

RETAIL LEASE

by and between

DUKE PLAZA LLC,

“Landlord”

and

CITY OF MARICOPA, A MUNICIPAL CORPORATION,

ON BEHALF OF MARICOPA DOMESTIC WATER IMPROVEMENT DISTRICT

“Tenant”

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EXHIBITS

- “A” SITE PLAN
“B” FORM OF ESTOPPEL CERTIFICATE
“C” RULES AND REGULATIONS

RETAIL LEASE

THIS RETAIL LEASE (“Lease”) is dated January 1, 2018 (“Effective Date”), and entered into by and between DUKE PLAZA LLC, an Arizona limited liability company (“Landlord”), and CITY OF MARICOPA, a municipal corporation on behalf of Maricopa Domestic Water Improvement District (“Tenant”).

Article I **FUNDAMENTAL LEASE PROVISIONS**

1.1 Basic Lease Provisions.

<u>Center:</u>	That certain shopping center located at 19756 N. John Wayne Parkway, in the City of Maricopa, County of Pinal, State of Arizona (See Article II and <u>Exhibit “A”</u>)																																													
<u>Premises:</u>	That certain space known as Suite 109, having approximately Nine Hundred Ninety (990) square feet of “Floor Area” (as defined in Section 2.3 below) located in the Center, as shown on the Site Plan attached hereto as <u>Exhibit “A”</u> .																																													
<u>Use of Premises:</u>	Tenant shall use the Premises for general office and administrative purposes and for no other use or purpose. (See Article V)																																													
<u>Lease Term:</u>	Forty three (43) months (See Section 3.1)																																													
<u>Option Periods</u>	One four (4) year option to extend the Lease.																																													
<u>Pro-Rata Share of Common Area Charges:</u>	Pro-rate share of common area expenses is 5.03% (See Section 4.2(e))																																													
<u>Rent Commencement Date:</u>	January 1, 2018																																													
<u>Termination Date:</u>	July 31, 2021, subject to the one four (4) year option to renew.																																													
<u>Base Rent:</u>	Base Rent shall be payable on a monthly basis in accordance with the following schedule (See Section 4.1):																																													
<table border="1"><thead><tr><th>Year</th><th>Annual Rent Per/SF</th><th>\$/Year</th><th>Monthly (Base)</th><th>Monthly Total w/NNN (\$5.60/ft.)</th></tr></thead><tbody><tr><td>2018</td><td>\$18.00</td><td>\$17,820.00</td><td>\$1,485.00</td><td>\$1,988.25</td></tr><tr><td>2019</td><td>\$18.50</td><td>\$18,315.00</td><td>\$1,526.25</td><td>\$2,029.50</td></tr><tr><td>2020</td><td>\$19.00</td><td>\$18,810.00</td><td>\$1,567.50</td><td>\$2,070.75</td></tr><tr><td>2021</td><td>\$19.50</td><td>\$19,305.00</td><td>\$1,608.75</td><td>\$2,112.00</td></tr><tr><td>2022</td><td>\$20.00</td><td>\$19,800.00</td><td>\$1,650.00</td><td>\$2,153.25</td></tr><tr><td>2023</td><td>\$20.50</td><td>\$20,295.00</td><td>\$1,691.25</td><td>\$2,194.50</td></tr><tr><td>2024</td><td>\$21.00</td><td>\$20,790.00</td><td>\$1,732.50</td><td>\$2,235.75</td></tr><tr><td>2025</td><td>\$21.50</td><td>\$21,285.00</td><td>\$1,773.75</td><td>\$2,277.00</td></tr></tbody></table>		Year	Annual Rent Per/SF	\$/Year	Monthly (Base)	Monthly Total w/NNN (\$5.60/ft.)	2018	\$18.00	\$17,820.00	\$1,485.00	\$1,988.25	2019	\$18.50	\$18,315.00	\$1,526.25	\$2,029.50	2020	\$19.00	\$18,810.00	\$1,567.50	\$2,070.75	2021	\$19.50	\$19,305.00	\$1,608.75	\$2,112.00	2022	\$20.00	\$19,800.00	\$1,650.00	\$2,153.25	2023	\$20.50	\$20,295.00	\$1,691.25	\$2,194.50	2024	\$21.00	\$20,790.00	\$1,732.50	\$2,235.75	2025	\$21.50	\$21,285.00	\$1,773.75	\$2,277.00
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<u>Security Deposit:</u>	None.																																													

