien or encumbrance upon the Center or Premises arising in connection with any Work shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Center and Premises.

**9.5 Electrical Installations.** In the event Tenant installs any electrical equipment or fixtures that overload the lines in the Premises, Tenant shall, at its own expense, make the changes necessary to comply with Landlord's requirements and those of insurance underwriters and applicable local governmental code administrators. Tenant agrees not to use any electric irons, electric grills or other equipment that contains an electric heating element, unless such electrical equipment also includes a red pilot light, connected and operated in compliance with Underwriters' Laboratory specifications.

#### **ARTICLE 10: USE AND OPERATING REQUIREMENTS**

**10.1 Use; Compliance with Laws.** Tenant shall use the Premises only for the purposes specified in Article 1 (and Tenant shall use the Premises for all the purposes specified therein), and for no other purpose whatsoever, subject to and in compliance with all other provisions of this Lease, including, without limitation, the Rules attached as Exhibit C. In addition to the foregoing, Tenant expressly covenants and agrees that it shall not permit any operation in the Premises which would violate: (a) any of the exclusives or restrictions set forth in Exhibit D attached hereto and incorporated herein by this reference; or (b) any of the prohibited uses set forth in Exhibit E attached hereto and incorporated herein by this reference. Tenant shall comply with all Laws relating to the Premises and Tenant's use thereof, including, without limitation, Laws, if any, requiring the Premises to be closed on any certain days or hours, health, safety and building codes, and any permit or license requirements. Tenant shall not dispose of any grease or oils on the Premises or any other part of the Center other than in the Grease Trap. Landlord makes no representation that the Premises are suitable for Tenant's purposes. No auctions, fire sales, truckload sales, sidewalk sales, inventory reduction sales, liquidation sales, bankruptcy sales, "going out of business" sales or sales of similar import may be conducted on or about the Premises except upon Landlord's prior written consent in each instance. Tenant shall not display any signs advertising the foregoing anywhere in or about the Premises. Tenant shall not conduct wholesale, factory outlet or warehouse business on the Premises, or operate as a discount store, or otherwise engage in heavily discounted sales from the Premises. For purposes of this Lease, "heavily discounted" sales shall mean those advertised or promoted at reductions of greater than fifty percent (50%) from retail prices. The foregoing restrictions also shall apply to Tenant's creditors.

**10.2 Required Hours.** Tenant agrees to continuously operate and conduct its business in one hundred percent (100%) of the Premises during the Required Hours. "Required Hours" herein shall mean those hours established from time to time by Landlord for the Center in general, or for categories or classes of Center tenants that includes Tenant, in Landlord's sole discretion, which Required Hours initially shall be as shown in Section 1.10. Notwithstanding anything to the contrary herein contained, Tenant shall not be required to be open for business on the following days: Easter Day, Memorial Day, Labor Day, Thanksgiving Day and Christmas Day. If there is more than one "legal" holiday for any day set forth in the preceding sentence, the day the Center closes, if any, will be the day which Tenant is not required to be open, and if the Center is not closed either day, then Tenant shall not be required to be open on that day which is observed by the Federal government as the "legal" holiday. If Tenant fails to open for business on any day on which Tenant is required under this Lease to be open or Tenant's business is not

conducted during the Required Hours, Tenant shall pay Landlord as additional Rent a charge equal to fifty percent (50%) of the calculated Rent on a per diem basis for every day or part thereof that Tenant shall be in violation of this Section 10.2.

**10.3 Required Operations.** Tenant shall conduct its business at all times in a first-class professional and businesslike manner consistent with reputable business standards and practices, and such that a high reputation of the Center is developed and enhanced. Tenant shall operate the Premises continuously, actively and diligently in a good faith manner designed to maximize Gross Sales. Tenant shall keep the Premises adequately staffed with well-trained personnel for efficient first-class service, and, where appropriate, adequately stocked with new "in season" merchandise in good condition and displayed in a professional and tasteful manner. Tenant agrees that storage and office space in the Premises shall be limited to that necessary for, and used in conjunction with, the business use designated in Article 1 to be conducted in the Premises. Sales and services permitted under Article 1 shall be provided only on a retail basis to the general public. Tenant shall not use the Premises for catalogue sales.

**10.4 Prior Vacation.** In the event that Tenant ceases to operate a business on the Premises for the purpose authorized herein and as described in this Article 10, or if Tenant surrenders the keys to the Premises, then Landlord shall have all rights and remedies under Article 20 below. In case of any such prior vacation of the Premises, this Lease shall continue in effect unless or until terminated by express action of Landlord pursuant to Article 20 or until its Term expires, and Tenant shall remain liable for the payment of Rent, notwithstanding Landlord's acceptance of the keys or its attempts to re-let the Premises.

#### **ARTICLE 11: MERCHANTS' ASSOCIATION**

#### **ARTICLE 12: UTILITIES AND SERVICES**

**12.1 Utility Payments.** Tenant agrees to pay for all electricity, gas, water and other utility services, whether furnished to the Premises by utility companies or by Landlord. Such utility services (if any) actually furnished by Landlord shall be billed at rates not exceeding those charged by applicable utility companies for the same size meter serving Tenant; provided that Landlord may allocate such billings on a square-foot basis unless service is separately metered or submetered.

**12.2 Metering or Pro Rata Allocations.** Landlord or Tenant may install separate meters or submeters on or about the Premises, or Tenant shall utilize existing separate meters or submeters (if any) already in place; and Tenant shall pay any such separately metered utility charges attributable to the Premises, including (without limitation) charges for electricity, gas and water, directly to the appropriate municipality, utility or service company, or shall reimburse Landlord for such charges based on submeter readings.

**12.3 Termination of Utilities.** Landlord shall not in any way be responsible or liable to Tenant, or to any other party occupying any part of the Premises, for any failure or defect in the supply or character of water, electricity or any other utility service furnished to the Premises or to the Common Areas (whether furnished by Landlord or by others), or by reason of any requirement, act or omission of the public utility company serving the Premises, the Building or the Center with electricity, water or other utility service, or because of necessary repairs or improvements or the lack thereof.

#### **ARTICLE 13: MAINTENANCE AND REPAIR OF PREMISES**

**13.1 Tenant Maintenance and Repairs.** Tenant shall keep the Premises in good working order, repair and condition (which condition also shall be clean, sanitary, sightly and free of odors, pests and rodents, and which repairs shall include necessary replacements and capital expenditures and compliance with all Laws now or hereafter adopted), except to the extent provided to the contrary in Article 16 respecting casualty damage. Tenant's obligations hereunder shall include, but not be limited to, Tenant's trade fixtures and equipment, security gates, security locks, ceilings, walls, storefront entrances, signs, interior decorations, floor-coverings, wall-coverings, windows, entry and interior doors, exterior and interior glass, plumbing fixtures, light fixtures and bulbs, keys and locks, fire extinguisher and fire protection systems, and equipment and lines for water, sewer (including, when applicable to the Premises, free flow up to the common sewer line and common grease trap line), HVAC, electrical,

gas, steam, sprinkler and mechanical facilities, and other Systems and Equipment which serve the Premises exclusively, whether located within or outside the Premises), and all alterations and improvements to the Premises (whether installed by Landlord or Tenant). Tenant also shall reimburse Landlord for any repairs, maintenance and replacements to areas of the Center outside the Premises caused as a result of moving any furniture, fixtures or other property to or from the Premises, or otherwise caused by Tenant or any other occupant of the Premises, or any of their employees, agents, invitees or contractors. Any repairs or other work by Tenant hereunder shall be deemed "Work" under Article 9 and shall be subject to all of the requirements thereunder, including, without limitation, Landlord's prior written approval.

**13.2 Maintenance.** If the Premises are served exclusively by any HVAC units or other Systems or Equipment, Tenant shall enter annual, written maintenance contracts with competent, licensed and insured contractors reasonably approved or designated by Landlord. Such contracts shall include, and Tenant shall require that such contractors provide: (i) inspection, cleaning and testing at least semi-annually for HVAC units and for other Systems and Equipment (or more frequently if required by applicable Law or if reasonably required by Landlord); (ii) any servicing, maintenance, repairs and replacements of filters, belts or other items determined to be necessary or appropriate as a result of such inspections and tests, or by the manufacturer's warranty, service manual or technical bulletins, or otherwise required to ensure proper and efficient operation, including emergency work; (iii) all other work as shall be reasonably required by Tenant, Landlord or Landlord's insurance carriers; (iv) a detailed record of all services performed; and (v) an annual service report at the end of each calendar year. Tenant shall provide Landlord with a copy of such annual service reports. Not later than thirty (30) days prior to the Commencement Date and annually thereafter, Tenant shall provide Landlord with a copy of all maintenance contracts required hereunder and written evidence reasonably satisfactory to Landlord that the annual fees therefor have been paid. Such maintenance contracts represent part of Tenant's obligations under this Article and shall not be deemed to limit Tenant's general obligations to keep any HVAC equipment and other Systems and Equipment hereunder in good working order, repair and condition as further described in Section 13.1 above.

**13.3 Landlord Maintenance and Repairs.** Landlord shall keep the roof, foundation, exterior walls other than the storefront, common utility lines to the point of connection for Tenant, and structural portions of the Premises in good working order and repair, provided that Tenant shall give Landlord reasonable prior notice of the necessity for such repairs, and further provided that, subject to the waiver of subrogation set forth in Article 15, if any damage thereto shall have been caused by any act or omission of, or violation of this Lease by Tenant or any other occupant of the Premises claiming by, through or under Tenant, or any of their employees, agents or contractors, Landlord shall perform such repairs as provided above (without limiting Landlord's other remedies therefor) and, subject to the waiver of subrogation set forth in Article 15 below, Tenant shall reimburse Landlord for the cost and expense thereof within thirty (30) days after receipt of any invoice.

#### **ARTICLE 14: COMMON AREAS**

**14.1 Use of Common Areas.** Tenant may use the Common Areas to which, and for the purposes for which, other tenants at the Center are given access during the Term, subject to the following conditions:

- (a) The Common Areas shall be used by Tenant and Tenant's employees and invitees on a non-exclusive basis in common with employees and invitees of Landlord and other tenants and parties to whom the right to use the Common Areas has been or is hereafter granted.
- (b) Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas which interferes in any way with the use of the Common Areas by other parties.
- (c) Tenant's use of the Common Areas shall be subject to the other provisions of this Lease, including without limitation, the Rules attached hereto as Exhibit C.
- (d) Tenant's right to use the Common Areas shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises.



**14.2 Common Area Maintenance and Control.** Landlord shall administer, operate, clean, maintain and repair the Common Areas. Landlord reserves the right at all times to determine the nature and extent of all Common Areas and shall have exclusive control and management thereof. Landlord shall have the right to close all or a portion of the Common Areas to discourage non-customer parking, to prevent a dedication thereof to public use or otherwise to prevent the acquisition of public rights in such areas. Landlord reserves the right to use or permit the use of the Common Areas for any purpose which, in Landlord's sole opinion, may be in the best interests of the Center, including, without limitation, promotions, events, exhibits, displays and shows.

#### **ARTICLE 15: INSURANCE, SUBROGATION, AND WAIVER OF CLAIMS**

**15.1 Required Insurance.** Tenant shall maintain during the Term: (i) commercial general liability insurance, with a contractual liability endorsement covering Tenant's indemnity obligations under this Lease, and with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate; (ii) umbrella/excess coverage liability insurance of no less than \$3,000,000 per occurrence and in the aggregate; (iii) workers' compensation insurance, including employer's liability insurance, as required by statute; (iv) plate glass insurance covering all plate glass in the Premises and the storefront therefor; (v) Special Form property damage insurance covering Tenant's inventory, personal property, business records, furniture, floor coverings, fixtures and equipment, and all Work installed by or for Tenant, including but not limited to any Tenant's Initial Work constructed or installed pursuant to the Construction Exhibit (if any), whether or not paid for out of the Improvement Allowance (if any), for damage or other loss caused by fire or other casualty or cause, including, but not limited to, vandalism and malicious mischief, theft, explosion, business interruption, and water damage of any type, including sprinkler leakage, bursting and stoppage of pipes; and (vi) commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this Lease covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00, combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. In addition to the foregoing, if alcoholic beverages are sold or served in, from or about the Premises, Tenant shall maintain Dram Shop and host liquor liability insurance in accordance with Nebraska law. All insurance required hereunder shall be provided by responsible insurers and have a policyholder rating of at least "A" and be assigned a financial category of at least "Class X" in the then current edition of Best's Insurance Guide and shall be licensed in the state of Nebraska. Tenant's property damage insurance shall include full replacement cost coverage, and the amount shall satisfy any coinsurance requirements under the applicable policy. Tenant's insurance shall be primary, and any insurance maintained by Landlord or any other additional insureds hereunder shall be excess and noncontributory. Landlord shall have the right to reasonably increase the amount or expand the level of insurance to be maintained by Tenant hereunder from time to time.

During the Term, Landlord shall maintain property damage insurance covering the Building in which the Premises are located. Tenant expressly acknowledges that Tenant understands that such insurance maintained by Landlord will not cover any leasehold improvements installed at Tenant's expense or any of Tenant's personal property. During the Term, Landlord shall also maintain commercial general liability insurance covering the Common Areas in the amounts of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and umbrella/excess coverage liability insurance of no less than \$3,000,000 per occurrence and in the aggregate. Tenant will not be insured under such liability insurance policies. All such insurance shall be maintained with financially responsible insurers licensed in the State of Nebraska.

**15.2 Certificates, Subrogation and Other Matters.** Tenant shall provide Landlord with certificates evidencing the insurance coverage required hereunder (and, with respect to liability coverage showing Landlord and others designated by Landlord as additional insureds, and with respect to leasehold improvements showing Landlord as an additional insured). Tenant shall provide such certificates prior to the Commencement Date or the date Tenant takes possession of the Premises (whichever first occurs). Tenant shall provide renewal certificates to Landlord at least thirty (30) days prior to expiration of such policies. Such certificates shall state that the coverage may not be changed or cancelled without at least thirty (30) days' prior written notice to Landlord. Each party hereto hereby releases the other party (and their respective agents, officers and employees) from any liability, right of recovery, claim, action or cause of action the other party may have on account of such loss, cost, damage or expense which arises from any peril that would be covered by a Special Form replacement cost policy of insurance regardless of the insurance actually carried by such party, the extent of any recovery thereunder or the negligence of the party being released or its agents, contractors, officers or employees and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, including that of the insurance carriers of the other party. All

insurance policies carried by either party with respect to its property located within or constituting a part of the Center or the Premises or with respect to Landlord's or Tenant's respective businesses (which shall include, without limitation, loss of earnings and loss or damage with respect to Tenant's leasehold interest in the case of Tenant and loss of rents in the case of Landlord), whether or not required to be carried by this Lease, shall permit the waiving of any right of recovery on the part of the insured against the other party for any loss or damage to the extent such rights have been waived by the insured prior to the occurrence of such loss or damage. For the purpose of the foregoing waiver, the amount of any deductible applicable to any loss or damage shall be deemed covered by the insured under the insurance policy to which such deductible relates.

**15.3 Waiver of Claims.** Except to the extent arising from the intentional misconduct or grossly negligent acts of Landlord or Landlord's agents or employees, Tenant waives all claims against Landlord for injury or death to persons, damage to property or to any other interest of Tenant sustained by Tenant or any party claiming through or under Tenant resulting from (i) any occurrence in or upon the Premises; (ii) leaking of roofs, bursting, stoppage or leaking of water, gas, sewer or steam pipes or equipment, including sprinklers; (iii) wind, rain, snow, ice, flooding, freezing, fire, explosion, earthquake, excessive heat or cold, fire or other casualty; (iv) the Center, Premises, Systems or Equipment being defective, out of repair, or failing; and (v) vandalism, malicious mischief, theft or other acts or omissions of any other parties, including, without limitation, other tenants, contractors and invitees at the Center. Tenant agrees that Tenant's property loss risks shall be borne by Tenant, and Tenant agrees to look solely to and seek recovery only from its insurance carriers, if any, in the event of such losses. For purposes of this Section, any deductible amount shall be treated as though it were recoverable under such policies.

#### **ARTICLE 16: CASUALTY DAMAGE**

**16.1 Restoration by Landlord.** If the Premises shall be damaged by fire or other casualty, Landlord shall use available insurance proceeds to repair the Premises, except that Landlord shall not be required to repair or replace any of Tenant's furniture, furnishings, fixtures or equipment, and Landlord's obligations shall be subject to any governmental requirements or requirements of any Lender and such Lender's right to control, apply or withhold such insurance proceeds. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof. Landlord shall notify Tenant within nine (9) months after the casualty whether or not Landlord intends to restore the Premises. If Landlord does not provide such written notice, then and in that event, Landlord shall be required to restore the Premises to the extent required hereby.

**16.2 Restoration by Tenant.** If Landlord repairs the Premises as provided herein, Tenant shall repair and replace Tenant's Work, all items required to be insured by Tenant hereunder, and all other items required to restore the Premises to the condition required under Article 9 of this Lease. Tenant shall commence such work within ten (10) days following substantial completion by Landlord of any repairs required by Landlord hereunder and shall proceed diligently therewith to completion. Tenant's work hereunder shall constitute "Work" under Article 9 and shall be subject to all of the provisions thereof. Tenant may close the Premises for business to the extent reasonably required in connection with such Work.

**16.3 Abatement of Rent.** Landlord shall allow Tenant a proportionate abatement of Rent from the date of the casualty through the date Landlord substantially completes Landlord's repair obligations hereunder (or the date that Landlord would have substantially completed such repairs, but for delays by Tenant, its agents, employees, invitees, transferees and contractors), provided such abatement shall (i) apply only to the extent the Premises are untenantable for the purposes permitted under this Lease and not used by Tenant as a result thereof, based proportionately on the square footage of the Premises so affected and not used, and (ii) not apply if Tenant or any other occupant of the Premises, or any of their employees, agents, invitees or contractors caused the damage.

**16.4 Termination of Lease.** Notwithstanding the foregoing to the contrary, Landlord may elect to terminate this Lease, if the Center is damaged by fire or other casualty or causes such that (a) more than twenty-five percent (25%) of the Premises is affected by the damage, (b) the damage occurs less than one (1) year prior to the end of the Term, (c) any Lender requires that the insurance proceeds or any portion thereof be applied to the debt (or terminates the ground lease, as the case may be), or the damage is not fully covered by Landlord's insurance policies, or (d) in Landlord's reasonable opinion, the cost of the repairs, alterations, restoration or improvement work would exceed twenty-five percent (25%) of the replacement value of the Center or of the portion thereof

owned or ground leased by Landlord (whether or not the Premises are affected). In any such case, Landlord may terminate this Lease by notice to Tenant within one hundred twenty (120) days after the date of damage (such termination notice to include a termination date providing at least thirty (30) days for Tenant to vacate the Premises). Tenant agrees that Landlord's obligation to restore, and the abatement of Rent provided herein, shall be Tenant's sole recourse in the event of such damage, and Tenant waives any other rights Tenant may have under any applicable Law to terminate this Lease by reason of damage to the Premises or Center, except as expressly set forth herein.

#### **ARTICLE 17: RETURN OF POSSESSION**

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall surrender possession of the Premises in broom-clean condition and good repair, free of debris, and otherwise in the condition required under Article 13, and shall ensure that all signs, movable trade fixtures and personal property have been removed therefrom and that any damage caused thereby has been repaired, including, without limitation, patching all holes in the walls so that the walls are in a "paint-ready" condition, capping any electrical wiring and ensuring that no electrical wiring is exposed. All leasehold improvements and other fixtures affixed to the Building or Premises as more particularly described in Section 22.2 shall be Landlord's property and shall remain, all without compensation, allowance or credit to Tenant. However, if in connection with any Work after the Tenant's initial Work, Landlord has notified Tenant in writing (which notice shall be at the time of plan approval if plan approval is required) that Tenant shall be required to remove any leasehold improvements at the end of the Term, then Tenant shall promptly remove such of the foregoing items as are designated and repair any damage to the Premises caused by such removal. If Tenant shall fail to perform any repairs or restoration, or fail to remove any items from the Premises as required hereunder, Landlord may do so, and Tenant shall pay Landlord the cost thereof upon demand. All property removed from the Premises by Landlord hereunder may be handled, discarded or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. All such property shall, at Landlord's option, be conclusively deemed to have been conveyed by Tenant to Landlord in "as is" condition, without any warranty, as if by bill of sale, without payment by Landlord. If Landlord arranges for storage of any such property, Landlord shall have a lien against such property for costs incurred in removing and storing the same.

#### **ARTICLE 18: HOLDING OVER**

Tenant shall pay Landlord one hundred fifty percent (150%) of the amount of Rent applicable during the preceding month prorated on a per diem basis for each day Tenant shall retain possession of the Premises or any part thereof after expiration or earlier termination of this Lease, together with all damages sustained by Landlord on account thereof. The foregoing provisions shall not serve as permission for Tenant to hold over, nor serve to extend the Term (although Tenant shall remain a tenant at sufferance, bound to comply with all provisions of this Lease until Tenant vacates the Premises). Landlord shall have the right, at any time after expiration or earlier termination of this Lease or Tenant's right to possession, to re-enter and possess the Premises and remove all property and persons therefrom, and Landlord shall have such other remedies for holdover as may be available to Landlord under other provisions of this Lease or applicable Laws.

#### **ARTICLE 19: ASSIGNMENT, SUBLEASE OR CHANGE OF MANAGEMENT CONTROL**

**19.1 Consent to Transfer.** Except upon Landlord's written consent in each instance, Tenant shall not directly or indirectly, voluntarily, by operation of law, or otherwise: (a) sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of this Lease, the Premises or Tenant's leasehold interests hereunder; nor (b) allow or permit any sale or transfer (including by consolidation, merger or reorganization) of a majority of the voting stock or management control of Tenant, if Tenant is a corporation or limited liability company; nor (c) allow or permit any sale or other transfer of controlling general partnership interests in Tenant, if Tenant is a partnership; nor (d) allow or permit a change of present controlling executive management by management contract, license, franchise agreement or other arrangement (all of the foregoing items (a), (b), (c) and (d) are hereafter collectively referred to as an "Assignment"); nor (e) permit subtenants, concessionaires, licensees or others to occupy all or any portion of the Premises; nor (f) sublease the Premises or any portion thereof (items (e) and (f) are hereafter collectively referred to as a "Sublease").