Address for Notices:

(See Article XXIV)

To Landlord:

Duke Plaza LLC
20987 N. John Wayne Parkway, #B104-269
Maricopa, AZ 85139
Attn: Sean Katona, Manager

To Tenant:

City of Maricopa
P. O. Box 641
Maricopa, AZ 85139

Tenant's Hours of Operation:

Monday through Saturday from 7:00 a.m. to 6:00 p.m. and
Sunday from 10:00 p.m. to 5:00 p.m. (See Section 13.2)

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 shall be deemed and construed to incorporate all the terms provided under each such Basic Lease Provision, provided that the Basic Lease Provisions shall be controlled by the specific term and provisions of this Lease relating to the subject matter of those Basic Lease Provisions.

1.2 Exhibits. The following drawings, documents and provisions are attached hereto as Exhibits and incorporated herein by this reference:

Exhibit "A": General site plan of the Center. Tenant acknowledges that Landlord may unilaterally change the shape, size, location, number and extent of the improvements to any portion of the Center without Tenant's consent.

Exhibit "B": Form of Estoppel Certificate.

Exhibit "C": Rules and Regulations.

1.3 Floor Area. "Floor Area" shall mean the actual number of square feet of space contained on each floor within a leasable building in the Center as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations: (i) space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located vertically above ground floor; (ii) mezzanine space not utilized for retail sales area; and (iii) the outdoor sales and seating areas. Deductions shall not be allowed for columns, sprinkler risers, roof drains, vents, piping, waste lines, conduit, ventilation shafts and related items serving the other tenant spaces.

**Article II
DEMISED PREMISES**

2.1 Demise of Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, which Premises are situated within the Center as delineated in **Exhibit "A"** hereof. This Lease is subject to the terms, covenants and conditions herein set forth, and Tenant covenants as a material part of the consideration of this Lease to keep and perform each and all of such terms, covenants and conditions to be kept and performed by it.

2.2 Acknowledgements. Tenant acknowledges that: (a) it has been advised by Landlord to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, fire sprinkler systems, security, environmental aspects, and compliance with applicable law), and their suitability for Tenant's intended use, (b) Tenant has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Landlord, Landlord's agents, nor any broker has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. Tenant acknowledges and agrees that prior to execution of this Lease, Tenant has had the opportunity to inspect the Premises and has satisfied itself as to the Premises and its condition and suitability for Tenant's intended use. Consequently, Tenant accepts possession of the Premises in its "AS IS" condition, without representation or warranty by Landlord. Notwithstanding the foregoing, for a period of thirty (30) days following

the full execution and delivery of this Lease by Landlord and Tenant, Tenant shall have the right, upon reasonable prior notice to Landlord, to inspect the building systems serving the Premises to confirm that the same are in good operating condition. Landlord shall have the right to have an agent or employee of Landlord accompany Tenant during any such inspection. If Tenant reasonably determines that any building systems are not in good operating condition, Tenant shall notify Landlord in writing of the same within such 30-day period (a “**Building Systems Notice**”). If Tenant delivers to Landlord a Building Systems Notice within such 30-day period, Landlord shall cause the same to be corrected at Landlord’s sole cost. If Tenant fails to deliver a Building Systems Notice, any subsequent repairs required to the building systems shall be repaired by Tenant at Tenant’s sole cost and expense pursuant to the terms and conditions of this Lease.

2.3 Measurement of Premises. Landlord and Tenant agree that the Floor Area of the Premises as set forth above in the Fundamental Lease Provisions above shall be conclusive and binding on Landlord and Tenant and shall not be subject to re-measurement.

2.4 Center Remodeling. At any time during the term of this Lease, Landlord may remodel or expand, in any manner, the existing Center, which work may include the addition of shops and/or the addition of new buildings to the Center (collectively, “**Remodeled Center**”). If Landlord deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Landlord shall give Tenant no less than forty-eight (48) hours’ prior notice and Tenant shall allow such entry. Landlord shall use reasonable efforts to complete the work affecting the Premises in an efficient manner so as to minimize interference with Tenant’s business. Tenant shall not be entitled to any damages or to a reduction or abatement of Base Rent, or other Additional Rent for any reasonable interference or interruption of Tenant’s business upon the Premises or for any inconvenience caused by such construction work.

Article III TERM

3.1 Commencement of Term. The Lease shall be effective as of the Effective Date hereof and shall continue thereafter until expiration of the Lease Term set forth in Section 1.1 above, unless sooner terminated as hereinafter provided. The term “**Lease Year**” shall generally mean each consecutive twelve (12) month period from and after the Rent Commencement Date until expiration of the Lease Term. The first Lease Year of the Lease Term shall commence on the Rental Commencement Date and end on the day immediately prior to the one-year anniversary of the Rental Commencement Date (however, if the Rental Commencement Date is a day other than the first day of a calendar month, the first Lease Year shall end on the last day of the calendar month in which the one-year anniversary of the Rental Commencement Date occurs). Each successive Lease Year during the Lease Term shall be an annual period beginning on the calendar day immediately following the day in which the first Lease Year expires, or be computed from the first day of the first full calendar month immediately following the Rent Commencement Date or from the Rent Commencement Date if the Rent Commencement Date occurs on the first day of the month. The term “**Lease Term**” shall mean the new Lease Term.

3.2 Tenant’s Work. Tenant, at its sole cost and expense, shall diligently perform all of Tenant’s work and shall equip the Premises with all trade fixtures and personal property suitable or appropriate for the regular and normal operation of the type of business in which Tenant is engaged. All materials, furnishings, trade fixtures, personal property, furniture and fixtures shall be new or of like-new quality. Tenant shall pay all Governmental Fees (as defined herein) required to be paid for the issuance of the permits for Tenant’s Work. As used herein, “**Governmental Fees**” shall mean and include all impact, city planning, inspection, permit, mitigation, school, public facility, traffic thoroughfare, traffic signal, energy, sewer, governmental entitlement, permit, fire protection, processing, license, roadway assessment, flood control, electrical department, drainage and utility hookup, connection startup or user fees (including, without limitation, the cost of all utility meters) and the other fees, assessments and impositions required to be paid as a condition for obtaining a building permit for the applicable improvements.

3.3 Intentionally Omitted.

3.4 Option Period(s).

(a) Option Period. Provided that (i) Tenant has not incurred a late charge more than one time during any twelve (12) month period during the Lease Term, (ii) no Event of Default (as defined in Section 17.1 below) by Tenant has occurred during the Lease Term or is continuing, (iii) Tenant is open for business in the Premises and not in breach or default under the Lease, and no event has occurred at the time of exercise or at any time thereafter prior to the commencement of the "Option Period" (as defined below) that, with the giving of notice or the passage of time, or both, would constitute an Event of Default by Tenant, Tenant may extend (the "**Option to Extend**") the Lease Term for the number of periods specified in Section 1.1 above (such period being referred to herein as an "**Option Period**") only by giving Landlord written notice not more than twelve (12) months nor less than six (6) months before the expiration of the initial Lease Term. All of the terms and conditions of the Lease, except this right to extend the Term, any rental concession, construction allowance or other concession previously granted to Tenant, shall apply to the Option Period so far as applicable with Base Rent adjusted in accordance with Section 3.4(d) below, and reference in this Section 3.4 and elsewhere in this Lease to the "Lease Term" or "Term" shall be deemed to include, as applicable, the Option Period(s).