**19.2 Request for Approval.** If Tenant desires at any time to enter into an Assignment or Sublease as described above, it shall first give written notice to Landlord of its desire to do so, which notice shall contain or include: (a) the name of the proposed successor, assignee, subtenant or occupant (hereafter referred to as the "transferee"); (b) the nature of the proposed transferee's business to be conducted in the Premises; (c) the terms, provisions and economic considerations of the proposed Assignment or Sublease; (d) the identity of proposed principals and lease guarantors (if any); (e) signed current financial statements of the proposed transferee and guarantors (if any), reviewed or prepared by a major local or national certified public accounting firm; and (f) the business plan of the proposed transferee or other written statements of purpose, proposed operating policies and the background and experience of the principals.

**19.3 Landlord's Election.** At any time within thirty (30) days after receipt of the notice specified in Section 19.2 above, Landlord may request additional information or may, in its sole and absolute discretion, by written notice to Tenant: (a) consent to the Sublease or Assignment; or (b) disapprove the Sublease or Assignment. If Landlord consents to the Sublease or Assignment within said thirty (30) day period, Tenant shall within thirty (30) days thereafter enter into such Sublease or Assignment of the Premises or portion thereof, upon the terms and conditions set forth in the notice previously furnished by Tenant to Landlord pursuant to Section 19.2 above; otherwise, Landlord's consent shall be void and of no force or effect.

**19.4 Noncompliance.** No consent by Landlord to any Assignment or Sublease by Tenant shall release Tenant from any of its obligations hereunder or relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease, including, without limitation, the payment of Rent. Landlord's consent to any Assignment or Sublease shall not relieve Tenant, or the transferee, from the obligation to obtain Landlord's express prior written consent to any other Assignment or Sublease. Following Landlord's consent to an Assignment or Sublease, said Assignment instrument or Sublease shall not be subsequently amended or modified without prior written notice to and the consent of Landlord, if Landlord would have been entitled to notice thereof in the first instance pursuant to Section 19.2. Any purported Assignment or Sublease not in compliance with this Article shall be void and, at the option of Landlord, shall constitute a default by Tenant under this Lease. The acceptance of Rent by Landlord from a proposed transferee shall not constitute Landlord's consent to any such Assignment or Sublease.

**19.5 Assumption of Lease.** Each transferee shall expressly assume all obligations of Tenant under this Lease and shall be and remain jointly and severally liable with Tenant for the payment of Rent and for the performance of all the terms, covenants, conditions and agreements herein contained with respect to that portion of the Premises which is subject to the Assignment or the Sublease. No Assignment or Sublease shall be binding on Landlord, unless the transferee or Tenant shall deliver to Landlord an executed counterpart of the Assignment or Sublease which contains covenants of assumption satisfactory in substance and form to Landlord, and consistent with the requirements of this Article; provided that the failure or refusal of such party to execute such instrument of assumption shall not release or discharge the transferee from its liability as set forth above.

**19.6 Successors; Joint Liability.** All rights and liabilities herein given or imposed upon the respective parties hereto shall, except as may be otherwise herein provided, extend to and bind the respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one (1) tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein contained. No rights, however, shall inure to the benefit of any transferee or assignee of Tenant unless the Assignment or Sublease has been made in accordance with the provisions in this Article.

**19.7 Processing Charge.** Tenant agrees to reimburse Landlord for reasonable attorneys' fees incurred by Landlord in connection with the processing, review and documentation of any Assignment, Sublease, license, concession, creation of a security interest, granting of a collateral assignment, change of ownership or transfer for which Landlord's consent is required or sought under this Article. Landlord shall not be required to take any action thereon until Tenant pays such amounts.

**19.8 Landlord's Consideration.** Whenever its consent to a proposed Assignment or Sublease is required hereunder, Landlord may request additional supporting documentation and assurances and may consider all relevant factors, including (without limitation):

(a) Whether the use of the Premises and trade name of the proposed transferee will be identical to (or substantially the same as) those of Tenant, or will otherwise be compatible with Landlord's efforts to enhance the image, reputation, trade name and long-term profitability of the Center;

(b) Whether the addition of the proposed new tenant or subtenant will be compatible with the tenant mix of the Center generally and specifically among business operators specializing in particular kinds of merchandise, services and products; or conflict with Landlord's marketing plans for the Center and the consumer groups being targeted by Landlord and its leading tenants in the Center;

(c) Whether the quantity, kind, variety and quality of the merchandise sold will remain substantially the same;

(d) Whether the level and quality of customer services on the Premises will be consistent with those of the leading tenants of the Center and will remain high;

(e) Whether the net worth and liquidity of the proposed transferee and lease guarantors (if any) are adequate in relation to the assets held and to current and anticipated future financial obligations, as revealed by current signed financial statements reviewed by a major local or national certified public accounting firm;

(f) Whether the proposed transferee and its principals, affiliates and guarantors (if any) have a sufficient credit history and reputation for honesty and fair dealing;

(g) Whether the business plan and operating procedures for the business on the Premises are reasonably coherent, lucid, credible and economically feasible;

(h) Whether the proposed transferee and its management team have sufficient education, specifically applicable business experience, and successful track records in marketing and managing businesses similar in size, scope and scale to that on the Premises together with any other stores, offices or businesses proposed to be acquired by the transferee and its affiliates; and

(i) Whether the amounts to be invested in the business on the Premises are actually invested, and whether the proposed transferee and its principals and guarantors (if any) have sufficient personal financial interests and potential personal liabilities to assure proper motivation for success.

19.9 **Franchisor.** Landlord acknowledges that Tenant, as a franchisee, has entered into a Franchise Agreement (as defined below) with Lenny's Franchisor, LLC, a Tennessee limited liability company ("Franchisor"), for the operation at the Premises of a Lenny's Sub Shop restaurant. Anything in this Article 19 to the contrary notwithstanding, if Franchisor, as a franchisor, enters into its standard franchise agreement ("Franchise Agreement"), granting a bona-fide third party franchisee (the "Franchisee") the right to operate a Lenny's Sub Shop restaurant at the Premises as a Franchisee and the Franchise Agreement and the Franchisee satisfy all the Franchisor's franchising requirements, then Tenant shall have the right, without Landlord's consent and without Landlord's exercising Landlord's recapture right pursuant to this Article 19, to sublet the entire Premises (but not less than the entire Premises) or to assign its interest in and to this Lease to the Franchisee or the Franchisor, provided that:

(a) at the time of any such proposed subletting or assignment, Tenant, as Tenant, shall not be in default under any of the terms, conditions and covenants of this Lease;

(b) the Franchisee or the Franchisor, as the case may be, shall occupy the entire Premises and conduct the Permitted Use subject to and in accordance with the terms, conditions and covenants of this Lease;

(c) the sublease or assignment to Franchisee shall be effective only so long as the Franchisor maintains direct control and supervision over the Franchisee in accordance with the terms of the Franchise Agreement;

(d) Tenant, as Tenant, and the Franchisee or the Franchisor, as the case may be, shall execute, acknowledge and deliver to Landlord, prior to the proposed subletting or assignment, a fully executed counterpart of either: 1) in the case of a sublease, a written sublease which will in all respects be subject and subordinate to all of the terms, conditions and covenants of this Lease and the sublessee will agree to be bound by and to perform all of the terms, conditions and covenants of this Lease on Tenant's part to be performed hereunder, except the payment of Minimum Rent and all items of Additional Rent reserved hereunder, which Tenant shall continue to pay directly to Landlord or 2) in the case of an assignment, a written assignment and assumption agreement in a form satisfactory to Landlord, together with a copy of all documents evidencing the agreement for such assignment, wherein the assignee agrees to assume and comply with and be bound by all of the obligations, liabilities, indemnities, terms, covenants, conditions, provisions and agreements to be kept, performed and observed by the Tenant under this Lease;

(e) in no event shall the Franchisee or the Franchisor, as the case may be, be permitted to further transfer or assign its interest or sublease the Premises to any entity other than to a Franchisee or Franchisor pursuant to this Section 19.9;

(f) notwithstanding any subletting or assignment under the terms of this Article 19, Tenant shall not be released or discharged from any liability whatsoever under this Lease and will continue to be liable therein, as a principal and not as a surety, with the same force and effect as though no sublease or assignment had been made; and

(h) the tangible, financial net worth of the Franchisee or the Franchisor, as the case may be, measured in accordance with generally accepted accounting principles, consistently applied, must be equal to or greater than \$1,000,000.00, with respect to a Franchisor, and \$300,000.00, with respect to a Franchisee, as evidenced by audited financial statements certified by an independent certified public accountant.

The rights of Tenant, the Franchisee and the Franchisor granted under this Section 19.9 are personal to BMK, LLC, a Nebraska limited liability company, the Franchisee and the Franchisor and shall not be assigned to nor inure to the benefit of any other party.

19.10 In the event Tenant, is in default under this Lease:

(a) Landlord agrees to notify Franchisor of any default hereunder, in writing, concurrently with providing notice to Tenant pursuant to Article 20;

(b) Landlord agrees that Franchisor shall have the right, but not the obligation, to cure any default by Tenant under this Lease within the time periods prescribed in this Lease, provided that Franchisor agrees to indemnify, defend and hold harmless Landlord from and against any loss, cost, damage, expense (including, without limitation, attorneys' fees and costs), claims, liabilities and settlements arising from or related to (i) exercise of Franchisor's cure rights granted herein or (ii) any disputes between a Franchisee and Franchisor;

(c) If (i) Tenant fails to cure any default of Tenant under this Lease within the time periods prescribed herein, and Franchisor cures the same within the time periods prescribed herein, or (ii) Franchisor notifies Landlord, in writing, that Tenant's Franchise Agreement with Franchisor has been terminated, then Franchisor may assume the obligations of Tenant, as Tenant, under this Lease; provided, however, as a condition precedent to any such assumption, (y) Tenant and Franchisor shall execute and deliver to Landlord an assignment and assumption agreement, in writing, in form and substance acceptable to Landlord, and (z) Franchisor shall cure any and all defaults by Tenant of the terms, covenants conditions and agreements under this Lease including, without limitation, any payment or performance obligations. If this Lease is assigned to and assumed by Franchisor, as aforesaid, then Franchisor may, at any time thereafter, sublet the entire (but not less than the entire) Premises or assign its interest in and to this Lease to a Franchisee that has entered into a Franchise Agreement, upon written notice to Landlord, upon and subject to the conditions and limitations set forth in Section 19.9.

Franchisor's notice address for purposes of any notice provided under this Section 19.10 is Lenny's Franchisor, LLC, 8295 Tournament Dr., Suite 200, Memphis, TN 38125, or such other address as Franchisor may, from time to time, specify in writing to Landlord.

The rights of Franchisor under this Section 19.10 are personal to Franchisor and shall not be assigned to nor inure to the benefit of any other party.

19.11 During the 30-day period following the date of Landlord's notice to Franchisor, as contemplated in Section 19.10(a) above (but not beyond the expiration or early termination of the Lease), Franchisor shall have the right to enter the Premises to remove all items installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Premises, as Franchisor reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademark, trade names or copyrights.

## **ARTICLE 20: LANDLORD'S REMEDIES**

20.1 **Default.** The occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in Section 20.2 below: (i) failure to make when due any payment of Rent or other sums to be paid hereunder, unless such failure is cured within ten (10) days after written notice; (ii) failure to observe or perform any term or condition of this Lease other than the payment of Rent or other sums to be paid hereunder, unless such failure is cured within thirty (30) days after written notice, provided, however, if it shall reasonably take more than thirty (30) days in which to cure, and Tenant begins punctually and proceeds diligently to effect a cure, the thirty (30) day period shall be extended by a reasonable period in which Tenant may cure (or such additional time as may be required due to Unavoidable Delays as described in Article 28); (iii) (a) making by Tenant or any Guarantor of this Lease of any general assignment for the benefit of creditors, (b) filing by or against Tenant or any Guarantor of a petition to have Tenant or such Guarantor adjudged a bankrupt or a petition for reorganization or arrangement under any Law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant or such Guarantor, the same is dismissed within sixty (60) days), (c) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days, (d) attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, (e) Tenant's or any Guarantor's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition or restructuring of its debt, (f) Tenant's or any Guarantor's insolvency or admission of an inability to pay its debts as they mature; or (iv) failure by Tenant to open for business in the entire Premises by the date which is thirty (30) days from the Commencement Date. Notwithstanding the foregoing, failure by Tenant to comply with the same term or condition of this Lease on two (2) occasions during any twelve (12) month period shall, at Landlord's option, constitute an incurable Default. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Law.

20.2 **Remedies.** If a Default occurs, Landlord shall have the right to terminate Tenant's right of possession, re-enter and repossess the Premises by detainer suit, summary proceedings or other lawful means, with or without terminating this Lease (and if applicable Law permits, and Landlord shall not have expressly terminated this Lease in writing, any such action shall be deemed a termination of Tenant's right of possession only). In such event, subject to the limitations of Section 20.3 below, Landlord may recover from Tenant: (i) any unpaid Rent as of the date Tenant's right of possession is terminated, (ii) any unpaid Rent which accrues during the Term from the date Tenant's right of possession is terminated through the time of judgment (or which may have accrued from the time of any earlier judgment obtained by Landlord), less any consideration received from replacement tenants as further described and applied pursuant to Section 20.8 below, and (iii) any other amounts necessary to compensate Landlord for all damages proximately caused by Tenant's failure to perform its obligations under this Lease, including, without limitation, all Costs of Reletting (as defined in Section 20.8 below). Tenant shall pay any such amounts to Landlord as the same accrue or after the same have accrued from time to time upon demand. At any time after terminating Tenant's right to possession as provided herein, Landlord may terminate this Lease by written notice to Tenant, and Landlord may pursue such other remedies as may be available to Landlord under this Lease or applicable Law. For purposes of computing the amount of Rent herein that would have accrued after the termination date, Tenant's obligations for Tenant's Proportionate Share of Taxes and Landlord's Insurance shall be projected, based upon the average rate of increase, if any, in such items from the Commencement Date through the termination date. The amounts computed in accordance with the foregoing subclauses (i) and (ii) shall both be discounted in accordance with accepted financial practice at the rate of six percent (6%) per annum to the then present value.

**20.3 Mitigation of Damages.** If Landlord terminates this Lease or Tenant's right to possession, (a) Landlord shall be required only to use reasonable good faith efforts to mitigate Landlord's damages, which shall not exceed such efforts as Landlord generally uses to lease other space at the Center, (b) Landlord will not be deemed to have failed to mitigate if Landlord leases any other comparable portions of the Center before reletting all or any portion of the Premises, and (c) any failure to mitigate as described herein with respect to any period of time shall only reduce the Rent and other amounts to which Landlord is entitled hereunder by the reasonable rental value of the Premises during such period, taking into account the factors described in Section 20.2 above. In recognition that the value of the Center depends on the rental rates and terms of leases therein, Landlord's rejection of a prospective replacement tenant based on an offer of rentals below Landlord's published rates for new leases of comparable space at the Center at the time in question, or at Landlord's option, below the rates provided in this Lease, or containing terms less favorable than those contained herein, shall not give rise to a claim by Tenant that Landlord failed to mitigate Landlord's damages.

**20.4 Reletting.** If this Lease or Tenant's right to possession is terminated, or Tenant vacates or abandons the Premises, Landlord may: (i) enter and secure the Premises, change the locks, install barricades, remove any improvements, fixtures or other property of Tenant therein, perform any decorating, remodeling, repairs, alterations, improvements or additions and take such other actions as Landlord shall determine in Landlord's reasonable good faith discretion to prevent damage or deterioration to the Premises or prepare the same for reletting, and (ii) relet all or any portion of the Premises (separately or as part of a larger space), for any rent, use or period of time (which may extend beyond the Term hereof), and upon any other terms as Landlord shall determine in Landlord's sole discretion, directly or as Tenant's agent (if permitted or required by applicable Law). The consideration received from such reletting shall be applied pursuant to the terms of Section 20.8 hereof, and if such consideration, as so applied, is not sufficient to cover all Rent and damages to which Landlord may be entitled hereunder, Tenant shall pay any deficiency to Landlord as the same accrues or after the same has accrued from time to time upon demand, subject to the other provisions hereof.

**20.5 Collection of Rent and Acceleration.** Landlord shall at all times have the right, without prior demand or notice except as required by applicable Law, to (i) seek any declaratory, injunctive or other equitable relief, or restrain or enjoin a violation of any provision hereof, and Tenant hereby waives any right to require that Landlord post a bond in connection therewith, and (ii) sue for and collect any unpaid Rent which has accrued. Notwithstanding anything to the contrary contained in this Lease, but subject to the provisions of Section 20.2 above, to the extent not expressly prohibited by applicable Law, in the event of any Default by Tenant, Landlord may terminate this Lease or Tenant's right to possession and accelerate and declare that all Rent reserved for the remainder of the Term shall be immediately due and payable (in which event, Tenant's obligations for Tenant's Proportionate Share of Taxes and Landlord's Insurance herein that would have accrued thereafter shall be projected in the manner described in Section 20.2 above); provided the Rent so accelerated shall be discounted in accordance with generally accepted financial practices at the rate of six percent (6%) per annum to the then present value, and Landlord shall, after receiving payment of the same from Tenant, be obligated to turn over to Tenant any actual net reletting proceeds (net of all Costs of Reletting) thereafter received during the remainder of the Term, up to the amount so received from Tenant pursuant to this provision.

**20.6 Landlord's Cure of Tenant Defaults.** If Tenant fails to perform any obligation under this Lease within any applicable notice and cure periods herein required (except that no notice shall be required in emergencies), Landlord shall have the right (but not the duty) to perform such obligations on behalf and for the account of Tenant. In such event, Tenant shall reimburse Landlord upon demand, as additional Rent, for all expenses incurred by Landlord in performing such obligation together with an amount equal to fifteen percent (15%) thereof for Landlord's overhead, and interest thereon at the Default Rate from the date such expenses were incurred. Landlord's performance of Tenant's obligations hereunder shall not be deemed a waiver or release of Tenant therefrom.

**20.7. Bad Rent Checks.** If during the Term (and any extension(s) thereof), Landlord receives two (2) or more checks from Tenant which are returned by Tenant's bank for insufficient funds, Landlord may require that all checks thereafter be bank certified or cashier's checks (without limiting Landlord's other remedies). All bank service charges resulting from any bad checks shall be borne by Tenant. In addition, Tenant shall immediately pay Landlord, upon demand, the sum of Fifty Dollars (\$50.00) for each bad check to cover Landlord's administrative costs for processing bad checks. Said sum shall be deemed additional Rent hereunder.



**20.8 Other Matters.** No re-entry or repossession, repairs, changes, alterations and additions, reletting, acceptance of keys from Tenant, or any other action or omission by Landlord shall be construed as an election by Landlord (to the extent Landlord has such an election) to terminate this Lease or, subject to the provisions of Section 20.2 above, Tenant's right to possession, or as an acceptance of a surrender of the Premises, nor shall the same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord or its agent to Tenant. Landlord may, subject to the overall limitation provided herein, bring suits for amounts owed by Tenant hereunder or any portions thereof, as the same accrue or after the same have accrued, and no suit or recovery of any portion due hereunder shall be deemed a waiver of Landlord's right to collect all amounts to which Landlord is entitled hereunder, nor, except as provided in the overall limitations, shall the same serve as any defense to any subsequent suit brought for any amount not theretofore reduced to judgment. Landlord may pursue one or more remedies against Tenant and need not make an election of remedies until findings of fact are made by a court of competent jurisdiction. All rent and other consideration paid by any replacement tenants shall be applied, at Landlord's option, as follows: first, to the Costs of Reletting; second, to the payment of all costs of enforcing this Lease against Tenant or any Guarantor; third, to the payment of all interest and service charges accruing hereunder; fourth, to the payment of Rent, subject to the overall limitations provided herein; and the residue, if any, shall be held by Landlord and applied to the payment of other obligations of Tenant to Landlord as the same become due (with any remaining residue to be retained by Landlord). "Costs of Reletting" shall include, without limitation, all reasonable costs and expenses incurred by Landlord for any repairs, maintenance, changes, alterations and improvements to the Premises (whether to prevent damage or to prepare the Premises for reletting), brokerage commissions, advertising costs, attorneys' fees, any economic incentives given to enter leases with replacement tenants, and costs of collecting rent from replacement tenants. Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues after the date of any termination by Landlord of the Lease or Tenant's right to possession of the Premises. The times set forth herein for the curing of violations by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any Law to redeem or reinstate this Lease or Tenant's right to possession after this Lease or Tenant's right to possession is terminated based on a Default by Tenant.

#### **ARTICLE 21: LANDLORD'S LIABILITY**

Anything in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate and property of Landlord in the land and buildings comprising the Center of which the Premises form a part and the rentals therefrom 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; subject, however, to the prior rights of any ground or underlying lessor or the holder of any mortgage, deed of trust or prior lien covering the Center, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claims.

#### **ARTICLE 22: PROPERTY REMOVAL**

**22.1 Tenant's Property.** For the purpose of this Article 22, the following shall be deemed to be Tenant's property: (a) all furniture, trade fixtures, equipment and movable personal property, other than those installed by or at the expense of Landlord; and (b) all inventory and stock in trade furnished by or at the expense of Tenant. Such property may be removed from the Premises by Tenant at any time, provided that items essential to the conduct of Tenant's business shall be replaced with items of similar purpose and quality during the Lease Term. All of Tenant's property, except those items, if any, which Landlord may have given Tenant specific written permission to leave in the Premises, shall be removed upon expiration or termination of this Lease, and Tenant shall repair any damage to the Premises caused by such removal.