(b) Confirming Memorandum. Upon the commencement of the Option Period, Landlord and Tenant shall execute, acknowledge and deliver an amendment to this Lease acknowledging the fact that the option has been exercised and confirming the commencement and expiration dates of the Option Period and the Base Rent applicable to the Option Period. In the event that Tenant shall fail to give Landlord notice of exercise of the Option to Extend granted herein as provided above, the Option to Extend shall be terminated and Tenant shall join with Landlord in executing and acknowledging an instrument of termination in form suitable for recording in the public records of the county within which the Premises is located, to be effective upon the expiration date of the Lease Term.

(c) Non-Transferable Option. As a material consideration to Landlord granting an Option to Extend the Lease Term as provided herein, Landlord and Tenant have expressly agreed that the Option to Extend is granted solely to the original Tenant under this Lease, is personal to such original Tenant, and is not assignable or transferable, whether separate from or incident to an assignment or other transfer of such original Tenant's interest under this Lease. Tenant acknowledges its understanding and awareness that the non-assignable and nontransferable nature of the Option is critical to Landlord, and that Landlord would not agree to grant the Option under any other circumstances. Any attempt to assign or transfer the Option shall cause the Option to automatically cease and terminate and, in such event, this Lease shall terminate upon the expiration of the initial Lease Term.

(d) Base Rent during Option Period. Effective on the first day of the Option Period, Base Rent shall be increased to the amount set forth in the Base Rent Schedule set forth in the Fundamental Lease Provisions and Section 1.1.

Article IV RENT

4.1 **Base Rent.** Tenant agrees to pay to Landlord, at the times and in the manner herein provided, the Base Rent specified in Section 1.1 above. Base Rent shall be payable in advance on the first day of each calendar month occurring during the Lease Term, without demand or offset, commencing upon the Rent Commencement Date as provided in Section 1.1 above. If the Rent Commencement Date falls on a day other than the first day of a calendar month, the Base Rent for the first fractional month shall accrue on a daily basis for the period from and including the Rent Commencement Date to the end of such fractional calendar month at a rate equal to 1/365th of the annual Base Rent per day, and shall be due and payable on the first (1st) day of the following calendar month. All other payments required to be made under the terms of this Lease which require proration on a time basis shall be prorated on the same daily basis.

4.2 **Additional Rent.** Commencing upon the Rent Commencement Date and for the balance of the Lease Term, Tenant shall pay to Landlord Tenant's "Pro Rata Share" (as defined in Section 4.2(e) below) of all common area expenses, real property taxes and Landlord's insurance expenses at the time and in the manner set forth herein.

(a) **Common Area Expenses.** The Term "common area expenses" shall mean all sums expended pursuant to Article XVI in connection with the common areas for all general maintenance, repairs, replacements and restoration, resurfacing, painting, restriping, cleaning, sweeping and janitorial services; maintenance and repair of sidewalks, curbs and Center signs; sprinkler systems, elevators, escalators and stairways, planting and landscaping including maintenance and replacement thereof; lighting and other utilities including, without limitation, gas, water, electricity and the operation of heating and cooling equipment, directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting fixtures and systems (including replacement of tubes and bulbs as necessary), storm drainage systems, irrigation systems and any other utility systems; repair any Center signs; maintenance, repair and replacement of mechanical equipment including automatic door openers, installation, repair and replacement of all security systems and trash compactors or other similar devices; personnel to implement such services including, if Landlord deems necessary, the cost of security guards or devices; Landlord's share of real and personal property taxes and governmental charges, fees or assessments of any kind or nature on the facilities, improvements and land comprising the common areas; the cost of any capital improvements made to the Premises or the Center by Landlord; premiums for commercial general liability, property damage, fire and extended coverage insurance (including "Earthquake Insurance," "Terrorism Insurance," "Rental Loss Insurance," and "Flood Insurance" if Landlord or Landlord's lender or ground lessor deems such insurance to be necessary or desirable) together with insurance against vandalism, malicious mischief, and any other insurance carried by Landlord on the common areas; and an allowance to Landlord for Landlord's supervision of said common areas in an amount equal to fifteen percent (15%) of the total of the aforementioned expenses for each calendar year. In the event Landlord shall contest tax or assessment affecting the Center, the expenses involved in such contest shall be part of the common area expenses, regardless of whether such contest affects the buildings of the common areas.

(b) **Real Property Taxes.**

(i) As used herein, the term "real property taxes" shall include the reasonable costs of professional consultants and/or counsel to analyze tax bills and prosecute any protests, refunds and appeals for the periods covered during the Lease Term, general real property and improvement taxes, any form of assessment, re-assessment, license fee, license tax, business license tax, commercial rental tax, in lieu tax, levy, charge, penalty or similar imposition whatsoever or at all, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, or any agency or public body, as against any legal or equitable interest of Landlord in the Premises and/or the Center including, but not limited to: (i) any tax on Landlord's Rent, right to Rent or other income from the Premises or as against Landlord's business of leasing the Premises; (ii) any assessment, tax,

fee, levy or charge in addition to, or in partial or total substitution of any assessment, tax, fee, levy or charge previously included within the definition of real property tax; (iii) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder including, but not limited to, any gross income tax with respect to the receipt of such Rent, or upon or concerning the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises, or any portion thereof, by Tenant; (iv) any assessment, tax, fee, levy, or charge upon this lease transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (v) any assessment or reassessment related to any change of ownership of any interest in the Center or portion thereof held by Landlord, or any addition or improvement to the Center or a portion thereof.

(ii) Real property taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes, with respect to any assessment which may be levied against or upon the Premises and which under the laws then in force may be evidenced by improvement or other bonds, or may be paid in annual installments, there shall be included within the definition of real property taxes, with respect to any tax fiscal year, only the amount currently payable on such bonds, including interest, for such tax fiscal year, or the current annual installment or semi-annual installments for such tax fiscal year.

(c) Landlord's Insurance Expenses. The term "Landlord's insurance expenses" shall include, without limitation, the premiums, costs, expenses and deductibles of any and all insurance maintained by Landlord with respect to the Center.

(d) Payment. Commencing on the Rent Commencement Date and thereafter on the first (1st) day of each calendar month of the Lease Term, Tenant shall pay to Landlord one-twelfth (1/12th) of an amount estimated by Landlord to be Tenant's share of the total annual common area expenses, real property taxes and Landlord's insurance expenses for the then-current calendar year (or balance thereof). Landlord may adjust the common area expenses charged to Tenant at the end of any calendar year on the basis of Landlord's experience and reasonably anticipated costs and a reasonable reserve for unanticipated expenses. On or before April 1 of each calendar year, Landlord shall furnish to Tenant a statement covering the calendar year just expired showing the total common area expenses, real property taxes, and insurance expenses for the preceding calendar year, the amount of Tenant's share of such amounts, and the payments made by Tenant with respect to such calendar year as set forth above. If Tenant's share of such expenses exceeds Tenant's payments so made, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of Landlord's statement. If Tenant's payments exceed Tenant's share of such expenses, Landlord shall have the option of (i) paying such excess to Tenant upon Landlord's delivery of such statement; or (ii) allowing Tenant to credit the excess against payments next thereafter to become due to Landlord for such expenses. If Tenant fails to give Landlord written notice that Tenant objects to any common area expenses, real property taxes or insurance within one (1) year after Tenant receives Landlord's annual statement of such expenses, Tenant shall be deemed to have conclusively accepted such statement as correct and to have waived any and all rights at law or in equity to object to the common area expenses, taxes or insurance set forth in such statement. If Tenant provides notice that Tenant objects to any such expenses, Tenant's notice must set forth in reasonable detail the specific expenses to which Tenant objects and the reasons for Tenant's objections. During any portion of the Lease Term which is less than a full taxable fiscal year or less than a full period for which Landlord has obtained such insurance, Tenant's obligation for such real property taxes and insurance expenses shall be prorated on a daily basis.