**22.2 Landlord's Property.** Regardless of which party may have installed or paid for them, or may own or have insurable interests in them during the Term, any and all improvements, betterments, materials, fixtures and equipment, affixed in any manner to the Building or the Premises (except trade fixtures and equipment installed and paid for by Tenant) shall become Landlord's sole property upon expiration or termination of this Lease. No such property may be removed from the Premises except upon the express written consent of Landlord; provided that Landlord shall have the right, at its option upon expiration or termination of the Lease Term, to demand that Tenant remove any specific improvements, betterments or other items previously installed and paid for by Tenant and to restore the Premises to substantially the same condition as existed prior to Tenant originally taking possession of the

Premises, all at Tenant's cost and expense; and Tenant shall promptly comply. By way of illustration and not in limitation, the following kinds of fixtures, improvements, betterments and other items shall be deemed to be Landlord's property unless otherwise determined by Landlord: attached carpeting and floor coverings; paneling, woodwork and moldings; doors and windows; attached mirrors; fixed walls and partitions; pipes, faucets, sinks, disposals, commodes, plumbing lines and plumbing fixtures of all kinds; lighting fixtures of all kinds and electrical outlets; HVAC ductwork, compressors, condensers, furnaces, boilers and other equipment; hot water heaters; fire suppression and sprinkler systems; floors, decks and mezzanines; built-in ovens, stoves, walk-in or non-moveable freezers or refrigerators and other kitchen equipment; suspended and fixed ceilings; fixed cabinetry and shelving; wall coverings; ceiling and attic fans and humidifiers; blinds, drapes, curtain rods and other window treatments; gazebos, gates, fences, trellises, trees, shrubs and plantings of all kinds; all similar items and all improvements and betterments to the Building, the Premises and any appurtenant tract.

#### **ARTICLE 23: LANDLORD'S LIEN, WAIVER AND SECURITY AGREEMENT**

**23.1 Landlord's Lien.** All property of Tenant which is now or hereafter may be in or upon the Premises, whether or not exempt from execution, shall be bound by and subject to a lien and also to the encumbrance of a security interest in said property, which Tenant hereby grants to Landlord in accordance with the provisions of the Uniform Commercial Code ("UCC") in the state in which the Premises are located, for the payment of all rents and charges herein reserved and for payment of any damages arising from Tenant's breach of any of the covenants or agreements of this Lease; provided that the provisions hereof shall not apply to inventory stock-in-trade kept by Tenant, but the lien and security interest hereby created shall apply as to all other property of Tenant now or hereafter in or upon said Premises. Tenant hereby appoints Landlord as its agent and attorney-in-fact to execute any and all financing statements, amendments and extensions thereof on UCC forms on behalf of Tenant, and to file the same on behalf of Tenant or without Tenant's signature, at Landlord's option. In case of default in the payment of Rent when the same becomes due, which default continues for a period of ten (10) days after written notice from Landlord to Tenant, Landlord may take possession of all or any parts of such property and sell or cause the same to be sold at public or private sale, with or without notice, to the highest bidder for cash, and apply the proceeds of said sale toward the costs thereof and then toward the debt and/or damages as aforesaid. Landlord's exercise of the security interest herein created shall cause Landlord's interest in said property to be senior to Tenant's interest therein for purposes of any replevin action brought against Landlord by Tenant.

**23.2 Optional Waiver.** Landlord may elect, in its sole discretion, to release or subordinate any and all rights it may have to claim a lien or other rights in or to Tenant's property. All Lenders claiming a security interest in any or all of Tenant's property may give Landlord written notice of their security interests upon or prior to expiration or termination of this Lease; and Landlord will contact said Lender if any such items remain in the Premises following expiration or termination of this Lease, provided that the Lender promptly removes the same upon demand by Landlord. Any items not so removed by Tenant or the Lender shall be deemed abandoned, and Landlord shall dispose of the same as it sees fit and retain all proceeds (if any).

**23.3 Non-Waivable Security Interest.** Regardless of who may have installed or paid for them, or who may own or have insurable interests in them during the Lease Term, Landlord hereby affirms and asserts its lien rights in and to full ownership of all Landlord's property described in Section 22.2 above upon expiration or termination of this Lease, together with all replacements thereof and substitutions therefor. The provisions of this Lease shall constitute a security agreement under the Uniform Commercial Code in the state in which the Premises are located, for the payment of all rents and other charges reserved hereunder and for damages arising from the breach (if any) by Tenant of the covenants, terms or conditions of this Lease; and such security interest shall attach and apply to any and all improvements, betterments, equipment and other items installed by Tenant in the Premises (except Tenant's property described in Section 22.1 above), or otherwise comprising Landlord's property as described in Section 22.2 above. In the event of default by Tenant in the payment of Rent or performance of any other covenant of this Lease, then Landlord shall have all rights and remedies prescribed in Article 20 above. Further, if Tenant fails to timely cure any such default after written notice from Landlord, then Landlord or its successors or assigns also shall have the further right to take possession of the encumbered property or any part thereof and sell or cause the same to be sold at any public or private sale, with or without further notice to Tenant, to the highest bidder for cash. Landlord thereupon may apply the proceeds of such sale toward the costs of sale and then to Tenant's Rent obligations and Landlord's damages as aforesaid. Landlord's security interests herein created shall be first and paramount over the interests of Tenant and any Lender of Tenant and specifically shall be senior to any claim by Tenant or its Lenders

for replevin of such property brought against Landlord. No action of Landlord in expressly waiving any security or lien rights against Tenant's property shall ever be deemed to extend such waiver to Landlord's property as described in Section 22.2 above. Nothing herein, however, is intended to preclude Tenant from any proper financing of Tenant's property; provided that upon expiration or termination of this Lease, Landlord's property shall remain Landlord's, free and clear of any encumbrance on the part of Tenant or its Lenders.

#### **ARTICLE 24: EMINENT DOMAIN**

**24.1 Effects of Condemnation.** If all or any part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain, or conveyed to a public or quasi-public authority under the threat of the power of eminent domain, then the terms of this Lease shall cease as to that part of the Premises so taken or conveyed (hereafter referred to as the "condemned portion") from the date possession of the condemned portion shall be taken by the condemning authority. Unless this Lease is cancelled as hereafter provided, the Rent shall be reduced in proportion to the amount of the Premises taken, commencing with the date possession is acquired by the condemning authority. If the loss of the condemned portion will, based upon generally accepted standards applicable to Tenant's business on the Premises, have a significantly impairing effect on such business as to render the Premises unfit for its intended use, then Tenant may cancel this entire Lease. Such right to cancel may be exercised by Tenant only:

- (a) If Tenant gives Landlord at least ten (10) days' prior written notice of such cancellation;
- (b) The effective date of such cancellation of the entire Lease is the same as the date possession was obtained of the condemned portion by the condemning authority; and
- (c) Rent is paid in full to the effective date of such cancellation.

**24.2 Awards.** All damages awarded for any such taking shall belong to Landlord as its property, whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee interest in the Premises; provided, however, that Landlord shall not be entitled to any portion of the award made to Tenant for loss of business, damage and depreciation to its inventory, stock, furnishings and trade fixtures, and the costs of removing and relocating the same.

#### **ARTICLE 25: SALE AND MORTGAGE OF THE PREMISES**

**25.1 Mortgage.** Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage or deed of trust loan now or hereafter placed upon Landlord's interest in the Premises or on the Center and land of which the Premises form a part. Upon the written request of any Lender, Tenant shall subordinate its rights under this Lease to the lien of any mortgage or deed of trust. Notwithstanding the foregoing, if the Lender elects to have this Lease superior to its mortgage or deed of trust, then upon Lender's request, Tenant shall execute, acknowledge and deliver an instrument, in the form used by said Lender, effecting such priority. In the event proceedings are brought for foreclosure of, or the exercise of a power of sale under any such mortgage or deed of trust, Tenant shall, upon request, attorn to the purchaser at any such foreclosure or sale and recognize such purchaser as Landlord under this Lease. Upon Landlord's request, Tenant shall promptly execute, acknowledge and deliver such instruments as are required to effect the intent of this section.

**25.2 Sale of Premises.** Landlord further reserves the right to sell or otherwise assign its interests in this Lease or the Premises, and no such action shall affect or otherwise impair this Lease. If Landlord conveys ownership of the Center or Premises or if Landlord assigns its interests in this Lease, then upon such conveyance or assignment, Landlord (and the grantor or assignor, in the case of any subsequent conveyances or assignments) shall be entirely released from all liability with respect to the performance of any obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or assignment; subject, however, to the new Landlord accepting the responsibility for the performance of all obligations of this Lease to be performed by Landlord.

**25.3 Estoppel Certificates.** Tenant agrees to execute, acknowledge and deliver to and in favor of any Lender or purchaser of the Premises or Center, within fifteen (15) days after written request by Landlord, any estoppel

certificate that may be requested. The estoppel certificate shall state, among other things: (a) whether this Lease is in full force and effect; (b) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment; (c) the date to which rents and any other charges have been paid; and (d) whether Tenant knows of any default on the part of Landlord or has any claim against Landlord and, if so, specifying the nature of such default or claim.

**25.4 Quiet Possession.** All other provisions of the Lease notwithstanding, so long as Tenant shall not be in default in the payment of rents or performance of the covenants of this Lease, Landlord shall not disturb Tenant's possession of the Premises.

#### **ARTICLE 26: INDEMNIFICATION**

Except to the extent arising from the intentional misconduct or negligent acts of Landlord or Landlord's agents or employees, but subject to the waiver of subrogation set forth herein, Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including, without limitation, court costs and attorneys' fees, arising from or relating to any violation of Law by Tenant, loss of life, diminution in value of the Center, damage or injury to persons, property or business occurring in the Premises, or directly or indirectly caused by or in connection with any violation of this Lease or use of the Premises or Center by, or any other negligent act or omission of, Tenant, any other occupant of the Premises, or any of their respective agents, employees or contractors. Without limiting the generality of the foregoing, Tenant specifically acknowledges that the indemnity undertaken herein shall apply to claims in connection with or arising out of any "Work" as described in Article 9, the use or consumption of any utilities in the Premises under Article 12, any repairs or other work by or for Tenant under Article 13 and the transportation, use, storage, maintenance, generation, manufacturing, handling, disposal, release or discharge of any "Hazardous Substance" as described in Article 31 (whether or not such matters shall have been theretofore approved by Landlord), and the use of any automobile by Tenant or its agents, employees, servants, subtenants or concessionaires, except to the extent that any of the same arises from the intentional misconduct or negligent acts of Landlord or Landlord's agents, contractors or employees.

Except to the extent arising from the intentional misconduct or any negligent act or omission of Tenant or Tenant's agents, employees or contractors but subject to the waiver of subrogation set forth herein, Landlord shall defend (with counsel selected by Landlord and reasonably acceptable to Tenant), indemnify and hold harmless Tenant from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including, without limitation, court costs and reasonable attorneys' fees, arising from any violation of Law by Landlord, or loss of life, damage or injury to persons or property occurring in the Common Areas.

#### **ARTICLE 27: NOTICES AND SERVICE**

**27.1 Receipt of Notice.** Any notice which either party desires or is required to deliver to the other shall be in writing and shall be effective and deemed received, (a) one (1) business day after deposit with a nationally recognized overnight courier service; or (b) upon delivery to Landlord or to Tenant or Tenant's manager in person; or (c) upon receipt or refusal, after being delivered by certified United States mail, postage prepaid, return receipt requested, addressed as follows:

To Tenant: At Tenant's home office address shown in Section 1.2 or at the last known post office address of Tenant or at the address of the Premises

To Landlord: East Campus Realty LLC  
c/o Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175  
Attn: President, East Campus Realty LLC

To Franchisor if required under Section 19.10: Lenny's Franchisor, LLC  
8295 Tournament Drive, Suite 200

Memphis, TN 38125  
Attn: Domestic Franchise/Legal

or to such other or additional addresses of which either party may, from time to time, give written notice to the other.

**27.2 Consent to Service.** Tenant agrees that any action brought in connection with this Lease may be maintained in any court of competent jurisdiction in the county and state where the Premises are located. Tenant hereby appoints Landlord as agent for the purpose of accepting service of any legal process, subject only to the condition that Landlord promptly send notice of such process to Tenant as provided in Section 27.1 above or at such other address of Tenant as set forth elsewhere in this Lease or of which Tenant may give Landlord notice at a later date.

#### **ARTICLE 28: TIME AND UNAVOIDABLE DELAY**

**28.1 Force Majeure.** In the event either party shall be delayed, hindered or prevented from performing any act required under this Lease by reason of Unavoidable Delay which is not the fault of the party delayed in performing, then performance of such act shall be excused for the reasonable period of the Unavoidable Delay, and the period for the performance of any such act shall be extended for a period equivalent to the reasonable period of such Unavoidable Delay.

**28.2 Timely Performance.** TIME IS OF THE ESSENCE OF THIS LEASE. All other provisions of this Lease notwithstanding, no Unavoidable Delay or other circumstance shall justify or excuse a delay or failure to make any payment required hereunder in a timely manner; provided that the commencement of the Lease or opening of the Premises for business may be postponed as provided in Article 3 above.

#### **ARTICLE 29: SAFETY AND SECURITY DEVICES, SERVICES AND PROGRAMS**

Landlord shall have no obligation to provide any safety or security devices, services or programs for Tenant or the Center and shall have no liability for failure to provide the same or for inadequacy of any measures provided. However, Landlord may institute or continue such safety or security devices, services and programs as Landlord, in its sole discretion, deems necessary. The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and enhance safety, may not in given instances prevent theft or other injurious acts or ensure safety of parties or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such acts and other losses, beyond that described in Article 15. Tenant agrees to cooperate in any safety or security program developed by Landlord or required by Law.

#### **ARTICLE 30: ACCESS TO PREMISES; ALTERATIONS**

**30.1 Access to Premises.** Landlord shall have the right, if it so elects, to enter upon the Premises at reasonable hours, with advance notice to Tenant except in emergencies, for the purpose of inspecting the same, determining Tenant's compliance with this Lease, repairing or maintaining any pipes, conduits or ducts (whether the same are used in the supply of services to Tenant or to other occupants of the Building or adjacent buildings) or in connection with construction work or any other improvements, repairs or alterations in and about the Building. If Landlord deems it necessary to make any repairs or replacements for which Tenant is responsible under this Lease, Landlord may demand in writing that Tenant make the same, and if Tenant refuses or neglects to commence such repairs or replacements in good faith or fails to complete the same with reasonable dispatch, Landlord may make or cause such repairs or replacements to be made; and, in so doing, Landlord shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's business by reason thereof. If Landlord makes or causes such repairs or replacements to be made, Tenant shall forthwith pay Landlord upon demand the full costs thereof as additional Rent hereunder with late charges and interest as prescribed in Section 7.2 above; and if Tenant shall default in such payment, Landlord shall have all the remedies provided in Article 20 and elsewhere in this Lease.

30.2 **Alterations and Improvements.** Landlord reserves the right at any time to build additional stories upon and/or to otherwise expand the Building or the Center. Landlord further reserves the right to close skylights, windows or doors of the Premises and to run pipes, conduits, ducts or electrical lines through the Premises; and to alter the size, area and location of hallways, entrances, parking areas, Common Areas reserved for general usage, driveways, sidewalks, landscaped areas and all other portions of the Center. Landlord also shall have the right to close the Premises, the Building or any other portions of the Center whenever necessary to comply with any Laws, in cases of public disturbance or for any other reasons which Landlord deems, in its discretion, appropriate, and Tenant hereby waives all claims for damage or inconvenience caused by any such closings.

#### **ARTICLE 31: HAZARDOUS SUBSTANCES**

Tenant shall not use or allow the Premises or any portion of the Building or Center to be used for the Release, storage, use, treatment, disposal or other handling of any Hazardous Substance, without the prior written consent of Landlord. The term "Release" shall have the same meaning as is ascribed to it in the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended ("CERCLA"). The term "Hazardous Substance" means (i) any substance defined as a "hazardous substance" under CERCLA; (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas; and (iii) any other substance or material deemed to be hazardous, dangerous, toxic or a pollutant under any Laws.

Tenant shall (a) give prior notice to Landlord of any activity or operation to be conducted by Tenant at the Premises or anywhere in the Building or Center which involves the Release, use, handling, generation, treatment, storage, or disposal of any Hazardous Substance ("Tenant's Hazardous Substance Activity"); provided, however, nothing herein shall permit the conduct of any Tenant's Hazardous Substance Activity without the prior written consent of Landlord; (b) comply with all Laws, permits and licensing conditions governing the Release, discharge, emission, or disposal of any Hazardous Substance and prescribing methods for or other limitations on storing, handling or otherwise managing Hazardous Substances; (c) at its own expense, promptly contain and remedy any Release of Hazardous Substances arising from or related to Tenant's Hazardous Substance Activity in the Premises, the Building, the Center, any area in the vicinity of the Center or the environment and remedy and pay for any resultant damage to property, persons and/or the environment; (d) give prompt notice to Landlord and all appropriate regulatory authorities of any Release of any Hazardous Substance in the Premises, Building, the Center, any area in the vicinity of the Center or the environment arising from or related to Tenant's Hazardous Substance Activity, which Release is not made pursuant to and in conformance with the terms of any permit or license duly issued by appropriate governmental authorities (any such notice shall include a description of measures taken or proposed to be taken by Tenant to contain and remedy the Release and any resultant damage to property, persons or the environment); (e) at Landlord's request, which shall not be more frequent than once per calendar year, retain an independent engineer or other qualified consultant or expert acceptable to Landlord, to conduct, at Tenant's expense, an environmental audit of the Premises and immediate surrounding areas, and the scope of work to be performed by such engineer, consultant or expert shall be approved in advance by Landlord, and all of the engineer's, consultant's or expert's work product shall be made available to Landlord; (f) at Landlord's request from time to time, execute affidavits, representations and the like concerning Tenant's best knowledge and belief regarding the presence of Hazardous Substances in the Premises; (g) reimburse to Landlord, upon demand, the reasonable cost of any testing for the purpose of ascertaining if there has been any Release of Hazardous Substances in the Premises, Building, Center, any area in the vicinity of the Center or the environment, if such testing is required by any governmental agency or Landlord's Lender; and (h) upon expiration or termination of this Lease, surrender the Premises to Landlord free from the presence and contamination of any Hazardous Substance.

Tenant agrees to and shall indemnify, defend and hold harmless Landlord, its successors and assigns from and against any and all liability, loss or expense, including, but not limited to, reasonable attorneys' fees, arising from or connected with any contamination, claim of contamination, violation of Laws, judgment, loss or damage related to Tenant's Hazardous Substance Activity. This provision shall survive termination of this Lease. Tenant agrees that the indemnity herein contained shall extend to any actions caused by Tenant and its agents, employees, contractors or invitees.

#### **ARTICLE 32: RULES**

Tenant shall comply with all of the rules which are set forth in Exhibit C attached to this Lease, as the same

may be amended or supplemented hereunder (the "Rules"). Landlord shall have the right by notice to Tenant to reasonably amend such Rules and supplement the same with other reasonable Rules relating to the Center or the promotion of safety, care, cleanliness or good order therein. Nothing herein shall be construed to give Tenant or any other party any claim against Landlord arising out of the violation of such Rules by any other tenant, occupant or visitor of the Center, or out of the enforcement, modification or waiver of the Rules by Landlord in any particular instance.

#### **ARTICLE 33: PERSONAL PROPERTY TAXES**

Tenant shall pay before delinquent all taxes, assessments, license fees, charges or other governmental impositions assessed against or levied or imposed upon Tenant's business operations, Tenant's leasehold interest or based on Tenant's use or occupancy of the Premises, or Tenant's fixtures, furnishings, equipment, leasehold improvements, inventory, merchandise, and personal property located in the Premises (whether or not title shall have vested in Landlord pursuant to any provision hereof). Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord and other parties. If any such items shall be assessed and billed with the property of Landlord or another party, Landlord shall include the same or an appropriate portion thereof in Taxes, or shall reasonably allocate the same or an appropriate share thereof between Tenant and such other party (and Tenant shall promptly pay the amount so allocated to Landlord).

#### **ARTICLE 34: AMERICANS WITH DISABILITIES ACT**

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and Center depending on, among other things, (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility," (2) whether such requirements are "readily achievable," and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below; (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease; and (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by alterations in the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

#### **ARTICLE 35: REAL ESTATE LEASING COMMISSIONS**

Tenant represents and warrants to Landlord that Tenant has had no dealings with any broker or agent in connection with this Lease, other than RED Development, LLC and the Lund Company and Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) imposed upon, asserted or incurred by Landlord as a consequence of any breach of this representation. Tenant further agrees that Landlord shall have no obligation to pay (or reimburse Tenant) for any real estate commission, finder's fee or other remuneration payable to any broker, consultant or lawyer contacted or retained by Tenant or its affiliates in connection with the renewal or extension of this Lease.

#### **ARTICLE 36: INTENTIONALLY DELETED**

#### **ARTICLE 37: PARKING**

Tenant and its employees shall park their cars and other motorized vehicles in areas as designated by Landlord or Landlord's agent from time to time. Landlord or Landlord's agent shall furnish Tenant with a map of available parking areas and charges, if any, therefor, which charges shall be based upon the location of the selected parking areas and are subject to change from time to time. Anything in this Lease to the contrary notwithstanding, in the event Tenant desires that Tenant's employees park in one of the parking garages serving the Center (collectively, the "Parking Garage"), then Tenant shall provide Landlord written notice thereof, which notice shall

contain the name(s) and vehicle license number(s) of any Tenant employees which intend to use the Parking Garage. Landlord shall provide monthly parking to such Tenant's employees and Tenant shall pay to Landlord a fee ("Parking Fee") for each Tenant employee vehicle parking in the Parking Garage. The Parking Fee for the first Lease Year shall be equal to Ninety-Five and 00/100 Dollars (\$95.00) per calendar month, per vehicle. For each Lease Year thereafter, the monthly Parking Fee shall be the then current annual Parking Fee for similar parking spaces in the Center; provided, however, the Parking Fee for such Lease Year shall in no event be less than the Parking Fee payable by Tenant immediately prior to commencement of the applicable Lease Year. The Parking Fee shall be payable as additional Rent and shall be payable at the same time and in the same manner as Rent set forth in Section 7.1, or at Landlord's election, the Parking Fee shall be payable directly to the management company operating the Parking Garage. Tenant also shall furnish to Landlord or its designated agent the state automobile license numbers assigned to Tenant's vehicles and those of all its employees. Following at least one (1) prior written notice of violation, Landlord or Landlord's designated agent shall have the right to bill Tenant a fee of Twenty Five Dollars (\$25.00) per day per vehicle parked in violation of this Section, which charge shall be deemed to be additional Rent. In addition, Landlord or its designated agent shall have the right to cause such cars parked in violation of this Section to be towed from the Center at the sole cost and expense of Tenant. Tenant shall use Tenant's best efforts to keep its employees, during their working hours, from parking in the diagonal metered parking spaces on Farnam Street between Turner Boulevard and 34th Street, or in the diagonal metered parking spaces in the Turner Park ring road.