(e) Tenant's Pro Rata Share. Tenant's "**Pro Rata Share**" shall mean a fraction, the numerator of which is the number of square feet of Floor Area in the Premises and the denominator is the total square feet of Floor Area in all leasable buildings in the Center, including without limitation the building within which the Premises are located (excluding therefrom, however, any portion of the Center not owned or leased by Landlord unless, and to the extent, the same is to be included nevertheless in the denominator of such fraction by virtue of any written instrument duly approved and executed by Landlord, or its predecessors in interest). Said share shall be determined as of the amount of leasable square feet ready for occupancy as of the Rent Commencement Date, and thereafter as of the assessment date for each

tax year of the term hereof, as determined by Landlord. The parties hereby stipulate that, as of the Effective Date, Tenant's Pro Rata Share is **5.03%**.

(f) **Separate Assessments.** In the event the Premises are separately assessed for real property tax or separately appraised for insurance purposes, Landlord shall have the right to require Tenant to pay all real property taxes or insurance, as the case may be, for the Premises in lieu of Tenant's Pro Rata Share of such amounts. In such event, Tenant shall pay to Landlord or, in the case of real property taxes, at Landlord's election, to the county tax collector, the real property taxes and or insurance for the Premises within thirty (30) days after written notice of such costs from Landlord.

(g) **Other Charges.** Tenant shall pay to Landlord when due all sums of money required to be paid pursuant to this Article, Article XIV (Repairs and Maintenance), and all other sums of money or charges including, without limitation, real property taxes, insurance, late charges, payment of attorneys' fees and interest, required to be paid by Tenant under this Lease as "**Additional Rent**," whether or not the same is designated as Additional Rent. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible with the next installment of Base Rent thereafter falling due. The foregoing notwithstanding, nothing herein contained shall be deemed to suspend or delay the payment by Tenant of any amount of money or charge at the time same becomes due and payable hereunder, or limit any other right or remedy of Landlord. If Tenant shall fail to pay, when due, any Rent or other charge, such unpaid amount shall bear interest at the maximum lawful rate from the date due through the date of payment. For purposes of this Lease, the term "**Rent**" shall include, without limitation, all Base Rent, Additional Rent and any other sums payable by Tenant to Landlord pursuant to this Lease.

(h) **Place of Payment.** All Rent and other charges shall be paid by Tenant to Landlord at the address specified for service of notice upon Landlord in Section 1.1 of this Lease, or at such other place as may from time to time be designated by Landlord in writing at least ten (10) days prior to the next ensuing payment date.

Article V **PERMISSIBLE USE**

5.1 Permitted Uses. Tenant shall use the Premises solely for the purpose and under the trade name specified in Section 1.1 hereof, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes or under any other trade name whatsoever without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Tenant shall not use, permit or suffer the use of the Premises for any business or purpose other than solely and specifically for the purpose set forth in Section 1.1 above, and Tenant shall not use, permit or suffer the use of the Premises under any trade name other than solely and specifically under the trade name set forth in Section 1.1 above. Landlord's approval of the use set forth in Section 1.1 above, shall not be deemed to grant to Tenant an exclusive right to such use in the Center.

5.2 Uses Prohibited. Tenant further covenants and agrees that it will not use, nor suffer or permit any person or persons to use the Premises or any part thereof for any use or purpose contrary to the Rules and Regulations of the Center as set forth in Exhibit "C" hereof, as same may be amended by Landlord from time to time, or in violation of any applicable laws, ordinances, regulations or requirements of any governmental or quasi-governmental authorities having jurisdiction over the Center, CC&Rs or other declarations or restrictions affecting the Center or in violation of any regulations of any insurance carrier providing insurance for the Premises or Center. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of, or affect any, fire or other insurance upon the Premises, the Building, or the Center, or cause a cancellation of any insurance policy covering the Premises, Center or Building or any part thereof or any of its contents. Tenant shall not do or permit or suffer anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Center or injure or annoy them, nor shall Tenant use or allow the Premises to be used for any improper, immoral, unlawful or objectionable or offensive purpose,