Tenant agrees and acknowledges that Tenant's customers and invitees shall have the non-exclusive right, subject to payment of fees ("Customer Parking Fees"), and subject to the rules and regulations established by Landlord from time to time, to use the Parking Garage. As of the date of this Lease, but subject to change from time to time, Tenant's customers and invitees shall (a) have no liability for Customer Parking Fees for the first three (3) hours that such customer's or invitee's vehicle is parked in the Parking Garage, and (b) shall be charged One and 00/100 Dollars (\$1.00) for each additional hour that such customer's or invitee's vehicle is parked in the Parking Garage following such 3-hour period (not to exceed a maximum of Six and 00/100 Dollars (\$6.00) per vehicle, per day). Tenant acknowledges that the Customer Parking Fees are subject to change any may require Tenant to participate in a validation program. Except as expressly provided above, neither Tenant, nor its employees shall use any parking spaces in the Parking Garage marked or designated as reserved parking spaces.

#### **ARTICLE 38: PATRIOT ACT**

Tenant hereby represents and warrants to Landlord that neither Tenant nor any of its respective officers, directors, shareholders, partners, members or affiliates is or will be an entity or person: (i) that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>) (the "OFAC List"); (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above.

#### **ARTICLE 39: INTERPRETATION AND CONSTRUCTION**

**39.1 Reasonable Defined.** Whenever a party under this Lease must act reasonably or with reasonableness, reasonableness under all such circumstances shall mean on the basis of rational, objective facts and information sought and considered in good faith in order to make a decision on the matter at hand which adequately protects the interests of the party making the decision. Moreover, it is the intent and purpose of the parties that no judge, hearing examiner or arbitrator shall substitute his or her judgment for that of Tenant or Landlord hereunder, unless clear and convincing evidence exists which shows that such party is not acting in good faith.

**39.2 Waiver.** The waiver by Landlord or Tenant of the breach of any term, covenant or condition in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition. No covenant, term or condition of this Lease shall be deemed to have been waived, unless such waiver is in writing signed by the party charged therewith.



**39.3 No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the actual Rent and other charges herein reserved shall be deemed to be a compromise or agreement to accept such lesser sum in full satisfaction, nor shall any endorsement or statement on any check, or in any letter accompanying a check be deemed an accord and satisfaction as to such lesser amount.

**39.4 Severability.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each term, covenant and condition of this Lease shall be severable, valid and enforceable independently to the fullest extent permitted by law.

**39.5 Survival of Tenant's Obligations.** All obligations of Tenant which by their nature involve performance, in any particular, after the end of the Term, or which cannot be ascertained to have been fully performed until after the end of the Term, shall survive the expiration or termination of this Lease. Likewise, utility bills, Taxes and other items payable by Tenant hereunder, the amounts of which may not have been ascertained or billed to Tenant upon the expiration or termination date, shall nonetheless be payable in full by Tenant within ten (10) days after written notice thereof from Landlord.

**39.6 No Partnership.** Nothing in this Lease shall be deemed or construed by the parties hereto, nor by any third party, to create a relationship between the parties hereto other than that of Landlord and Tenant, nor does Landlord in any way or for any purpose become a partner in the conduct of Tenant's business, nor a joint venturer or a member of a joint enterprise of any kind with Tenant.

**39.7 Governing Law and Venue.** This Lease shall be governed by and construed under the laws of the state in which the Premises are located, and any proceeding arising out of this Lease shall be brought in a court located in the state in which the Premises are located and having jurisdiction for the city and county where the Premises are located. By executing and delivering this Lease, Tenant hereby irrevocably and unconditionally submits to the personal jurisdiction of such court and agrees not to assert in any proceeding before any such court, by way of motion, as a defense or otherwise, any claim contesting or challenging the personal jurisdiction of such court.

**39.8 Non-Binding Effects and Amendments.** The submission of this Lease for examination or execution shall not constitute a reservation or an option for the Premises, and this Lease shall become effective only upon execution, delivery and acceptance hereof by both parties. Except as otherwise expressly provided herein, no subsequent alteration, amendment, change or addition to this Lease, nor any surrender of the Premises, shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

**39.9 Headings.** The article and section headings used throughout this Lease are for convenience of reference only and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

**39.10 Entire Agreement; Amendments.** This Lease comprises the entire agreement and understanding of the parties; and all prior negotiations, correspondence, proposals, verbal understandings and other prior documents are hereby merged into this Lease, which shall not be amended or modified except by a formal written instrument executed by both parties. Tenant hereby acknowledges that: (a) this Lease contains no restrictive covenants or exclusives in favor of Tenant; and (b) this Lease shall not be deemed or interpreted to contain, by implication or otherwise, any warranty, representation or agreement on the part of Landlord that Tenant has any exclusive use rights or that any department store, regional or national chain store, or any other merchant shall open for business or occupy or continue to occupy any premises in or adjoining the Center during the Term of this Lease or any part thereof, and Tenant hereby expressly waives all claims with respect thereto and acknowledges that Tenant is not relying on any such warranty, representation or agreement by Landlord either as a matter of inducement in entering into this Lease or as a condition of this Lease or as a covenant by Landlord.

**39.11 Integration.** It is the expressed intent of each party that the provisions of this Lease be construed and interpreted in harmony as an integrated whole to the maximum extent possible. However, in the event of an irreconcilable conflict between the language in the Special Provisions Rider, if any, and the language in the General Provisions of this Lease, the Special Provisions Rider shall govern.

**39.12 Waiver of Jury Trial.** LANDLORD AND TENANT HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE.

**39.13 Declaration.** Tenant agrees and acknowledges that (i) Landlord intends to subject the Center to the terms and conditions of a Declaration of Covenants, Conditions and Restrictions or similar recorded document (as amended from time to time, the "Declaration") providing for, among other things, certain covenants, conditions, restrictions and easements, and (ii) notwithstanding the later execution and recordation of the Declaration, this Lease and Tenant's interest in and to the Premises is and shall be subject and subordinate to the Declaration.

**39.14 Development Matters.** Tenant hereby acknowledges and agrees that Landlord shall have the right to improve or cause to be improved or to convey to or lease to third parties for improvement or otherwise (without the necessity of obtaining Tenant's consent) certain portions of the Center to which legal or equitable title is held by Landlord at any time during the Term hereof, as separate and independent developments from the remainder of the Center, and the same may (at Landlord's sole election) be excluded from the Center (and the covenants and restrictions contained herein) for purposes of this Lease, provided that such portions and the remainder of the Center shall nevertheless constitute an integrated shopping center. In the event of a sale, transfer or other conveyance of any portion of the Center, Landlord may enter into an agreement with the transferee granting appropriate easement and other rights (which may be in addition to, or in substitution of, such rights granted pursuant to the Declaration), and containing such other matters as Landlord and such transferee may agree, to the extent not inconsistent with this Lease.

**39.15 Guaranty.** This Lease is guaranteed by the parties set forth in Section 1.9 above, and such Guarantor(s) shall execute a Guaranty in the form attached hereto as Exhibit F ("Form of Lease Guaranty").

**39.16 Financial Statements.** Within 15 days after Landlord's request, Tenant agrees to provide Landlord with a true and correct Financial Statement (as defined in this Section) of Tenant and any Guarantors of the Lease. If Tenant is a publicly traded company, copies of its annual report delivered to its stockholders shall be deemed to be Tenant's Financial Statement for purposes of this Section. Subject to the foregoing, for purposes of this Section, Tenant's "Financial Statement" shall mean the following documents: (a) a balance sheet; (b) an income statement; (c) a statement of cash flows; and (d) a statement of owner's equity, each as certified to be true and correct by Tenant (if Tenant is an individual) or by an authorized representative of Tenant, if Tenant is an entity.

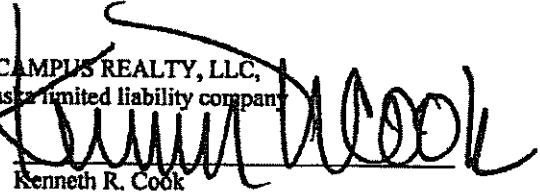
**39.17 Exhibits.** The exhibits referred to herein and attached hereto are incorporated herein and made an integral part of this Lease.

WITNESSING THEIR AGREEMENT and intending to be legally bound, the parties have executed this Lease as of the day and year first above written.

LANDLORD:

EAST CAMPUS REALTY, LLC,  
a Nebraska limited liability company


By:

  
Kenneth R. Cook  
President, East Campus Realty, LLC

TENANT:

BMK, LLC,  
a Nebraska limited liability company

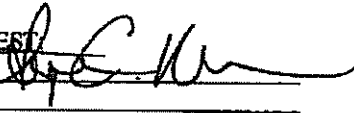
By:

  
Wesley D. Klaus  
Managing Member

ATTEST

By:

Its:



### Special Provisions Rider

The provisions of this Special Provisions Rider ("Rider") are incorporated as an integral part of that certain Retail Lease ("Lease") dated June 1, 2012 by and between East Campus Realty, LLC, a Nebraska limited liability company ("Landlord"), and BMK, LLC, a Nebraska limited liability company ("Tenant"). Capitalized terms used but not defined in this Rider shall have the meanings ascribed to such terms elsewhere in the Lease. The rights granted to Tenant in this Rider are personal to BMK, LLC, a Nebraska limited liability company, and shall not be assigned to nor inure to the benefit of any other party.

1. **Extension Options.** Provided: (a) Tenant is fully operating its business for the Permitted Use in all portions of the Premises (except as such operation may be temporarily excused by Force Majeure); and (b) no event of Default exists on the date Tenant exercises its right to extend the Term or on the date that the Extension Option would otherwise commence, Tenant shall have the right to extend the Term for the Extension Option(s) by delivering notice (the "Option Notice") to Landlord not less than 180 days prior to the end of the then existing Term ("Exercise Window"). Provided Tenant has properly and timely exercised the applicable Extension Option prior to the expiration of the Exercise Window, the Term shall be extended for the period of the Extension Option, and all provisions of this Lease shall remain unmodified and in full force and effect; provided, however, the annual Minimum Rent for the Extension Option(s) shall be an amount equal to \$24.00 per square foot of Gross Rentable Area. Failure by Tenant to timely exercise its right to the first Extension Option shall constitute a waiver of the second Extension Option.
2. **Exclusive.** Landlord agrees that so long as Tenant is conducting as a primary business the operation of a quick-serve typical Lenny's Sub Shop selling at retail Philly cheesesteaks, submarine or deli sandwiches, Landlord will refrain from leasing any space in the Center to any future tenant or occupant for the permitted purpose of conducting as a primary business the operation of a quick-serve submarine sandwich shop selling at retail Philly cheesesteaks, submarine or deli sandwiches (such as by way of example, but not limited to, a tenant or occupant operating as a Subway's, Quizno's, Jersey Mike's, Firehouse Subs, Jimmy John's, Cousin's Subs, the Philly Connection, and Which Which); provided, however: (i) the terms and provisions of this Section 2 shall not apply to nor be of any force or effect with respect to (a) any existing tenant or occupant of the Center (i.e. any tenant or occupant under an executed lease, occupancy, purchase agreement or management agreement), or any successor, assignee or sublessee of such existing tenant or occupant, for so long as any such existing tenant's lease or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof, or any such existing occupant's occupancy or management agreement, is in effect, or to the Premises demised thereunder, (b) any tenant or occupant in the Center leasing or occupying more than 10,000 square feet, (c) full service sit down restaurants, or (d) any premises leased or owned by any of the foregoing; (ii) Landlord's covenant to refrain from leasing space as aforesaid shall expire without further act of the parties by the date twelve (12) months prior to the expiration of the Term or any renewal or extension thereof; and (iii) the terms of this Section 2 shall expire without further act of the parties if Landlord terminates Tenant's right to possession of the Premises (with or without a termination of the Lease) or Tenant fails to conduct the Permitted Use subject to and in accordance with the conditions and limitations contained herein for a period of sixty (60) days. For purposes hereof, the operation of a quick-serve typical Lenny's Sub Shop selling at retail Philly cheesesteaks, submarine or deli sandwiches as a primary business with respect to Tenant shall mean that the greater of ninety percent (90%) or more of Tenant's Gross Sales consists of, or ninety percent (90%) or more of the Gross Rentable Area of the Premises is dedicated by Tenant to the operation of such primary business. For purposes hereof, the operation of a quick-serve submarine sandwich shop selling at retail Philly cheesesteaks, submarine or deli sandwiches as a primary business with respect to a future tenant or occupant shall mean that the greater of twenty percent (20%) or more of any future tenant's or occupant's revenues from the operation of such primary business conducted at such future tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such of such future tenant's or occupant's premises is dedicated to the operation of such primary business.

This agreement of Landlord shall operate only to the extent Landlord's covenants and agreements are not contrary to public policy or contrary to law. Anything herein to the contrary notwithstanding, Tenant agrees to indemnify, defend and hold harmless Landlord from and against any loss, cost, damage, expense (including, without limitation, attorneys' fees and costs), liability, cause of action or settlement arising from or related to any claim that Landlord's compliance, or attempted compliance, with the terms and conditions of this Section 2 is contrary to any antitrust or similar law or statute.

In the event Landlord violates the provisions of this Section 2, and such violation continues for a period of more than 60 days after receipt of written notice thereof from the Tenant, then Tenant shall have the right (as its sole and exclusive remedy for such violation) to pay, in lieu of Minimum Rent, an amount ("Exclusive Alternative Rent") equal to fifty percent (50%) of Minimum Rent, which payment shall commence from and after the expiration of such 60 day period and shall end on the date such breach is cured. Exclusive Alternative Rent shall be payable at the same time and in the same manner as provided in this Lease for the payment of Minimum Rent. During any period that Exclusive Alternative Rent is payable, Tenant shall continue to pay all other additional Rent and all other charges otherwise payable under this Lease at the times specified herein.

3. **Outdoor Patio Area:** So long as Tenant is able to determine a manner to safely overcome sloping in the Outdoor Patio Area (as defined below) to Landlord's reasonable satisfaction as shown in the approved Drawings (as defined in Exhibit B), and subject to Tenant obtaining from the applicable authority having jurisdiction all requisite permits, licenses, approvals, consents, authorizations and the like, including without limitation, approvals to overcome sloping in the area (collectively, the "Outdoor Patio Area Approvals") to construct, operate and use an outdoor patio (the "Outdoor Patio") in the location (the "Outdoor Patio Area") depicted on the Site Plan, Tenant shall be entitled, at its sole cost and expense, to exclusively construct, operate and use the Outdoor Patio solely for purposes of providing outdoor seating to its customers; provided, however, (i) any such operation and use shall be subject to such reasonable rules and regulations as Landlord may promulgate from time to time regarding access to and use of the Outdoor Patio, including, without limitation, rules and regulations regarding operating hours, location and relocation of personal property, areas of operation, scheduling, clean-up, material and equipment storage and handling, and such other matters as Landlord deems appropriate for the best interests of the Shopping Center; provided that no such rules and regulations shall materially and adversely interfere with Tenant's ability to use the Outdoor Patio Area for the purposes set forth herein, subject to and in accordance with the conditions and limitations set forth herein; (ii) any such operation and use of the Outdoor Patio shall be subject to all governmental laws, governmental ordinances and governmental regulations and Tenant shall comply with the same and Tenant shall furnish Landlord with evidence reasonably satisfactory to Landlord that all necessary Outdoor Patio Area Approvals have been obtained as a condition to commencing any operation or use of the Outdoor Patio; (iii) Tenant shall pay all costs and expenses of operating, maintaining, repairing and replacing the Outdoor Patio Area; (iv) Tenant shall maintain the Outdoor Patio Area in a manner consistent with the balance of the Shopping Center; and (v) all of the terms, covenants and conditions of this Lease with respect to Tenant, other than Tenant's obligation to pay Minimum Rent and Additional Rent, and other than the Improvement Allowance, shall apply with respect to the Outdoor Patio and the Outdoor Patio Area, and Tenant's indemnity obligations set forth in Article 20 shall extend to the Outdoor Patio and the Outdoor Patio Area. If Tenant does not obtain the Outdoor Patio Area Approvals, then this Lease shall continue in full force and effect, except that Tenant shall have no right to operate or use the Outdoor Patio or the Outdoor Patio Area and all references to the Outdoor Patio and/or the Outdoor Patio Area shall be disregarded. The rights granted under this Section are personal to BMK, LLC, a Nebraska limited liability company, and shall not be assigned to nor inure to the benefit of any other party.

4. **Improvement Allowance.** In consideration of the performance by Tenant of Tenant's Initial Work in the Premises and the timely fulfillment of all of the terms of this Lease, Landlord agrees to pay to Tenant an amount (the "Improvement Allowance"), equal to Ninety-Five 00/100 Dollars (\$95.00) per square foot of Gross Rentable Area toward the "hard costs" (as defined below) expended by Tenant to construct the leasehold improvements for the Premises, for the costs of Tenant's Drawings (as defined in Exhibit B), all architectural and engineering fees, all construction fees, the cost of permits for the leasehold improvements, and the walk-in coolers and freezers, all hoods and ducting, all HVAC equipment, bathrooms, all plumbing, all counters and millwork, all signage, all interior walls and floors, ceilings, all piping, all fire protection, and all electrical work. For this purpose, "hard costs" shall mean only the cost of labor and materials incorporated into the Premises as permanent leasehold improvements. In no event shall the Improvement Allowance be used toward inventory. The Improvement Allowance shall be paid pursuant to those certain Midtown Crossing Tenant Allowance Payment Procedures dated as of April 1, 2011 ("Payment Procedures"), which have previously been delivered to Tenant and are hereby incorporated by reference as if part of the Lease. Tenant acknowledges receipt of the Payment Procedures. Anything in this Lease to the contrary notwithstanding, no portion of the Improvement Allowance shall be disbursed (and Landlord shall have no liability to pay the Improvement Allowance) until Landlord has received a written list (the "Improvement Allowance List") of all items purchased with the Improvement Allowance, other than any leasehold improvements, and the amount paid for each item, which items include all personal property and furniture, fixtures and equipment purchased by Tenant (and all replacements thereof). It is understood that Landlord has and

retains an express first and superior contract lien and a continuing security interest to secure the payment of all rental due under this Lease from Tenant and amounts paid to Tenant as the Improvement Allowance, upon all items listed on the Improvement Allowance List. Except upon expiration of the Term where no Default exists, Tenant shall not remove any of the items listed on the Improvement Allowance List from the Premises, other than pursuant to sale thereof in the regular course of its business, without the prior written consent of Landlord, and Landlord shall have the right and privilege, at its sole option and discretion, to take possession of all property listed on the Improvement Allowance List, and to store and sell the same at Tenant's risk and expense, in addition to any lien and rights of distraint it may possess against the items listed on the Improvement Allowance List. If a Default occurs hereunder, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code of Nebraska, including, without limitation, the right to sell the items listed on the Improvement Allowance List at public or private sale upon ten (10) days notice to Tenant, which notice Tenant hereby agrees is adequate and reasonable. Within five (5) days after request by Landlord, Tenant hereby agrees to execute such other instruments necessary or desirable in Landlord's discretion to perfect or continue the security interest hereby created. Landlord and Tenant agree that this Lease and the security interest granted herein serve as a financing statement, and a copy or photographic or other reproduction of this Section may be filed of record by Landlord and will have the same force and effect as the original. Tenant agrees that Landlord may prepare and file a UCC to evidence Landlord's security interest in the items on the Improvement Allowance List and in connection therewith, Tenant's Organizational ID is 27-2882592.