nor shall Tenant cause, maintain, suffer or permit any waste or nuisance in, on or about the Premises. Tenant agrees that during the Term hereof, the Premises shall be kept in a clean and wholesome condition, free of any objectionable noises or odors and that all health and police regulations shall, in all respects and at all times, be fully complied with by Tenant. Tenant shall not use or permit the use of the Premises or any portion thereof as living quarters, sleeping quarters or for lodging purposes. If the use permitted under this Lease is determined by Landlord to be a use that may generate excessive noise, offensive odors or other offensive impacts which could be a nuisance to other tenants in the Center, to surrounding property owners, or to business invitees or licensees of the Center, Tenant shall be responsible for installing, providing for and maintaining, at Tenant's sole cost and expense, measures to mitigate the nuisance or potential nuisance. The type and adequacy of such mitigating measures shall be determined by Landlord and communicated to Tenant by written notice. The construction, installation, maintenance and repair of such mitigating measures as Landlord determines are necessary shall be accomplished in accordance with the requirements set forth in Article VIII below. Tenant may not display or sell merchandise, or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls or roof or permanent doorways of the Premises, or in the hallways.

5.3 Compliance with Laws. Tenant shall, at its sole cost and expense, faithfully observe and promptly comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force with respect to Tenant's use, occupancy and possession of the Premises and Tenant's business conducted thereon including, but not limited to, laws or regulations relating to the accessibility or usability of the Premises by disabled persons, and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant's obligation under this Section 5.3 shall be deemed to include, without limitation, the covenant to make, at Tenant's sole cost and expense, all alterations, additions, modifications and improvements to the Premises as may be required under or pursuant to any of the aforementioned laws, statutes, ordinances, rules, regulations or requirements. Tenant agrees to at all times operate its business from the Premises in a first-class and professional manner. Tenant acknowledges that Landlord makes no representation or warranty in this Lease that the Center or any portion thereof is in compliance with any governmental statutes, ordinances, rules or regulations relating to the accessibility or usability of the Center or any portion thereof by disabled persons.

5.4 Hazardous Materials.

(a) Tenant shall not cause or permit any Hazardous Activity (as defined in Section 6.4(c) below) to occur, whether by Tenant or any of Tenant's employees, agents, contractors, customers or business invitees (collectively, "**Tenant Parties**," or, individually, a "**Tenant Party**"), without the prior written consent of Landlord, which consent Landlord may grant or withhold in its sole and absolute discretion. Notwithstanding the foregoing, Tenant shall be permitted to use small quantities of Hazardous Materials (provided such use complies with all applicable laws) that are typically used in the ordinary course of operating the Permitted Use (such as the use of cleaning materials). Upon the expiration or sooner termination of this Lease, Tenant shall remove from the Premises and the Center, at its sole cost and expense, any and all Hazardous Materials which are or have been brought upon, stored, used, handled, generated, released or disposed of in, on, under or about the Premises or any portion of the Center by Tenant or any Tenant Party (regardless of whether Landlord granted its consent thereto). Tenant shall promptly notify Landlord of any release of Hazardous Materials in the Premises or any portion of the Center which Tenant becomes aware of during the Lease Term, whether caused by Tenant or any other persons or entities.

(b) Tenant shall indemnify, protect, defend and hold harmless Landlord from and against any and all losses, costs, damages, expenses, claims, inquiries, liabilities and judgments, including without limitation attorneys' fees or costs (whether or not suit is

commenced or judgment is entered) incurred in connection with any Hazardous Activity of Tenant or any Tenant Party, including without limitation any clean up, removal, remediation or restoration, which arise during or after the Lease Term from any Hazardous Activity of Tenant or Tenant Parties, whether or not Landlord granted its consent thereto. Tenant shall immediately take all action Landlord deems necessary or appropriate to remediate the Hazardous Activity of Tenant or a Tenant Party and to prevent any similar future Hazardous Activity to the satisfaction of Landlord and each and every lender holding a secured interest in the Center.

(c) For purposes of this Lease (i) "**Hazardous Activity**" means bringing upon, storing, using, handling, generating, releasing into the environment or disposing of any Hazardous Materials on, in, under or about the Premises or any other portion of the Center, and (ii) "**Hazardous Materials**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Materials shall include, without limitation, any substances included in the definition of "Hazardous Substances," "Hazardous Wastes," "Hazardous Materials," "Toxic Substances," "Pollutant," or "Contaminant" under any applicable federal, state or local laws or regulations, or any flammable items, explosives, radioactive materials, petroleum based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCB's and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

5.5 No Satellite Dish. No aerial, antenna or satellite dish shall be erected on the roof of the Building or on the exterior walls of the Premises.