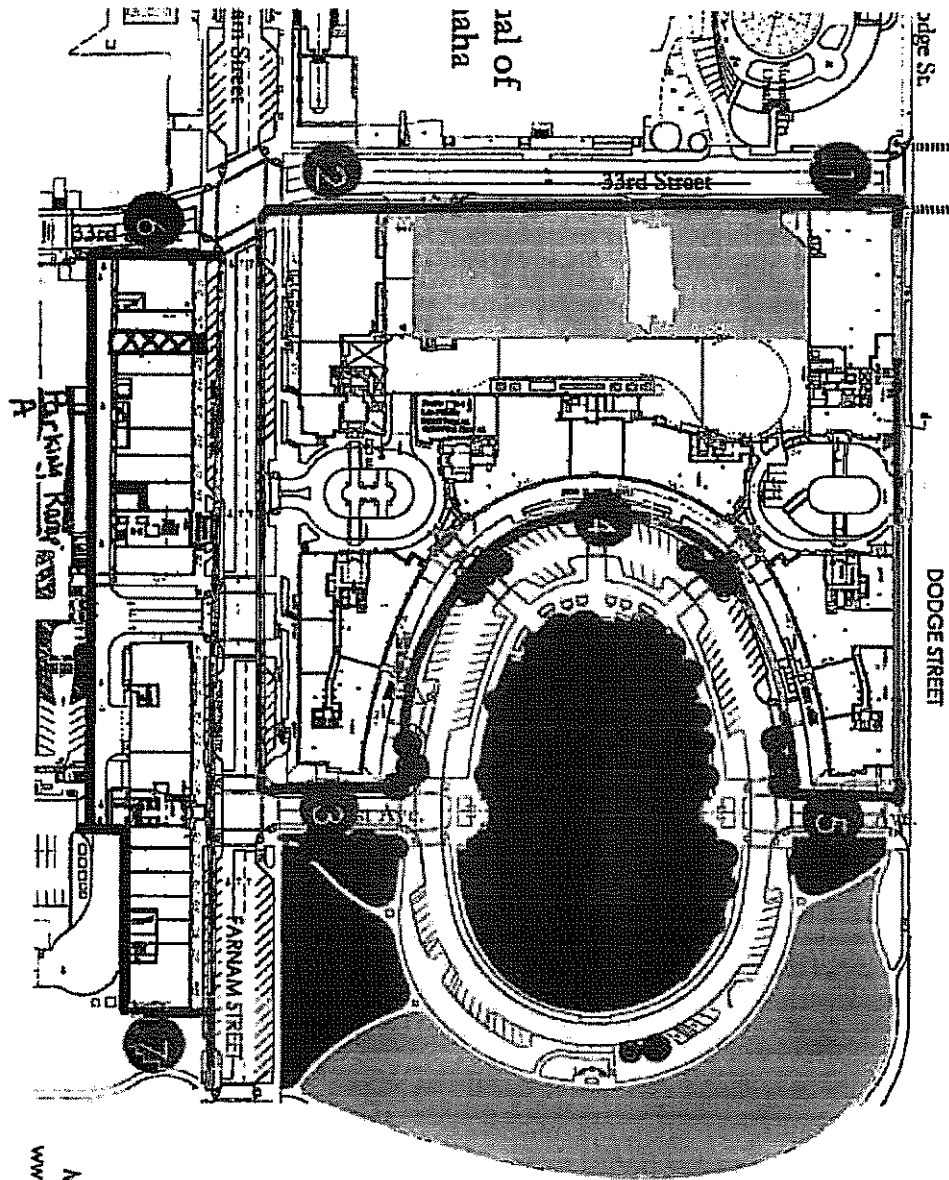
5. **Radius Restriction.** Beginning on the date of this Lease, and irrespective of whether Tenant is open and operating for business in the Premises, if Tenant or any party which directly or indirectly controls, is controlled by, or is under common control with Tenant shall directly or indirectly, either individually or as a principal or otherwise, operate within a radius of 2 air miles of the Center, any store (a "Competing Store") for the Permitted Use or any use being conducted in the Premises or under the Trade Name (whether or not Tenant is open and operating for business in the Premises at such time), then during the period of such Competing Store's operation, the Minimum Rent otherwise payable by Tenant shall be increased by 50%. Such adjustment reflects the agreement of the parties as to the damages which Landlord would likely incur by reason of the diversion of business and customer traffic from the Premises and Shopping Center to such Competing Store within such radius, as a proximate result of the operation of such Competing Store. Notwithstanding the foregoing, the provisions of this Section shall not apply to any Competing Store which is acquired by Tenant after the date of this Lease as part of Tenant's simultaneous acquisition of a chain of other stores.

6. **Pre-Approved Signage.** Anything herein to the contrary notwithstanding, Landlord hereby approves Tenant's signage as described on Exhibit G, subject to compliance with applicable laws and regulations (provided, however, if Tenant makes any changes to the specifications set forth on Exhibit G, then any such change shall require the written approval of Landlord and shall be consistent with Landlord's sign criteria), and Tenant shall, at its sole cost and expense, comply with the same, it being understood that Tenant's exterior signage may require the consent and approval of the applicable governmental authorities having jurisdiction thereof, and Tenant, as a condition to erecting such signage, shall, at Tenant's sole and expense, obtain such consent and approval, to the extent the same is required by the applicable governmental authority. If Tenant does not obtain the foregoing consents and approvals, then this Lease shall continue in full force and effect except Tenant shall have no right to place Tenant's signage, as described on Exhibit G, on the building containing the Premises.

7. **Delivery Vehicle.** In connection with Tenant's Permitted Use, Tenant may provide delivery service and use a delivery vehicle. Tenant agrees to park the delivery vehicle on the top level of Ramp A (i.e., the large parking garage located behind the building containing the Premises) in a location specified by Landlord from time to time. So long as Tenant parks in the location specified by Landlord on the top level of Ramp A, then Tenant may park such delivery vehicle without charge.

# EXHIBIT A

## SITE PLAN



- Center
- Premises
- Outdoor Patio Area

MIDTOWN CROSSING  
www.midtowncrossing.com

*MC*

## EXHIBIT B

### CONSTRUCTION EXHIBIT

#### Construction Exhibit

This Exhibit is attached to and forms a part of that certain Retail Lease ("Lease") dated June 1, 2012, between East Campus Realty, LLC, ("Landlord") and BMK, LLC, a Nebraska limited liability company ("Tenant"). This Exhibit is subject to and shall be supplemented by the Design Criteria (defined below) for the Center. All terms used in this Exhibit but not defined in this Exhibit shall have the meanings provided for them in the body of the Lease. The term "Tenant's Work" shall mean any work performed by Tenant, whether Tenant's Initial Work or work subsequent thereto. The term "Tenant's Initial Work" shall mean work performed by Tenant prior to opening for business in the Premises. The term "Lease Outline Drawing" shall mean the drawing described in Section III, paragraph 3 of this Exhibit. The term "Grand Opening Date" shall mean the date announced by Landlord as the Grand Opening Date for the Center which shall be on or about the date on which one or more tenants open for business in the Center.

Attachment 2 hereto contains special provisions that pertain to most or all of the tenants in Building 6 in the Center, or to certain types of tenants in the Center, or to tenants in certain locations in the Center, as noted in Attachment 2. With respect to such tenants, the provisions on Attachment 2 shall govern in case of any conflict with the other provisions of this Exhibit.

#### SECTION I. DELIVERY OF PREMISES BY LANDLORD

1. Landlord shall provide the following services stubbed to the Premises in the locations shown on the Lease Outline Drawings: (a) electrical service of 200 amps at 480 volts (i.e., 400 amps at 208/110); (b) a 1 1/4" water line; (c) a 1" gas line, and (d) a 4" sewer pipe. Except for the foregoing, Tenant shall otherwise take the Premises in an "as is" condition and all work to be performed at the Premises shall be performed by Tenant at Tenant's expense.

2. Landlord does not warrant any information Landlord may have furnished or will furnish Tenant regarding the Premises. It shall be Tenant's responsibility to verify existing field conditions of the Premises. Tenant's failure to verify the existing conditions of the Premises shall not relieve Tenant of any expenses or responsibilities resulting from such failure, nor shall Landlord have any liability or obligations to Tenant arising from such failure.

3. Tenant is directed to refer to Lease Outline Drawing for specific conditions, including without limitation, any Tenant's Work attributable to the condition of the acoustical/sound ceiling of the Premises.

#### SECTION II. TENANT'S WORK

##### PART ONE. General Criteria for Tenant's Work

1. Tenant shall construct improvements in the Premises as provided in this Exhibit and in as provided in other relevant provisions of the Lease, including Articles 8 and 9. In the event of any conflict between the provisions of this Exhibit and other provisions of this Lease, the provisions of this Exhibit shall control.

2. Tenant shall perform Tenant's Work in accordance with all Laws including, without limitation, the building, fire and life safety codes of the jurisdiction of the City of Omaha and all requirements of the Americans with Disabilities Act.

3. Tenant shall prepare its plans and specifications for its Work in accordance with this Exhibit, Landlord's design criteria for the Center, as the same may be revised or supplemented from time to time, and such other criteria as Landlord may furnish Tenant (such criteria herein referred to as the "Design Criteria"). The Design Criteria contains specific criteria for the design and performance of the Work, including the mechanical and



electrical work. The Design Criteria may contain "Standard Project Details" as issued from time to time with which Tenant shall comply.

4. Tenant's Initial Work and, except to the extent as may be specifically otherwise provided in this Lease, all subsequent work in the Premises which Tenant may wish to perform, shall be subject to the advance written approval by Landlord.

5. Tenant shall, prior to commencement of Tenant's Work, obtain all required building and other permits at Tenant's expense and post said permits at the Premises as required.

6. The loads imposed by Work at the Premises (including dead and live loads) shall not exceed the allowable load capacity of the existing structural systems and components thereof. Suspension or anchoring to the upper floor deck above shall be limited to ceilings, conduit, and piping. All other loads shall be supported by the Tenant's floor or by means approved by the Landlord's design engineer.

7. Tenant shall use only new materials for the Work, including all improvements, equipment, trade fixtures and all mechanical, plumbing and electrical systems and components.

8. Tenant shall make no marks or penetrations into the roof, upper floor decks, exterior walls, or floors, unless approved by Landlord in advance.

9. If any Tenant's Work to connect to Landlord's utilities requires access through the premises of any other tenant or otherwise will affect any other tenant and Landlord has approved such work, Tenant shall be responsible for coordinating such Tenant's Work with such other tenant, restoring said tenant's premises to its original condition following the Tenant's Work, and compensating said other tenant for any costs incurred by it on account of such Tenant's Work.

10. If any of Tenant's Work necessitates any special work outside the Premises, such as, but not limited to, increasing the size of electric conduit or adding or relocating water service or sanitary service, Landlord, at Landlord's election, may perform such work and Tenant shall reimburse Landlord the cost thereof plus 15% thereof for administration, or require Tenant perform the work at Tenant's cost.

11. Tenant shall retain Landlord's identification signs or, at Tenant's cost, provide new signs for Landlord's utilities, valves, and other such devices in the Premises.

12. Landlord may at its election require any aspect of Tenant's Work to be tested, and Tenant shall cooperate with any such testing procedure.

13. No approval from Landlord with respect to any aspect of Tenant's Work shall be valid unless in writing.

## **PART TWO. Certain Specific Criteria for Tenant's Work**

### **A. Walls; Partitions; Doors; Floors.**

1. All exterior walls shall be finished with metal stud furring, R-19 thermal insulation, vapor retarder and gypsum board.

2. All partitions within the interior of the Premises shall be of metal stud construction, and shall extend to the structure with gypsum board to the ceiling (except if required as a rated wall in which case the gypsum board shall extend to the structure), and shall have gypsum board finish on all sides with taped and sanded joints. Any combustible materials applied to partitions shall be covered with a fire retardant coating. Perimeter demising and common area wall shall be acoustic insulated, and gypsum board full height and sealed to structure to ensure separate atmosphere from adjacent spaces, vapor retarder will be provided at food service tenants.

3. Tenant shall install and finish gypsum board from floor to deck above on the Premises side of all demising walls where such walls have metal stud framing provided by the Landlord.

4. Tenant shall maintain all structural fireproofing to comply with the fire rating requirements.

5. Commercial grade finish hardware, labeled where required, shall be used throughout.

6. Intentionally Omitted.

7. Tenant shall not use flooring, tile or adhesives at the Premises containing asbestos or similar material. No vinyl flooring or similar materials shall be allowed in the sales area of the Premises; provided, however, Tenant may use a wood laminate stick down tile that looks and feels like wood but is actually vinyl provided that Tenant provides Landlord with a sample and receives Landlord's approval of such sample prior to installation.

8. If Tenant has a door leading to the exterior or a service corridor, Tenant shall install on the door an identification sign setting forth Tenant's name and address number.

**B. Ceilings.**

1. Ceilings shall be non-combustible construction, and shall be gypsum board or acoustical tile, which such tile shall be the regular edge type with regressed metal grid lay-in type incorporating a 2' x 2' acoustical tile. 2' x 4' grid systems shall be permitted only in stock areas not visible to the public. Other ornamental or acoustical tile ceilings may be permitted only if Landlord shall so approve in writing.

2. Ceilings shall be of the accessible type, or access panels shall be provided as required by Landlord.

3. Furring, framing, and blocking above ceiling shall be of non-combustible materials meeting codes.

4. No wood (even if fire treated) or any other combustible material shall be permitted above the ceiling.

5. Tenant shall install acoustical ceilings.

**C. Structural.**

1. Without limitation, any alterations, additions or reinforcements to Landlord's structure, piping, conduit or duct work to accommodate Tenant's Work, or any work that may otherwise affect Landlord's structure, including mezzanines, shall not be performed without in each instance the prior written approval of Landlord.

2. Upon completion of Tenant's Work, Tenant shall leave Landlord's structure as strong or stronger than the original design and with finishes unimpaired.

3. Tenant shall submit detailed and certified engineering documents to show any proposed work involving Landlord's structure, and Landlord may require said documents to be reviewed by Landlord's structural engineer at Tenant's cost. Further, Landlord may require Tenant to use, at Tenant's cost, Landlord's structural engineer to design Tenant's structural modifications. Landlord may also elect to require that any structural modifications proposed by Tenant be performed by Landlord's contractor at Tenant's cost.

4. No welding to the building structure shall be permitted.

5. Channeling core drilling or culling of the suspended structural slabs shall not be permitted (except coring of the slab shall be permitted subject to Landlord's prior written approval of core size and location).

6. Support of all mechanical equipment shall be subject to Landlord's advance written approval. If in the Landlord's opinion structural analysis of the method of support is necessary, Tenant shall at Tenant's expense utilize Landlord's structural engineer to evaluate or design the support.

D. Roofs.

1. Any work affecting or pertaining to the roof, including roof penetration and installation of structural supports, curbing and flashing on or to the roof, shall be subject to Landlord's prior written consent and, if consented to, shall be performed only in the manner specifically approved by Landlord. All such approved work (including repair or maintenance of such work) shall be performed by Landlord's designated roofing contractor at Tenant's expense.

E. Storefront. If Tenant desires to modify or alter the storefront provided by Landlord, Tenant may do so consistent with the Design Criteria, provided Tenant has Drawings and specifications for such modifications or alterations and obtained Landlord's prior written consent for the work described therein. If Tenant modifies the storefront, Tenant's modified storefront shall be self supporting and shall be designed and constructed to transfer all loads to the concrete slab in the manner so indicated in the Design Criteria. Tenant shall install cloth awnings on existing frames or canopies in conjunction with the Tenant's storefront construction as required by the Design Criteria.

F. Restroom. Tenant shall install a restroom (or restrooms) within the Premises in accordance with the Design Criteria and in accordance with all requirements of Law.

G. Mechanical.

1. HVAC Equipment: The Tenant shall provide fan coil units with electric heat located in the Premises and air-to-air heat pumps located on grade behind the premises for heating and cooling of the Premises. The Tenant shall provide all supports required for HVAC equipment located in the Premises. The Tenant shall provide refrigerant piping routed from the air-to-air heat pumps to fan coil units located in the Premises.

2. Exhaust Air Configuration: The Tenant shall provide all equipment required to provide code required exhaust for bathrooms and janitor rooms. The Tenant shall route all exhaust duct to the Landlord provided louvers above the Premises storefront windows or to other exterior walls. If Tenant requires dishwasher hood exhaust, the Tenant shall provide all equipment required for dishwasher hood exhaust. Dishwasher hood exhaust shall also be routed to the Landlord provided louvers above the Premises storefront windows or to the exterior wall as appropriate. The Tenant shall maintain all code required intake and exhaust air clearances. See the Lease Outline Drawings for locations of louvers.

3. Kitchen Hood Grease Exhaust: If Tenant intends to use the Premises as a restaurant, Tenant shall provide kitchen hoods, associated welded steel grease exhaust duct, and kitchen exhaust fans. The Tenant shall provide sidewall mounted kitchen exhaust fans. The kitchen exhaust fan configuration, fan supports and location shall be subject to approval by the Landlord.

4. Makeup and Ventilation Air Intake: The Tenant shall provide makeup and HVAC ventilation air duct routed from Landlord provided louvers located above the Premises storefront windows or in the exterior wall to the Tenant's kitchen hoods and HVAC equipment. The Tenant shall provide code required HVAC ventilation air to the HVAC equipment. The Tenant shall be required to maintain all code required intake and exhaust air clearances at the louvers. See the Lease Outline Drawings for location of louvers.

5. Gas Piping: The Tenant shall provide gas piping required in the Premises downstream of the Landlord provided service and shut off valve located in the Premises. The gas meter for the Premises shall be provided by the Tenant. See the Lease Outline Drawings for location of the gas service to the Premises.

6. Water Piping: The Tenant shall provide water piping as required in the Premises downstream of the Landlord provided service and shut off valve located in the Premises. The water meter for the Premises shall be provided by the Tenant. See the Lease Outline Drawings for location of the water service to the Premises.

7. Waste and Vent Piping: The Tenant shall provide all sanitary waste piping required within the Premises. The Tenant shall connect to the sanitary waste stub provided by the Landlord within the Premises. The Tenant shall provide vent piping required within the Premises. See the Lease Outline Drawings for location of Landlord provided waste piping.

8. Grease Sanitary: If Tenant intends to use the Premises as a restaurant, Tenant shall provide all grease sanitary piping, required by code, within the Premises. The Tenant shall connect to grease sanitary waste piping provided by the Landlord below the Premises. The Tenant shall provide separate grease waste vent piping, required by code, within the Premises. See the Lease drawings for location of Landlord provided grease wastepiping.

9. Fire Protection: The Tenant shall provide all piping, sprinkler heads, and other accessories required to provide a fire protection system for the Premises in accordance with NFPA 13 and the authority having jurisdiction. The Tenant shall connect to the Landlord provided fire sprinkler main located in the Premises. See the Lease drawings for location of the fire sprinkler main. A sprinkler grid exists within the Premises by Landlord. If a sprinkler grid is installed, the Tenant shall be responsible for making all modifications to it such that it will be adequate for the Tenant's use and in compliance with all applicable codes and requirements of the authority having jurisdiction. If a sprinkler grid is not installed by Landlord, a sprinkler grid, Tenant shall install a sprinkler grid that is adequate for the Tenant's use and in compliance with all applicable codes and requirements of the authority having jurisdiction.

- a. Tenant's fire sprinkler contractor shall be approved by the Landlord.
- b. Restaurant tenants shall provide a kitchen exhaust hood fire extinguishing system in accordance with NFPA 17A and the authority having jurisdiction.
- c. All fire sprinkler work shall be done without interrupting service to the remainder of the building. All sprinkler work shall be coordinated with other tenants and residents of the building.
- d. All fire sprinkler work, including system design, equipment, materials, and installation shall be in accordance with the requirements of, and be approved by the Landlord's insurance underwriter and the authority having jurisdiction.
- e. Tenant's fire sprinkler contractor shall prepare shop drawings and plans of the proposed work, with appropriate calculations and submit them to the Landlord, Fire Marshall and Landlord's insurance underwriter for approval prior to commencing work. Approved shop drawings and plans shall be filed with the Landlord prior to commencement of fire sprinkler system construction. Upon completion of work, copies of the material and test certificates shall be filed with the Landlord and all required agencies prior to occupancy of the Premises.
- f. Should Tenant's Work or use of the Premises require a main larger than the main provided by the Landlord, the Tenant shall be responsible for the cost of providing the larger main to meet its requirements. See the Lease Outline Drawings for size of the existing fire sprinkler main in the Premises.
- g. The introduction of stock, furniture, fixtures, equipment or other combustible material to the Premises is prohibited until the fire sprinkler system is placed in service. Testing of the fire sprinkler system as required by the Fire Marshall shall be completed before Tenant opens for business in the Premises.

- h. Landlord's insurance underwriter shall have the right to inspect the fire sprinkler system and its component parts. The system shall, at all times, comply with the reasonable requirements of the insurance underwriter. Any alterations, improvements, repairs, or maintenance required by the underwriter shall be the Tenant's sole responsibility and shall be performed promptly at Tenant's expense upon notice of the necessity for such work.

H. Electrical

1. Tele/Comm: Tenant shall extend the empty two inch (2") provided by Landlord to a distribution point within the Premises for connection between the Premises and the Landlord furnished IC. Tenant shall make arrangements with telephone carrier and provide all telephone system panels, outlets and conduits within the Premises and wire to the distribution point within the Premises. All tele/comm. wiring within the ceiling of the Premises shall be installed to conform to applicable requirements of the Law for a ceiling return air plenum if one exists.

2. Electrical Systems: Subject to and in accordance with Attachment 1, Tenant shall design and install a complete electrical system for the Premises which shall include the following:

- (i) Tenant shall not be obligated to use the provider designated by Landlord to obtain such electrical service.
- (ii) Branch breakers in Landlord furnished electrical panel, conduit and branch circuits as required to accommodate Tenant's requirements.
- (iii) Dry-type transformers as required to accommodate Tenant's requirements.
- (iv) Relocation of Landlord furnished electrical panel to meet Tenant's requirements, including extension of existing panel feeder from Landlord's meter center.
- (v) All receptacles and devices as required by Code, and as required to accommodate Tenants requirements.
- (vi) Lighting for illuminating the path of emergency egress as required by Code, and as required to accommodate Tenants requirements.
- (vii) Without limitation to any other requirements in connection with the electrical work, all wiring shall be installed in conduit and Tenant shall balance all phases of Tenant's electrical system upon completion of construction to a tolerance of ten percent (10%).

3. Fire Alarm: Tenant shall install a fire alarm system for the Premises as required by Code. The Premises shall be connected to central building fire alarm system using the Landlord's designated fire alarm contractor. All fire alarm wiring shall be installed in conduit.

1. Security Devices. Tenant's freestanding security devices, if any, shall not be installed or placed in operation unless the size, location and design of such security devices are shown on the Working Drawings (defined in Section III, paragraph 1) and have specifically been approved by Landlord. Any such device installed without such prior consent shall be subject to removal by Landlord without notice to Tenant or liability therefor. Landlord's approval of the Working Drawings shall not be deemed as its approval of such security devices unless such devices are specifically shown as approved on said Working Drawings. Surface mounted raceways or conduits will not be allowed.

### SECTION III. PROCEDURES AND SCHEDULES FOR THE COMPLETION OF PLANS AND SPECIFICATIONS

1. All prints, drawing information, and other materials to be furnished by Tenant as required hereinafter, shall be delivered to Landlord in care of East Campus Realty, LLC Mutual of Omaha Plaza Omaha, NE 68175 ATTN: Brenda Elliot & Project Advocates, or such different address as Landlord may designate to Tenant from time to time. Tenant's preliminary drawings and specifications are herein referred to as the "Preliminary Drawings" and Tenant's final drawings and specifications are herein referred to as the "Working Drawings". The Preliminary Drawings and Working Drawings are sometimes referred to herein as the "Drawings"
2. Tenant shall, at its sole expense, utilize the services of an architect and engineer to prepare all Drawings. Said architect and engineer shall be registered in Nebraska. All Drawings shall be submitted to Landlord for approval in the form of two (2) sets of prints (1 full size and 1 half-size). In addition AutoCAD files shall be submitted on disk (CD or DVD). Tenant shall, with the Drawings, furnish sample boards indicating materials, color selections and finishes to be used. Tenant shall also submit to Landlord such further information on Tenant's planned electrical and mechanical usage at the Premises as requested by Landlord (herein referred to as "Mechanical/Electrical Design Submittal Forms").
3. Landlord will furnish Tenant a drawing that shows the dimensions and square footage of the Premises (the "Lease Outline Drawing"). The Lease Outline Drawing may also show the location of certain existing base building improvements, such as utility lines. Landlord shall furnish Tenant the Design Criteria for the Center. If, pursuant to the foregoing, Tenant is supposed to receive the Lease Outline Drawing and/or the Design Criteria, and has not received the same by the date this Lease is fully executed, Tenant shall promptly notify Landlord and Landlord shall furnish said item(s) to Tenant as soon as reasonably possible; Landlord does not warrant the information shown on the Lease Outline Drawing, or on any other drawings it furnishes to Tenant with respect to the Premises.
4. Tenant shall submit the Preliminary Drawings promptly, and in no event later than four (4) weeks after receipt of the Lease Outline Drawing and Design Criteria. The Preliminary Drawings shall show a general rendering of the storefront modifications, interior layout, signage, and any other work Tenant intends to perform. With the Preliminary Drawings Tenant shall submit a color rendering of Tenant's storefront with any proposed modifications, Tenant's proposed signage, and a sample board of the materials to be used in the interior of the Premises. Landlord shall use reasonable efforts to send notification to Tenant that it approves or disapproves the Preliminary Drawings within ten (10) days after receipt thereof. If Landlord disapproves, Landlord shall specify the reasons for the disapproval. If Landlord disapproves, Tenant shall within five (5) days after receipt of Landlord's disapproval, send Landlord revised Preliminary Drawings addressing Landlord's comments. This procedure shall be repeated until Landlord has approved the Preliminary Drawings. Landlord may give approval "as noted" in which event the changes noted by Landlord shall be deemed incorporated into the Preliminary Drawings; provided, if Tenant notifies Landlord within five (5) days thereafter that it does not accept said changes, then the Preliminary Drawings shall be deemed disapproved on account of the changes Landlord had requested.
5. Within twenty-eight (28) days after Landlord approves the Preliminary Drawings, Tenant shall submit the Working Drawings. The Working Drawings shall include detailed final drawings for architectural, electrical, mechanical, sprinkler and plumbing and all other work to be performed by Tenant and shall be prepared consistent with the approved Preliminary Drawings. Landlord shall use reasonable efforts to send notification to Tenant that it approves or disapproves of the Working Drawings within ten (10) days after receipt thereof. If Landlord disapproves, Landlord shall specify the reasons for the disapproval. If Landlord disapproves, Tenant shall within ten (10) days after receipt of Landlord's disapproval, send Landlord revised Working Drawings addressing Landlord's comments. This procedure shall be repeated until Landlord has approved the Working Drawings. Landlord may give approval "as noted" in which event the changes noted by Landlord shall be deemed incorporated into the Working Drawings; provided, if Tenant notifies Landlord within five (5) days thereafter that it does not accept said changes, the Working Drawings shall be deemed disapproved on account of the absence of the changes Landlord had requested.
6. Working Drawings shall include, but not be limited to, the following:

- a. Key plan showing location of Premises
- b. Floor and fixture layout plans
- c. Overall sections
- d. Reflected ceiling plans
- e. Details of special conditions encountered
- f. Interior elevations
- g. Full sections of types of partitions
- h. Door schedule with jamb details, including list of hardware
- i. Storefront and interior finish color sample board (maximum size 11" x 17")
- j. Sprinkler, plumbing riser diagram, heating, ventilating, and cooling plans
- k. Mechanical details
- l. Electrical plans (circuited lighting plan and circuited power plan)
- m. Electrical details, fixture schedules, diagram, and phase balanced panel board schedules,
- n. Mechanical/Electrical Design Submittal Forms as required by the Design Criteria

7. The approval by Landlord or Landlord's agent of any Drawings or of Tenant's Work shall not constitute an implication, representation or certification by Landlord or Landlord's agent that either said Drawings or Tenant's Work is accurate, sufficient, efficient or in compliance with insurance and indemnity requirements, or any Laws, including but not limited to code and the Americans with Disabilities Act, the responsibility for which belongs solely to Tenant.

8. In those instances where multiple standards and requirements apply with respect to Tenant's Work, the strictest of such standards and requirements shall control unless prohibited by applicable Law.

#### SECTION IV. CONSTRUCTION

1. Tenant may not commence any Tenant's Work until this Lease has been fully executed, Landlord has approved Tenant's Working Drawings, all required insurance certificates have been furnished to Landlord, all building permits have been obtained, and Tenant has complied with all other requirements herein and elsewhere in this Lease.

2. A representative of Tenant shall meet with Landlord prior to start of construction to discuss construction-related items. Tenant's representative shall contact Landlord in advance to schedule said meeting at a mutually satisfactory time.

3. Without limitation to any provision of this Lease, prior to commencement of any Tenant's Work at the Premises Tenant shall furnish Landlord the following:

- a. The names, addresses, representatives and telephone numbers of Tenant's general contractor. Additionally, Tenant shall use reasonable efforts to furnish Landlord such information for all subcontractors ("Tenant's Contractors").

- b. Amounts of the general contract and each subcontract.
- c. Certificates of Insurance evidencing the insurance required of Tenant and Tenant's general contractor as provided in this Lease, including this Exhibit \_.
- d. A copy of the building permit(s).
- e. A detailed construction schedule.
- f. If required by Landlord, a deposit (the "Construction Deposit") to cover damage to Landlord's property during Tenant's construction and payment of any charges due from Tenant. The amount of the Construction Deposit shall be as set forth in Attachment 1. The Construction Deposit, or the balance remaining, if any, after application pursuant to the following sentence, shall be returned to Tenant upon completion of all Tenant's Work in accordance with the approved Working Drawings. Landlord shall have the right to apply the Construction Deposit to pay for the repair of any damage to Landlord's property caused by Tenant's contractors or subcontractors or the payment of any charges due from Tenant.

4. All of Tenant's contractors shall be bondable, licensed contractors, having good labor relations, capable of working in harmony with Landlord's general contractor and other contractors working in the Center and in the Midtown Crossing at Turner Park residential construction. Tenant shall coordinate Tenant's Work with other construction work at the Center and in the Midtown Crossing at Turner Park residential development, if any. Landlord specifically reserves the right to approve Tenant's contractors. If Landlord does not give Tenant such approval with respect to any contractor(s) Tenant shall contract with another general contractor and/or subcontractors(s), as the case may be, for the completion of Tenant's Work.

5. In addition to the items in paragraph 3 of this Section IV above, Landlord may require either or both of the following:

- a. Proof in form satisfactory to Landlord of Tenant's financial ability to cause Tenant's Work to be completed and fully paid for prior to opening for business.
- b. A completion bond or an irrevocable letter of credit in Landlord's favor in the amount of the cost of Tenant's Work which Landlord may draw upon in order to pay the Tenant's contractors if Tenant fails to pay for any of Tenant's Work.

6. Tenant's Work shall be subject to the inspection of Landlord's representative from time to time during the period in which the Work is being performed.

7. Tenant's general contractor shall maintain at the Premises during construction a complete set of approved Working Drawings bearing Landlord's approval stamp.

8. Temporary Facilities.

- a. If not already available in the Premises, Tenant shall provide temporary heat, air-conditioning and ventilation for the Premises during construction if Tenant desires the same.
- b. Landlord shall furnish permanent electrical service of electrical capacity determined by Landlord to a location at or near the Premises for Tenant's use during Tenant's construction period and permanent occupancy.



- c. If Tenant requires water service during construction and Landlord is able to provide it, Landlord shall do so and bill Tenant as Landlord reasonably determines, or as otherwise provided for in this Lease,
- d. Tenant shall place all trash in trash containers at a pick-up area or areas designated by Landlord. Tenant shall be responsible for breaking down boxes. Prior to the Grand Opening Date, Landlord shall furnish the trash containers and shall cause the trash to be removed therefrom, and Tenant shall reimburse Landlord for such trash removal expenses as Landlord reasonably determines, or as otherwise provided for in this Lease. After the Grand Opening Date, Tenant shall provide trash removal service from the pick-up areas at Tenant's own cost, unless Landlord elects to continue to provide the trash removal service.
- e. Tenant shall not permit trash to accumulate within the Premises or in any common area space such as corridors, service courts or other common areas, and Tenant shall deposit its trash in designated trash containers at least once a day during Tenant's construction period. If Tenant fails to dispose of trash as required above, and Landlord elects to pick up or otherwise remove Tenant's trash, the charge to Tenant shall be equal to Landlord's actual costs for such removal (as Landlord reasonably determines), plus 15% thereof for administrative costs.

9. Construction Barricade:

- a. If Tenant elects to take down Landlord's provided storefront (which shall only be done with Landlord's prior approval), Landlord may, at Landlord's election, require that until the Grand Opening Date Tenant install and maintain a rough finished temporary construction barricade of minimum six foot (6'-0") height across the front of the Premises.
- b. If the Tenant has not completed Tenant's Work by the Grand Opening Date, then by the Grand Opening Date Tenant shall install a finished barricade with gypsum board on metal framing and a finished painted surface with graphics in front of the entire Premises. Tenant shall at Tenant's cost install such barricade in accordance with Landlord's requirements and standards for such barricade construction, Landlord may at its election require that the barricade include a graphic design and Landlord shall affix the design at Tenant's expense. No other signs shall be allowed on any barricade except those, if any, provided by Landlord. Landlord shall have the right to remove any nonpermitted signs without liability or prior notice.

10. The cost of any work permitted or required to be performed by Landlord on behalf of Tenant under this Exhibit shall become due and payable in full within thirty (30) days after Tenant has been invoiced for same by Landlord and said charges shall be deemed Rent under the Lease.

11. Upon completion of Tenant's Initial Work and before Tenant opens for business at the Premises, Tenant shall submit to Landlord written proof from Landlord's insurance underwriter that the fully installed sprinkler system was approved by such underwriter, and Tenant shall submit to Landlord and Landlord's insurance underwriter copies of all material and test certificates.

12. Upon completion of Tenant's Initial Work, Tenant shall notify the management office. Upon said notification, Landlord's designated representative shall inspect the Premises and, if the Premises are constructed in accordance with the approved Drawings, said representative shall issue a Letter of Acceptance for the Premises. If Landlord believes the Premises have not been constructed in accordance with the approved Working Drawings, Landlord shall so notify Tenant or Tenant's Contractor. Tenant shall not open prior to Landlord's issuance of a Letter of Acceptance. Tenant shall furnish Landlord a copy of a certificate of occupancy for the Premises before Tenant opens for business.

13. All work performed by Tenant during its construction period, or otherwise during the Term, shall be performed so as to cause the least possible interference with other tenants, and the Landlord's construction activities or operation of the property, and Landlord shall have the right to impose reasonable requirements with respect to timing and performance of the Work in order to minimize such interference. Work causing noise, odor or vibration outside the Premises shall be performed only during hours approved in advance by Landlord. Tenant shall take all precautionary steps to protect its facilities and the facilities of others affected by the Work and shall police same properly. Construction equipment and materials are to be located in confined areas and truck traffic is to be routed to and from the site as directed by Landlord so as not to burden the construction or operation of the Center or the residential portion of Midtown Crossing at Turner Park. All Work shall be confined to the Premises. Tenant's Contractor shall coordinate with Landlord's on-site representative for the delivery and removal of its equipment and materials. Landlord shall have the right to order Tenant or any Tenant's contractor or subcontractor who willfully violates the above requirements to cease work and to remove its equipment and employees from the building. Tenant's Work shall be properly supervised by a qualified construction superintendent at all times when work is being performed at the Premises.

14. Contractor Insurance. Tenant shall cause its general contractor to maintain during the construction period the following insurance: (i) commercial general liability insurance, with limits of not less than \$3,000,000 per occurrence (the portion of such coverage over \$1,000,000 may be provided under an umbrella or excess liability policy), for personal injury, bodily injury or death, or property damage or destruction, arising out of or relating to the contractor's work at or in connection with the Premises, (ii) workers' compensation insurance with respect to each contractor's workers at the site or involved in the Work, in the amount required by statute, (iii) employer's liability insurance in the amount of at least \$500,000 per accident and at least \$500,000 for disease, each employee, (iv) comprehensive automobile liability insurance covering all owned, hired or non-owned vehicles, including the loading and unloading thereof, with limits of not less than \$2,000,000 per occurrence (the portion of such coverage over \$1,000,000 may be provided under an umbrella or excess liability policy), and (v) builder's risk property insurance upon the entire Work to the full replacement cost thereof. Landlord, Landlord's managing agent, and such other parties as are designated by Landlord, shall be additional insureds under (i), (iv) and (v) above. All insurance required hereunder shall be provided by responsible insurers rated at least A and X in the then current edition of Best's Key Rating Insurance Guide and shall be licensed in Nebraska. Tenant shall provide, or cause its contractors to provide, such certificates prior to any Tenant's Work being performed at the Premises. Such certificates shall state that the coverage may not be changed or cancelled without at least thirty (30) days' prior written notice to Landlord. All such insurance shall provide for a waiver of subrogation by the insurance carriers.

Attachment 1 to Exhibit B for  
Midtown Crossing

1. Electrical. Landlord shall make available to Tenant electrical service within the Premises from a electric service distribution and metering center located in a secured Landlord electric room. Service capacity shall be based on tenant occupancy type as follows:

- a. Maximum load of 20 watts per square foot of leasable area of the Premises for non-restaurant retail tenants.
- b. Maximum load of 35 watts per square foot of leasable area of the Premises for restaurant tenants with seating.
- c. Maximum load of 40 watts per square foot of leasable area of the Premises for restaurant tenants without seating.

If Tenant's total electrical power requirements exceed the maximum allowed service capacity, Landlord may require Tenant to arrange to obtain power directly from the local utility company at Landlord's designated location.

2. Sprinkler Drain down. Cost to Tenant per sprinkler drain down: \$345.00

3. Construction Deposit. None prior to the Grand Opening Date, thereafter a \$3,000.00 construction deposit shall be required.

**Special Provisions.**

**Attachment 2 to Exhibit B for Midtown Crossing**

1. **Grease Trap.** Notwithstanding anything contained herein to the contrary, Landlord shall install a grease waste line from a common grease trap to a location beneath the slab of each restaurant space. Each restaurant tenant shall connect to such grease waste line at its expense. Restaurants shall also be required to install an individual grease trap within the Premises as required by the Design Criteria.

2. **Waterproofing.** Each tenant who has more than an incidental water usage shall be required to contract with Landlord's designated slab waterproofing contractor to install a waterproof membrane system beneath the Tenant's finished flooring, which such waterproofing system shall be in accordance with Landlord's standards and requirements.

## EXHIBIT C

### RULES

(1) **Common Areas.** Tenant shall not use the Common Areas, including areas adjacent to the Premises, for any purpose other than ingress and egress, and any such use thereof shall be subject to the other provisions of this Lease, including these rules. Without limiting the generality of the foregoing, Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any article or material to, other tenants, occupants or invitees of the Center. Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, shipping area, or other area outside the Premises. Janitorial closets, utility closets, telephone closets, broom closets, electrical closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant, or its contractors, agents, employees, or other parties without Landlord's prior written consent.

(2) **Deliveries.** Furniture, inventory and all other deliveries may be brought into the Center only at times and in the manner designated by Landlord, in compliance with all Laws, and always at Tenant's sole risk. Landlord may inspect items brought into the Center or Premises with respect to weight or dangerous nature or compliance with this Lease or applicable Laws. Tenant's use of any freight elevators and loading and service areas at the Center shall be subject to scheduling by Landlord. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Center, any item normally taken, or which Landlord otherwise requires to be taken, in or out through service doors or on freight elevators. Tenant shall move all inventory, supplies, furniture, equipment and other items directly to the Premises as soon as the same are received. Any hand-carts used at the Center shall have rubber wheels and side guards. No other material handling equipment may be brought upon the Center except as Landlord shall approve in writing in advance.

(3) **Trash.** All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to Article 31 respecting Hazardous Substances. If Landlord designates a service to pick up such items, Tenant shall use the same at Tenant's cost, and Landlord may require Tenant to contract directly for such service with the designated service provider. If Landlord shall provide or arrange for such service, Tenant shall pay to Landlord Tenant's Proportionate Share of the cost thereof (or such other share as Landlord may fairly and reasonably determine) on or before the first day of each calendar month in advance, or Landlord may include such charges in Operating Costs. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord. If Tenant is permitted under this Lease to handle food stuffs, garbage and refuse shall be stored and daily removed from the Premises in leak proof containers; and, if there should be any leakage, Tenant shall clean and remove any evidence of such leakage at its expense.

(4) **Pest Control.** Tenant shall, at Tenant's cost, select such pest and rodent extermination contractor, and arrange for pest control at such intervals as may reasonably be required, but in no event less than monthly, or in the alternative, from time to time. At Tenant's request, Landlord may arrange for pest control (in which case, Tenant shall pay to Landlord Tenant's Proportionate Share of the cost thereof, or such other share as Landlord may fairly and reasonably determine, on or before the first day of each calendar month in advance, or Landlord may include such charges in Operating Costs). Tenant shall provide Landlord with evidence of Tenant's compliance with this provision within five (5) days after Landlord's written request.

(5) **Signs and Display Windows.** Tenant shall not place any sign or other thing of any kind outside the Premises (including, without limitation, exterior walls and roof), or on the interior or exterior surfaces of glass panes or doors, except such single sign as Landlord shall expressly approve in writing for or in connection with Tenant's storefront. Tenant shall not install within the Premises any sign that is visible from outside the Premises or that is illuminated, without Landlord's prior written approval. If Landlord approves or requires illuminated signs, Tenant shall keep the same illuminated each day of the Term during the hours designated by Landlord from time to time. All Tenant's signs shall be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Premises or the Center and shall comply with the Design Criteria developed by Landlord and previously delivered to Tenant, as amended from time to time. The term "sign" in this rule shall mean any sign, placard, picture, name, direction, lettering, insignia or trademark, advertising material,

advertising display, awning or other similar item, including Tenant's storefront sign. Blinds, shades, drapes or other such items shall not be placed in or about the windows in the Premises except to the extent, if any, that the character, shape, design, color, material and make thereof is first approved by Landlord in writing.

(6) **Display of Merchandise.** Tenant shall not place or maintain any permanent or temporary fixture or item or display any merchandise (i) outside the Premises, or (ii) anywhere inside the Premises within six (6) feet of any entrance to the Premises (except that for any recessed entry of the Premises, Tenant shall not so place or maintain fixtures within three (3) feet of such entrance). All displays of merchandise shall be tasteful and professional.

(7) **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains and sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein.

(8) **Grease Traps.** Tenant shall properly maintain, clean, repair and replace adequate grease traps. If Tenant shall operate a restaurant in the Premises, Tenant shall clean all grease interceptors no less than four (4) times per year. If Tenant operates a business on the Premises in which smoke and/or odor cannot be avoided by an exhaust termination location design, Tenant shall, at Tenant's sole cost and expense, provide an exhaust air pollution control system approved by Landlord. Notwithstanding anything to the contrary contained in these Rules and the Lease, Tenant shall use reasonable and diligent efforts to promptly resolve any odor problems arising from its use of the Premises during the Term. All restaurant tenants shall be required to install a roof protection system approved by Landlord around all cooking exhaust fan equipment on the roof to protect the roof from grease damage. The kitchen exhaust fan configuration, fan supports and location shall be subject to approval by Landlord.

(9) **Roof; Awnings and Projections.** Tenant shall not install any aerial, antennae, satellite dish or any other device on the roof, exterior walls or Common Areas of the Center. Tenant may install and have access to rooftop HVAC equipment only to the extent approved in writing or required by Landlord from time to time in connection with Tenant's obligations under this Lease. No awning or other projection shall be attached by or for Tenant to the exterior walls of the Premises or the Building.

(10) **Overloading Floors.** Tenant shall not overload any floor or part thereof in the Premises, Building or Center, including any public corridors or elevators therein, and Landlord may direct and control the location of safes, vaults and all other heavy articles and require supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight at Tenant's expense (including expenses for structural review and engineering).

(11) **Locks and Keys.** Upon termination of this Lease or Tenant's right to possession, Tenant shall (i) return to Landlord all keys, parking stickers or key cards, and in the event of loss of any such items, shall pay Landlord therefor, and (ii) advise Landlord as to the combination of any vaults or locks that Landlord permits to remain in the Premises.

(12) **Unattended Premises.** Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights (except signs required to be illuminated hereunder), water faucets and other utilities in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes). This provision shall not imply that Tenant may leave the Premises unattended in violation of the operating requirements set forth elsewhere in this Lease.

(13) **Energy Conservation.** Tenant shall not waste electricity, water, heat or air conditioning, or other utilities or services, and agrees to cooperate fully with Landlord and comply with any Laws to assure the most effective and energy efficient operation of the Center.

(14) **Food, Beverages, Game and Vending Machines.** Except to the extent expressly permitted under Article 1 of this Lease, Tenant shall not: (i) use the Premises for the manufacture, preparation, display, sale, barter, trade, gift or service of food or beverages, including, without limitation, intoxicating liquors, or (ii) install, operate or use any video, electronic or pinball game or machine, or any coin or token operated vending machine or device to

provide products, merchandise, food, beverages, candy, cigarettes or other commodities or services, including, but not limited to, pay lockers, pay toilets, scales, and amusement devices; provided, however, that Tenant may install vending machines for the sale of non-alcoholic beverages, food and candy in an area not visible from the sale area or exterior of the Premises for the exclusive use of Tenant's employees.

(15) **Labor Relations.** Tenant shall conduct its labor relations and relations with employees so as to avoid strikes, picketing and boycotts of, on or about the Premises or Center. If any employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant, its employees, agents, contractors, or subcontractors in or about the Premises or Center, Tenant shall immediately close the Premises and remove or cause to be removed all such employees, agents, contractors and subcontractors until the dispute has been settled.

(16) **Landlord's Trade Name and Trademarks.** No symbol, design, name, mark or insignia adopted by Landlord for the Center or picture or likeness of the Center shall be used by Tenant without the prior written consent of Landlord.

(17) **Prohibited Activities.** Tenant shall not: (i) use strobe, flashing lights or rotating spotlights in or on the Premises (or other areas of the Center) or in any signs for the Premises; (ii) use, sell or distribute leaflets, handbills, bumper stickers, other stickers or decals, balloons or other such articles in the Premises (or other areas of the Center); (iii) operate any loudspeaker, television set, phonograph, radio, CD player or other musical or sound producing instrument or device so as to be heard outside the Premises; (iv) operate any electrical or other device which interferes with or impairs radio, television, microwave, or other broadcasting or reception from or in the Center or elsewhere; (v) bring or permit any bicycle or other vehicle or dog (except in the company of a blind party) or other animal, fish or bird in the Center; (vi) make or permit objectionable noise, vibration, smoke, fumes, vapors or odors to emanate from the Premises or any equipment serving the same; (vii) do or permit anything in or about the Premises or any other areas of the Center that is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Center; (viii) use or permit upon the Premises or other areas of the Center anything that violates the certificates of occupancy issued for the Premises or the Center, or causes a cancellation of Landlord's insurance policies or increases Landlord's insurance premiums (and Tenant shall comply with all requirements of Landlord's insurance carriers, the American Insurance Association, and any board of fire underwriters); (ix) use the Premises for any purpose, or permit upon the Premises or any other areas of the Center anything that may be dangerous to parties or property (including, but not limited to, flammable oils, fluids, paints, chemicals, firearms or any explosive articles or materials); nor (x) do or permit anything to be done upon the Premises or any other areas of the Center in any way tending to disturb, bother or annoy any other tenant at the Center or the occupants of neighboring property.

(18) **Responsibility for Compliance.** Tenant shall be responsible for ensuring compliance with these Rules, as they may be amended from time to time, by Tenant's employees and, as applicable, by Tenant's agents, invitees, contractors, subcontractors and suppliers.

## EXHIBIT D

### EXCLUSIVES

#### 1. Blanc Burgers + Bottles

Landlord will refrain from leasing any space in the Center to (i) any ... tenant or occupant operating under the following trade names: Red Robin, Smash Burger, Blu Burger, Five Guys Burgers and Fries, Flying Saucer (collectively, the "Prohibited Tenants"), and (ii) any ... tenant or occupant for the ... purpose of conducting as a primary business the retail sale of hamburgers and cheeseburgers ... For purposes hereof, the retail sale of hamburgers and cheeseburgers as a primary business ... shall mean that the greater of fifty percent (50%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or fifty percent (50%) or more of the Gross Rentable Area of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

#### 2. Delice European Bakery

Landlord will refrain from leasing any space in the Center to any ... tenant or occupant for the ... purpose of conducting as a primary business the operation of a bakery or coffeehouse ... For purposes hereof, the operation of a bakery or coffeehouse as a primary business ... shall mean that the greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

#### 3. Ingredient

Landlord agrees that Landlord shall not enter into a lease of ... space in the Center ... to a tenant to operate a Panera Bread, Paradise Bakery and Cafe, Cusi, Wheatfield's, Atlanta Bread, le Madeleine or Corner Bakery ... or to a tenant to operate a restaurant offering a menu of which 40% or more of the menu items are salads .

#### 4. Crave Restaurant

Landlord shall not lease to, sell to, or permit any person or entity to sell sushi, provided, however, this prohibition shall not apply to a restaurant provided that no more than 10% of such restaurant's food menu items are sushi.

#### 5. Coldstone Creamery

Landlord will refrain from leasing any space in the Center to (i) any ... tenant or occupant for the ... purpose of conducting as a primary business the sale of ice-cream, frozen yogurt or gelato, and (ii) any tenant or occupant operating under the following tradenames: Maggie Moo's, Marble Slab Creamery, Brewsters, Baskin Robins, Ben & Jerry's, Haagen Dazs, Carvel, Friendly's Dairy Queen or Ted & Wally's ... for purposes hereof, the operation of an ice-cream, frozen yogurt or gelato store as a primary business shall mean that greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

#### 6. Three Dog Bakery

Landlord will refrain from leasing any space in the Center to any ... tenant or occupant for the permitted purpose of operating, as a primary business, a retail bakery for pets or pet grooming salon ... for purposes hereof, a retail bakery for pets or pet grooming salon as a primary business shall mean that the greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

#### 7. Arlan's Barbershop



Landlord will refrain from leasing any space in the Center to any ... tenant or occupant for the ... purpose of conducting as a primary business the operation of a barber shop .. for purposes hereof, the operation of a barber shop as a primary business ... shall mean that the greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

#### **8. Z-Wireless**

Landlord will refrain from leasing any space in the Center to any ... tenant or occupant for the permitted purpose of conducting as a primary business the retail sale of wireless telephone accessories and wireless communication equipment and services ... for purposes hereof, the retail sale of wireless telephone accessories and wireless communication equipment and services ... shall mean that the greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such future tenant's or occupant's premises is dedicated to the operation of such primary business.

#### **9. Definitive Vision**

Landlord will refrain from leasing any space in the Center to any ... tenant or occupant for the ... purpose of conducting as a primary business the operation of an optical store selling, at retail, prescription eyewear as well as providing eye exams ... for purposes hereof, the operation of a an optical store selling, at retail prescription eyewear as well as providing eye exams as a primary business, with respect to any ... tenant or occupant shall mean that the greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

#### **10. NT Nails**

Landlord will refrain from leasing any space in the Center to any ... tenant or occupant for the purpose of conducting as a primary business the operation of a nail salon performing nail services ... for purposes hereof, the operation of a nail salon as a primary business shall mean that ... the greater of twenty percent (20%) or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ... tenant's or occupant's premises consist of, or twenty percent (20%) or more of the Gross Rentable Area of such of such ... tenant's or occupant's premises is dedicated to the operation of such primary business.

**EXHIBIT E**  
**PROHIBITED USES**

Tenant shall not use the Center in whole or in part, for any of the following purposes:

- (a) Flea market or swap show;
- (b) So-called "off-track betting" operation, or any operation selling keno and pickle cards;
- (c) Store specializing in the sale of drug paraphernalia;
- (d) Store specializing in the display or sale of pornographic materials;
- (e) Except as otherwise expressly permitted by Landlord, a theater;
- (f) Except as otherwise expressly permitted by Landlord, a grocery store;
- (g) Except as otherwise expressly permitted by Landlord, a bowling alley;
- (h) Mobile home park, trailer court, labor camp, junkyard or stockyard (except the temporary use of construction trailers during periods of construction);
- (i) Dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located in the rear of any building);
- (j) Fire sale or bankruptcy sale (unless pursuant to a court order);
- (k) Except as otherwise expressly permitted by Landlord, a central laundry, dry cleaning plant, or laundromat;
- (l) Automobile, truck, trailer, R.V. or motor vehicle sales, leasing, display or repair;
- (m) Veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);
- (n) Mortuary or funeral parlors;
- (o) Establishment renting, selling or exhibiting pornographic materials (this exclusion shall not apply to (a) a Blockbuster Video or a Hollywood Video or any other video stores that are substantially similar to the foregoing video stores as such stores operate as of the date hereof in the State of Nebraska), or (b) a Barnes & Noble, Borders, Half Price Books, or Books a Million or any other full line book stores that are substantially similar to the foregoing book stores as such stores operate as of the date hereof in the State of Nebraska;
- (p) Auditorium, meeting hall, school, church or other place of public assembly;
- (q) Car wash or gas station;
- (r) Carnival, amusement park or circus;
- (s) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building; and
- (t) Except as otherwise expressly permitted by Landlord, a hotel, living quarters, sleeping apartments, or lodging room.

**EXHIBIT F**

**GUARANTY OF LEASE**

This Guaranty is made as of this 15<sup>th</sup> day of June, 2012 by Wesley Klaus and Stephanie Klaus, husband and wife residing in Omaha, Nebraska (hereafter whether one or more collectively, "Guarantor") with an address of 4829 Pine Street, Omaha, Nebraska 68106, to and in favor of East Campus Realty, LLC, a Nebraska limited liability company (hereafter "Landlord") with an address of c/o Mutual of Omaha Insurance Company, Mutual of Omaha Plaza, Omaha, Nebraska 68175, Attn: Ken Cook.

**WITNESSETH:**

WHEREAS, by Lease Agreement dated June 1, 2012, Landlord has leased to BMK, LLC, a Nebraska limited liability company ("Tenant") approximately 1,817 square feet of space (the "Premises") in the development known as Midtown Crossing at Turner Park in Omaha, Nebraska (the "Lease") which term includes the same as it may hereafter be modified, amended, extended or renewed; and

WHEREAS, Landlord has required the Guarantor to execute this Guaranty of Lease ("Guaranty") as a condition to the Landlord entering into the Lease with the Tenant; and

WHEREAS, Guarantor will receive direct or indirect benefit from the Landlord entering into the Lease with the Tenant.

NOW, THEREFORE, in order to induce Landlord to enter into the Lease and for other good and valuable consideration, the undersigned Guarantor hereby agrees as follows:

1. Guarantor hereby absolutely, unconditionally, and irrevocably jointly and severally guarantees to Landlord the full and prompt payment of all Rent (as defined in Section 7.1 of the Lease) and any and all other sums and charges payable by Tenant under the Lease (collectively, the "Payment Obligations") and hereby further guarantees the full and timely performance and observance of all of the covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant (the "Performance Obligations" and together with the Payment Obligations collectively, the "Obligations"). In the event of a default under the Lease, Guarantor hereby covenants and agrees with Landlord: (i) to make the due and full punctual payment of all Payment Obligations payable by Tenant under the Lease; (ii) to effect prompt and complete performance of all and each of the Performance Obligations, contained in the Lease on the part of Tenant to be kept, observed and performed; and (iii) to indemnify and save harmless Landlord from any loss, costs or damages arising out of any failure by Tenant to pay or perform any Obligation including, without limitation, attorneys' fees and costs of collection. This Guaranty is a continuing guaranty of payment and performance and is not conditional or contingent upon any attempt to collect from Tenant or upon any other condition or contingency.

2. In the event of a default under the Lease, Guarantor waives any right to require Landlord to first: (i) proceed against Tenant or pursue any rights or remedies with respect to the Lease; (ii) proceed against or exhaust any security that Landlord holds from Tenant; or (iii) pursue any other remedy whatsoever. Landlord shall have the right to enforce this Guaranty regardless of the acceptance of additional security from Tenant and regardless of the release or discharge of Tenant or any guarantor by Landlord or by others, or by operation of law.

3. Guarantor hereby expressly waives: (a) any right of setoff, counterclaim or deduction against amounts due under this Guaranty; (b) notice of the acceptance of this Guaranty and notice of default of Tenant under the Lease; and (c) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance.

4. Without limiting the generality of the foregoing, the liability of Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by (a) reason of any waiver or failure to enforce or delay in enforcing any of the Obligations, or (b) the granting of any indulgence or extension of time to Tenant, or (c) the assignment of the Lease, or the subletting of the Premises by Tenant, with or without Landlord's consent, or (d) the expiration of the term, or (e) if Tenant holds over beyond the term of the Lease, or (f) any merger or reorganization or the release or discharge of Tenant or any other guarantor in any voluntary or

involuntary receivership, bankruptcy, winding-up or other creditors' proceedings, or (g) the rejection, disaffirmance or disclaimer of the Lease by any party in any action or proceeding, or (h) the release of any collateral held for the Obligations or release of any Guarantor or any other guarantor, or (i) any defect or invalidity of the Lease or (j) the transfer by Guarantor of any or all of the capital stock of Tenant, and shall continue with respect to the periods prior thereto and thereafter. The liability of the Guarantor shall not be affected by any repossession, re-entry or re-letting of the Premises by Landlord.

5. The liability of Guarantor under this Guaranty shall not be released by any modification or amendment to the Lease (including any extension or renewal of the term of the Lease), and in the case of any such modification, the liability of Guarantor shall be modified in accordance with the term of any such modification of the Lease. Guarantor waives any notice of the modification or amendment of the Lease.

6. Guarantor shall pay Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection of this Guaranty or in any negotiations relative to the Obligations guaranteed under this Guaranty whether or not a lawsuit is commenced. All rights and remedies of Landlord under this Guaranty shall be cumulative and may be exercised singly or concurrently.

7. This Guaranty shall remain in full force and effect until the payment or performance of all Obligations and the other amounts payable under this Guaranty (whether or not the Lease shall have been terminated). Until the payment and performance of all Obligations and the amounts payable under this Guaranty, Guarantor:

(a) Shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the Guarantor in compliance with the obligations of the Guarantor under this Guaranty;

(b) Waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor under this Guaranty; and

(c) Subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to the Landlord under the Lease.

8. This instrument may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and the Landlord.

9. All of the terms, agreements and conditions of this Guaranty shall extend to and be binding upon Guarantor, and the heirs, executors, personal administrators, and/or successors and assigns of Guarantor and shall inure to the benefit of and may be enforced by Landlord, its successors and assigns, and the holder of any mortgage to which the Premises may be subject at any time or from time to time.

10. The use of the singular herein shall include the plural and the use of any gender shall include all genders or neuter as the case may be. This Guaranty is entered into in the State of Nebraska and shall be governed by and construed in accordance with the laws of the State of Nebraska. Guarantor agrees that the District Court of Douglas County, Nebraska and the Federal District Court for the District of Nebraska shall have jurisdiction over any dispute arising out of this Guaranty.

11. If Guarantor consists of more than one person or entity, the liability of each such person or entity under this Guaranty shall be joint and several.

12. This Guaranty has been executed and delivered by Guarantor and constitutes the valid, binding and legal obligation of the Guarantor. Guarantor agrees that it will, from time to time, within ten (10) days of Landlord's request, execute and deliver a statement certifying that this Guaranty is unmodified and in full force and effect.

13. All notices under this Guaranty shall be delivered personally, by commercial courier service which provides written evidence of delivery, or by United States certified mail, return receipt requested, postage prepaid to the addresses of the parties first set forth above. All notices shall be deemed given upon receipt or refusal at the


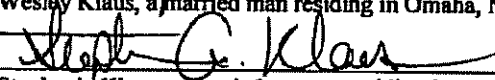
addresses first set forth above. Any party may change its address for notice by giving notice in the manner set forth herein.

14. If any provision of this Guaranty or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Guaranty and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. This Guaranty shall be construed without regard to any presumption or other rule requiring construction against the party causing this Guaranty to be drafted.

15. As a further inducement to Landlord to enter into the Lease and to accept this Guaranty, Guarantor hereby intentionally, knowingly and voluntarily waives any right to a trial by jury in any lawsuit, proceeding, counterclaim, or any other litigation procedure based upon, or arising out of this Guaranty. In extension of the foregoing, the Guarantor specifically consents to trial before a court respecting any such matter. Guarantor will not seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

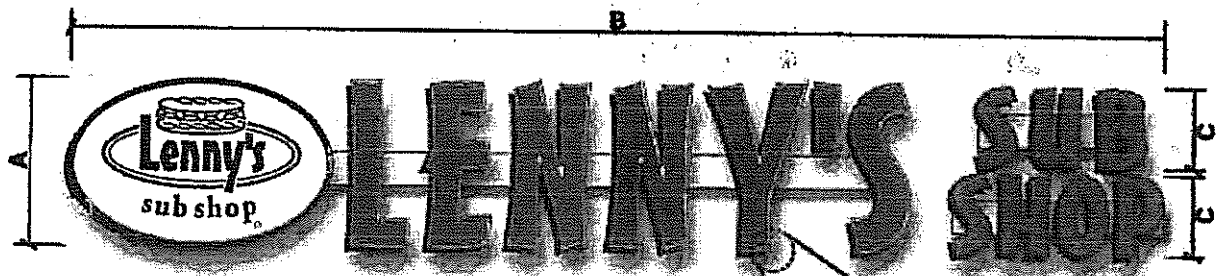
16. Anything in this Guaranty or in the Lease to the contrary notwithstanding, if, as of the date ("Release Date") that is the last day of the sixtieth (60<sup>th</sup>) full calendar month following the Commencement Date (a) no default has occurred under the Lease beyond applicable notice and cure period, and (b) Guarantor has not been in default of the covenants, agreements and obligations hereunder, then, from and after the Release Date, Guarantor shall have no liability under this Guaranty with respect to any fact, event or circumstance first occurring after the Release Date; provided, however, if as of the Release Date, a default shall have occurred or Guarantor has been in default of the covenants, agreements and obligations hereunder or under the Lease, then (x) the Guaranty shall continue in full force and effect until such default has been cured, and (y) Guarantor shall remain liable for any liability arising before such default has been cured.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the date of execution of the Lease by Tenant.

  
Wesley Klaus, a married man residing in Omaha, Nebraska  
  
Stephanie Klaus, a married woman residing in Omaha, Nebraska

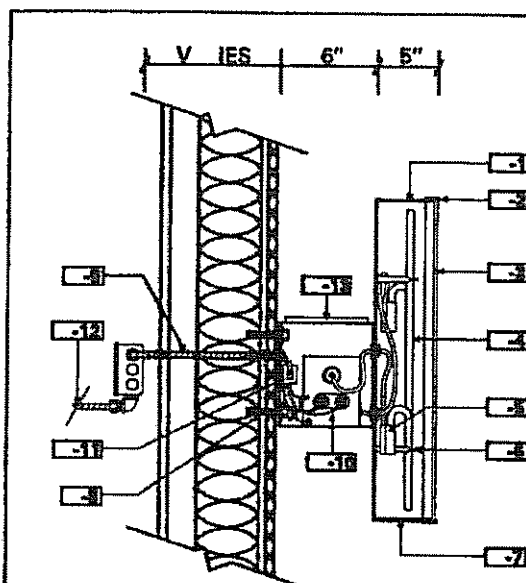
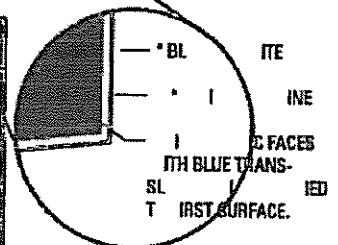
# Exhibit G

## CHANNEL LETTERS FOR LIGHT COLORED WALLS



① WALL SIGN DETAIL  
SCALE: NOT TO SCALE

MODEL	A	B	C	BOXES SQ. FEET	WTS. LBS.
-18	18"	-0"	8 5/8"	.53	1
-24	24"	-0"	"	.9	1
-30	30"	-3"	"	.93	1
-36	36"	-3"	"	.99	1
-42	42"	-3"	"	.93	1
-48	48"	-0"	23"	.9	1



② LETTER SECTION  
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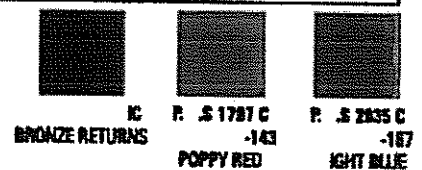
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- M1 LETTERS TO HAVE INUM RETURNS AND BAC I BSH  
TO BE PR - I BSH BRONZE. INSIDE OF LETTERS TO BE W ITE.  
M2 1" BLUE JEW ITE TRI -CAPS ON OVAL & "LENNY", "SUB  
SHOP" TO HAVE RED JEW ITE TRI -CAPS.  
M3 LETTERS TO HAVE WHITE PLA IC FACES WITH BLUE AND  
RED TRANSLUCEN NYLS APPLIED Y RST SURFACE. W ITE  
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M4 15 AMB 6500 W ITE ARGON (NEON) TU IN IN LETTERS.  
M5 DOUBLE BACK ELECTRODES ITH U.L. APPROVED ELECTRODE  
BOOTS AND 18000 VOLT GTO RE.  
M6 STANDARD TUBE SUPPORTS.  
M7 1/4" WEEP HOLES AS REQ. BRED.  
M8 MOUNTING HARDWARE (TYPE DEPENDS ON WALL  
CONSTRU IO  
M9 1/2" FLEX CONDUIT, USE SEAL ITE IF EXPOSED TO WEATHER.  
M10 30 J.A. NORMAL POWER FACTOR (120V) TRANSFORMERS  
FAULT PROTECTED AND 2101 U.L. APPROVED).  
M11 20 AMP. RECONNECT SWI  
M12 MANY ELECTRICAL LE . POWE ION BY OTHERS.  
M13 6" INUM RACEWAY INSH TO MATCH I BSG.



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NOTE: CHANNEL LETTERS CAN  
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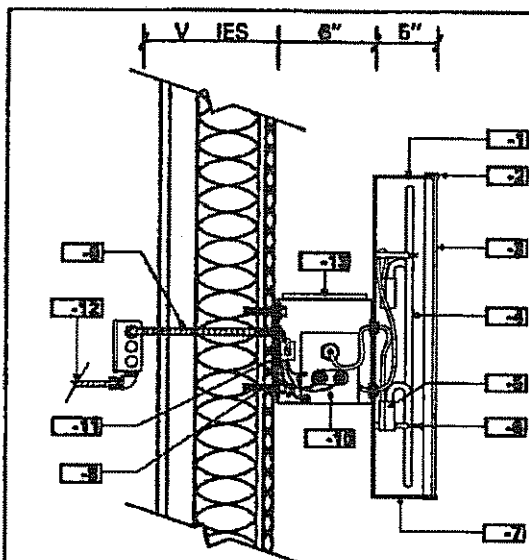


\*Signage cannot exceed  
24"



# LENNY'S SUB SHOP

MODEL	A	B	C	BOXED IN FEET	ITEM NUMBER
-18	18"	-8"	8 1/2"	.83	1
-24	24"	-8"	"	.8	1
-30	30"	-3"	"	.83	1
-36	36"	-8"	"	.58	1
-42	42"	-8"	"	.83	1
-48	48"	-8"	23"	.8	1



② LETTER SECTION  
SCALE: N.T.S.

NOTE: CHANNEL LETTERS CAN  
EITHER ON RACEWAYS (AS SHOWN)  
ON BE MOUNTED FLUSH TO WALL AND  
HAVE REMOTE TRANSFORMERS.

- M1 LETTERS TO HAVE MINIMUM RETURNING AND BACK TO BE PR - 1 SH BRONZE. INSIDE OF LETTERS TO BE W ITE.
- M2 1" BRONZE JEWELRY I - CAPS.
- M3 LETTERS TO HAVE #7328 W ITE PLATE IC FACES.
- M4 15 AMP 6500 W ITE ARGON (NEON) TUBES IN LETTERS.
- M5 DOUBLE BACK ELECTRODES WITH U.L. APPROVED ELECTRODE BOOTS AND 15000 VOLT STD IRE.
- M6 STANDARD TUBE SUPPORTS.
- M7 1/4" WEEP HOLES AS REQUIRED.
- M8 MOUNTING HARDWARE (TYPE DEPENDS ON WALL CONSTRUCTION).
- M9 1/2" FLEX CONDUIT, USE SEAL ITE IF EXPOSED TO WEATHER.
- M10 30 A. NORMAL POWER FACTOR (120V) TRANSFORMERS FAULT PROTECTED AND 2161 U.L. APPROVED).
- M11 20 AMP. DISCONNECT SW.
- M12 MANY ELECTRICAL LE . POWE IGH BY OTHERS.
- M13 6" MINIMUM RACEWAY WASH TO MATCH I INCL.



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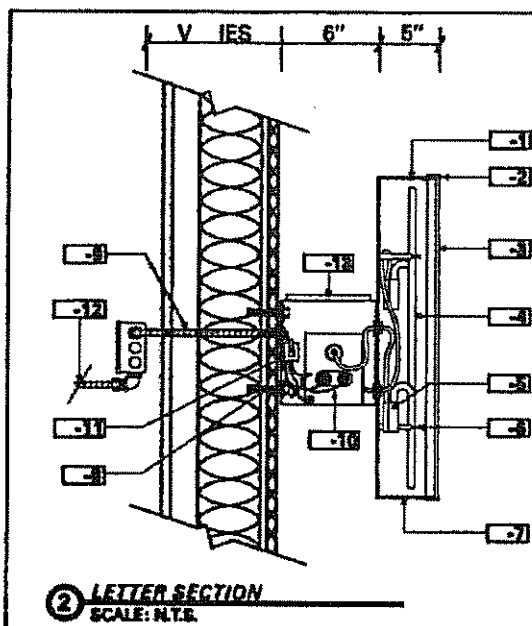


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AND RETURNS

\*Signage cannot exceed  
24"

# LENNY'S SUB SHOP

MODEL	A	B	C	BOXED SQ. FEET	ITS REQUIRED
-18	18"	-3"	8 5/8"	.88	1
-24	24"	-8"	"	.93	1
-30	30"	-1"	"	.21	1
-36	36"	-6"	"	.58	1
-42	42"	-11"	"	.28	1
-48	48"	-4"	23"	.33	1



- MA IAL I ION
- M1 LETTERS TO HAVE INUM RETURNS AND BAC I IGH  
TO BE PR - I IGH BRONZE. INSIDE OF LETTERS TO BE W ITE.
- M2 1" BRONZE JEWEL I I -CAPS.
- M3 LETTERS TO HAVE #7328 W ITE PLA IC FACES.
- M4 15 MM 8500 W ITE ARGON (NEON) TU IN IN LETTERS.
- M5 DOUBLE BACK ELECTRODES ITH U.L. APPROVED ELECTRODE  
BOOTS AND 15000 VOLT GTO IRE.
- M6 STANDARD TUBE SUPPORTS.
- M7 1/4" WEEP HOLES AS REQ. IREQ.
- M8 MOUNTING HARDWARE (TYPE DEPENDS ON WALL  
CONSTRU IO .
- M9 1/2" FLEX CONDUIT, USE SEAL ITE IF EXPOSED TO WEATHER.
- M10 30 .A. NORMAL POWER FACTOR (120V) TRANSFORMERS  
FAULT PROTECTED AND 2161 U.L. APPROVED).
- M11 20 AMP. DISCONNECT SWI .
- M12 MANY ELECTRICAL LE . POWE IGH BY OTHERS.
- M13 6" INUM RACEWAY. BRSH TO MATCH I ING.

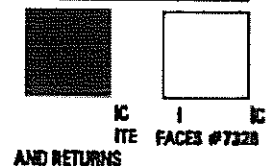


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NOTE: CHANNEL LETTERS CAN  
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ON BE MOUNTED FLUSH TO WALL AND  
HAVE REMOTE TRANSFORMERS.

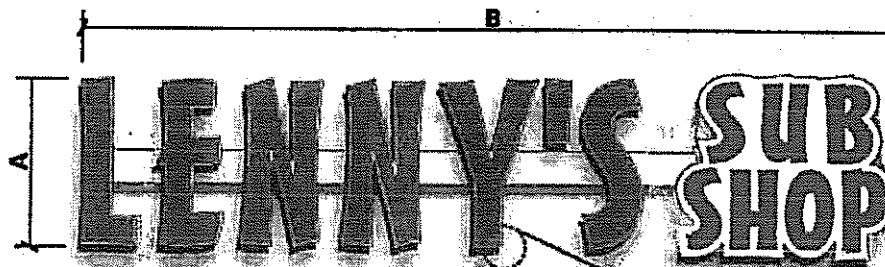
\*Signage cannot exceed  
24"





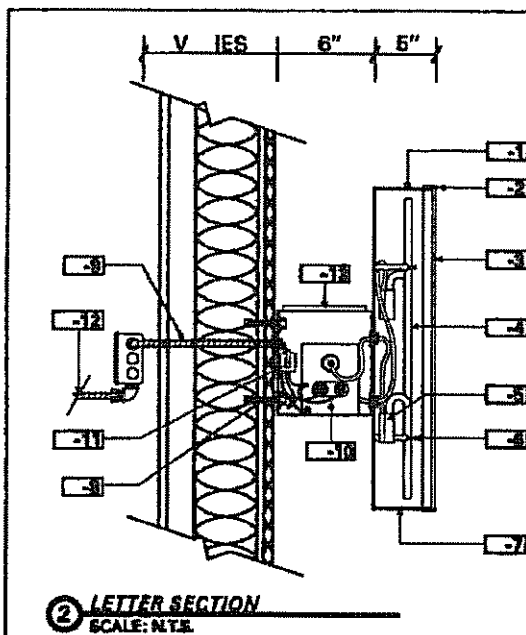
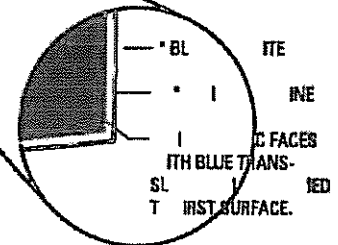
# CHANNEL LETTERS FOR LIGHT COLORED WALLS

10



① WALL SIGN DETAIL  
SCALE: NOT TO SCALE

MODEL	A	B	BOXED SQ. FEET	REQ. WIRE
-18	18"	-3"	.89	1
-24	24"	-8"	.33	1
-30	30"	-1"	.21	1
-36	36"	-6"	.59	1
-42	42"	-11"	.20	1
-48	48"	-4"	.33	1



② LETTER SECTION  
SCALE: N.T.S.

- MA IAL I ION
- M1 LETTERS TO HAVE BRONZE RETURNS AND BACK I ION  
TO BE PR - I ION BRONZE. INSIDE OF LETTERS TO BE W ITE.
- M2 1" BLUE JEW ITE TRI -CAPS ON OVAL & "LENNY". "SUB  
SHOP" TO HAVE RED JEW ITE TRI -CAPS.
- M3 LETTERS TO HAVE WHITE PLA IC FACES WITH BLUE AND  
RED TRANSLUCEN INYLS APPLIED T IRT SURFACE. W ITE  
TRAP IRE AROUND P IETER OF "LENNY'S" LETTERS.
- M4 15 MM 6500 W ITE ARGON (NEON) TU IN IN LETTERS.
- M5 DOUBLE BACK ELECTRODES ITH U.L. APPROVED ELECTRODE  
BOOTS AND 15000 VOLT GTO IRE.
- M6 STANDARD TUBE SUPPORTS.
- M7 1/4" WEEP HOLES AS REQ IRED.
- M8 MOUNTING HARDWARE (TYPE DEPENDS ON WALL  
CONSTRU IO .
- M9 1/2" FLEX CONDUIT, USE SEAL ITE IF EXPOSED TO WEATHER.
- M10 30 A. NORMAL POWER FACTOR (120V) TRANSFORMERS  
FAULT PROTECTED AND 2161 U.L. APPROVED).
- M11 20 AMP. DISCONNECT SWI .
- M12 MANY ELECTRICAL LE . POWE ION BY OTHERS.
- M13 6" INUM RACEWAY IUSH TO MATCH I IRG.

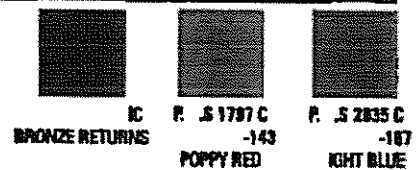


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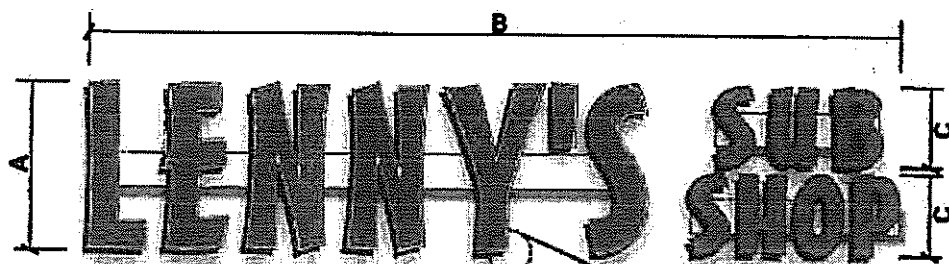
NOTE: CHANNEL LETTERS CAN  
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HAVE REMOTE TRANSFORMERS.

\*Signage cannot  
exceed 24"



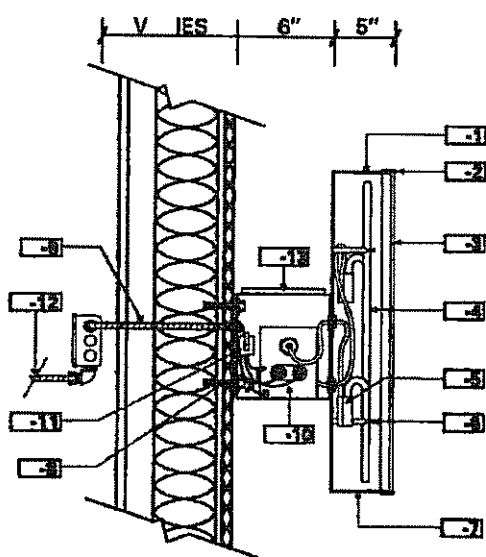
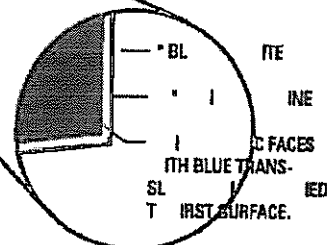
# CHANNEL LETTERS FOR LIGHT COLORED WALLS

8



① WALL SIGN DETAIL  
SCALE: NOT TO SCALE

MODEL	A	B	C	BOXED SQ. FEET	WTS REQUIRED
-18	18"	-3"	8 5/8"	.38	1
-24	24"	-5"	"	.33	1
-30	30"	-1"	"	.21	1
-36	36"	-5"	"	.50	1
-42	42"	-11"	"	.29	1
-48	48"	-4"	23"	.33	1



② LETTER SECTION  
SCALE: N.T.S.

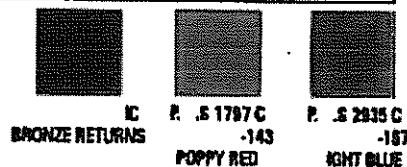
NOTE: CHANNEL LETTERS CAN  
EITHER ON RACEWAYS (AS SHOWN)  
OR BE MOUNTED FLUSH TO WALL AND  
HAVE REMOTE TRANSFORMERS.

- MA IAL I KON
- M1 LETTERS TO HAVE BRONZE RETURNS AND BACK TO BE PR - 1 BSH BRONZE. INSIDE OF LETTERS TO BE W ITE.
  - M2 1" BLUE JEW ITE TRI -CAPS ON OVAL & "LENNY". "SUB SHOP" TO HAVE RED JEW ITE TRI -CAPS.
  - M3 LETTERS TO HAVE WHITE PLA IC FACES WITH BLUE AND RED TRANSLUCEN WYLS APPLIED T RST SURFACE. W ITE TRAP INE AROUND P IMETER OF "LENNY'S" LETTERS.
  - M4 15 MM 6500 W ITE ARGON (NEON) TU IN IN LETTERS.
  - M5 DOUBLE BACK ELECTRODES ITH U.L. APPROVED ELECTRODE BOOTS AND 15000 VOLT GTO RE.
  - M6 STANDARD TUBE SUPPORTS.
  - M7 1/4" WEEP HOLES AS REQ. RED.
  - M8 MOUNTING HARDWARE (TYPE DEPENDS ON WALL CONSTRU ID.
  - M9 1/2" FLEX CONDUIT, USE SEAL ITE IF EXPOSED TO WEATHER.
  - M10 30 A. NORMAL POWER FACTOR (120V) TRANSFORMERS FAULT PROTECTED AND 2181 U.L. APPROVED).
  - M11 20 AMP. DISCONNECT SWI.
  - M12 MANY ELECTRICAL LE. POWE IGN BY OTHERS.
  - M13 6" NUM RACEWAY. RSH TO MATCH I ING.



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\* Signage cannot exceed  
24"



The Lund Company  
450 Regency Parkway, Suite 220  
Omaha, Nebraska 68114  
402.393.8811 • www.lundco.com

January 11, 2017

Lenny's Sub Shop  
3201 Farnam Street; Suite 6104  
Omaha, NE 68131

**RE: Notice of Potential Lease Default**

Dear Stephanie:

You are hereby notified that you are in violation of your Lease for failure to pay the Landlord Minimum Rent and the Late Fees associated. These terms are noted in Section 7.1 and 7.2 of your Lease.

As of **01/11/2017**, the current outstanding amount owed by Lenny's is **\$16,146.82**. A detailed copy of the charges is attached for your review.

Pursuant to Article 20, Section 20.1, failure to pay the Landlord this past due balance within ten (10) days of the date of this letter shall result in Default of your lease and immediate cause for action.

In the event this matter is turned over to legal counsel, in accordance with section 20.3 and 20.4 of your Lease, in addition to the regular monthly charges, you shall be required to pay costs associated with Mitigation Damages and Reletting.

Sincerely,

Emily Koesters  
Asset Manager

**EXHIBIT**  
**"B"**

# Lease Unpaid Charges

Tenant: Lenny's Sub Shop(m0000623)

Date	Description	Ch	Charge	Payment	Net Due	Balance
04/01/2016	2015 Opera...	C-881508	4,843.18	4,343.18	300.00	300.00
06/01/2016	Late fee :R...	C-834536	25.00	0.00	25.00	325.00
06/01/2016	Reverse ...	C-1033169	-25.00	0.00	-25.00	300.00
	Not late					
09/01/2016	Retail Awnl...	C-1083013	294.25	0.00	294.25	594.25
10/01/2016	Recovery - ...	C-1130140	53.00	0.00	53.00	647.25
10/01/2016	MTC Tras...	C-1130141	138.00	0.00	138.00	785.25
10/01/2016	Recovery ...	C-1130142	143.85	0.00	143.85	929.10
10/01/2016	Fixed Oper...	C-1130143	876.41	0.00	876.41	1,805.51
10/01/2016	Recovery - ...	C-1130145	348.26	0.00	348.26	2,153.77
10/01/2016	Rent - Retail...	C-1184826	2,119.83	0.00	2,119.83	4,273.60
11/01/2016	Recovery - ...	C-1170503	53.00	0.00	53.00	4,326.60
11/01/2016	MTC Tras...	C-1170504	138.00	0.00	138.00	4,464.60
11/01/2016	Recovery ...	C-1170505	143.85	0.00	143.85	4,608.45
11/01/2016	Fixed Oper...	C-1170506	876.41	0.00	876.41	5,484.86
11/01/2016	Rent - Retail...	C-1170507	2,119.83	0.00	2,119.83	7,604.69
11/01/2016	Recovery - ...	C-1170508	348.26	0.00	348.26	7,952.95
12/01/2016	November ...	C-1219280	119.29	0.00	119.29	8,072.24
12/01/2016	Recovery - ...	C-1223179	53.00	0.00	53.00	8,125.24
12/01/2016	MTC Tras...	C-1223180	138.00	0.00	138.00	8,263.24
12/01/2016	Recovery ...	C-1223181	143.85	0.00	143.85	8,407.09
12/01/2016	Fixed Oper...	C-1223182	876.41	0.00	876.41	9,283.50
12/01/2016	Rent - Retail...	C-1223183	2,119.83	0.00	2,119.83	11,403.33
12/01/2016	Recovery - ...	C-1223184	348.26	0.00	348.26	11,751.59
01/01/2017	Late Fees	C-1267330	305.05	0.00	305.05	12,056.64
01/01/2017	Recovery - ...	C-1267418	53.00	0.00	53.00	12,109.64
01/01/2017	MTC Tras...	C-1267419	138.00	0.00	138.00	12,247.64
01/01/2017	Recovery ...	C-1267420	143.85	0.00	143.85	12,391.49
01/01/2017	Fixed Oper...	C-1267421	920.23	0.00	920.23	13,311.72
01/01/2017	Rent - Retail...	C-1267422	2,119.83	0.00	2,119.83	15,431.55
01/01/2017	Recovery - ...	C-1267423	348.26	0.00	348.26	15,779.81

+ \$367.01 late fee for  
January 2017 rent.

Total = \$16,146.82

**Nicholas A. Buda**

1700 Farnam Street  
Suite 1500  
Omaha, NE 68102-2068  
Tel: 402.344.0500  
Fax: 402.344.0588  
Direct: 402.636.8330  
nbuda@bairdholm.com  
www.bairdholm.com  
Also admitted in Iowa

January 24, 2017

**VIA CERTIFIED MAIL AND U.S. FIRST CLASS MAIL**

BMK Renovations, LLC,  
d/b/a Lenny's Sub Shop  
c/o Mr. and Mrs. Wesley Klaus  
4829 Pine Street  
Omaha, NE 68106

and

Lenny's Franchisor, LLC  
Attn: Domestic Franchise/Legal  
8295 Tournament Drive  
Suite 200  
Memphis, TN 38125

Re: Default under Lease and Guaranty with East Campus Realty, LLC

Dear Mr. and Mrs. Klaus:

This Firm represents the Lund Company with regard to that lease agreement dated June 1, 2012 ("Lease"), and entered into by and between BMK Renovations, LLC, d/b/a Lenny's Sub Shop ("Tenant"), as tenant, and East Campus Realty, LLC ("Landlord"), as landlord, for the lease of real property consisting of approximately 1,817 square feet of gross rentable area, Building 6, Space 4, located in the center commonly referred to as Midtown Crossing at Turner Park in Omaha, Nebraska, and as more fully set forth in the Lease ("Leased Premises"). As you know, the Lund Company is the agent for Landlord with regard to the Leased Premises.

Contemporaneously with the execution of the Lease, on or about June 1, 2016, Wesley Klaus and Stephanie Klaus ("Guarantors") signed and delivered to Landlord a personal guarantee of the Lease ("Guaranty"). Pursuant to the Guaranty, Guarantors, and each of them, guaranteed to Landlord, among other things, the full and prompt

BMK Renovations, LLC,  
and  
Lenny's Franchisor, LLC  
January 24, 2017  
Page 2

and each of them, guaranteed to Landlord, among other things, the full and prompt payment of all rent and any other obligations due under the Lease to Landlord. In the event of a default by Tenant under the Lease, Guarantors, and each of them, must pay all amounts due and owing under the Lease to Landlord.

On or about January 11, 2017, the Lund Company provided written notice to Tenant that Tenant was in violation of the Lease for its failure to pay minimum rent and late fees in the amount of \$16,146.82. Tenant was given ten (10) days to cure its default by paying the just stated amount; however, as of the date of this letter, Tenant has failed and refused to pay its outstanding obligations to Landlord.

As a result of Tenant's failure to pay all amounts due and owing under the Lease, coupled with Tenant's failure to conduct business operations during normal business hours as required by the Lease, Tenant is in material breach of the Lease. Thus, Landlord has the right under the Lease to accelerate the balance due for the full term of the Lease, including tenant improvements, totaling \$263,308.93.

**Please consider this letter a demand upon Tenant and Guarantors for payment in the amount of \$263,308.93 within ten (10) days of the date of this letter.** If payment has not been made within the time so required, Landlord may institute legal proceedings against Tenant and Guarantors to collect the unpaid amount.

Furthermore, pursuant to Section 19.10 of the Lease, Lenny's Franchisor, LLC ("Franchisor"), is hereby given notice that it may exercise its right to cure the foregoing events of default within ten (10) days of the date of this letter. Inherent in Franchisor's right to cure the foregoing events of default is Franchisor's responsibility to indemnify, defend, and hold harmless Landlord from and against any loss, cost, damage, expense (including attorney's fees), claims, liabilities, and settlements arising from or related to any disputes pertaining to the Lease, Leased Premises, or the relationship between Franchisor and Tenant.

Nothing herein shall be construed to constitute a termination of the Lease or Guaranty, and all obligations under the Lease and Guaranty shall remain in full force and effect. Furthermore, nothing herein constitutes a waiver of any right or remedy under state law, or under the Lease or Guaranty. This is a serious matter and you may wish to contact an attorney to advise you.

BMK Renovations, LLC,  
and  
Lenny's Franchisor, LLC  
January 24, 2017  
Page 3

GOVERN YOURSELVES ACCORDINGLY.

Very truly yours,

A handwritten signature in black ink, appearing to be 'NAB', with a horizontal line extending to the right.

Nicholas A. Buda  
FOR THE FIRM

NAB/mlk

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