5.6 Deliveries. Tenant shall use its best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Premises prior to 10:00 a.m. of each day, and to prevent delivery trucks or other vehicles servicing the Premises from parking or standing in service areas for undue periods of time. Landlord reserves the right to further reasonably regulate the activities of Tenant in regard to deliveries and servicing of the Premises, and Tenant agrees to abide by such further reasonable rules and regulations which Landlord may impose from time to time. In addition, Tenant agrees that it will not solicit in any manner in any of the automobile parking and common areas of the Center.

Article VI UTILITIES

6.1 Utility Installation. Landlord agrees that it will cause to be made available to Tenant upon or adjacent to the Premises, facilities for the delivery to the Premises of water, power, electricity, and telephone service, and for the removal of sewage from the Premises. Such utilities, except for water, shall be separately metered. Tenant agrees to use such utilities in connection with the use of the Premises. Notwithstanding the foregoing or anything contained herein to the contrary, in the event that Tenant consumes more water than a normal retail use or in which the water meter or water or sewer connection charges are higher than normal retail uses, Tenant shall, upon Landlord's written request, pay all water meter and water and sewer connection charges in connection with the Premises.

6.2 Payment of Utility Cost. Tenant agrees, at its own expense, to pay for all water, power, gas and electric current and all other utilities used by Tenant on or from the Premises and Tenant agrees to provide, at Tenant's sole cost and expense, any check meters of the type required by Landlord. If Tenant's use requires more utilities than a typical retail use, Tenant shall pay for all impact fees or other hookup or connection charges in connection therewith, including without limitation, sewer connection fees. In the event that any utilities are furnished to the Premises by Landlord, whether sub-metered or otherwise, then and in that event, Tenant shall pay Landlord for such utilities, within ten (10) days after Tenant's receipt of a statement from Landlord, but the rates charged to Tenant by Landlord shall not exceed those of the public utility company furnishing same to Landlord as if its services were being furnished directly to Tenant.

6.3 **No Liability.** Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold any Rent or any other sums due under the terms of this Lease.

Article VII INDEMNITY AND INSURANCE

7.1 Indemnification and Waiver.

(a) **Indemnification and Waiver.** Tenant agrees that Landlord shall not be liable for any damage or liability of any kind, or for any injury to or death of persons, or damage to property of Tenant or any other person during the Lease Term, from any cause whatsoever, resulting from the use, occupation or enjoyment of the Premises or the operation of business therein or therefrom by Tenant or any person holding under Tenant. Tenant hereby further agrees to defend, indemnify, protect and save harmless Landlord from all claims, liabilities, losses, damages, suits, costs and expenses of any kind or nature (including attorneys' fees) (collectively, "**Claims**") whatsoever including, without limitation, liability for any real or claimed damage or injury and from all liens, claims and demands arising out of or relating to the use of the Premises and its facilities, any repairs or alterations which Tenant may make upon the Premises, any claims of any employee of Tenant against Landlord, any acts, omissions, negligence or willful misconduct of Tenant or its agents, employees, servants or contractors, or any breach of this Lease by Tenant. Tenant shall not be liable for damage or injury occasioned by the gross negligence of Landlord and its designated agents, servants or employees. The foregoing obligation of Tenant to indemnify shall survive the expiration or earlier termination of the Lease Term and shall include all costs of legal counsel and investigation, together with other costs, expenses and liabilities incurred in connection with any and all claims of damage.

(b) **Waiver of Subrogation.** To the extent any such loss or damage is covered by insurance, Landlord and Tenant each hereby waive any rights one may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective properties, the Premises or their contents, or to other portions of the Center arising from any risk generally covered by fire and extended coverage insurance or from vandalism, malicious mischief or sprinkler leakage. The parties hereto, on behalf of their respective insurance companies insuring such losses, waive any right of subrogation that one may have against the other. The foregoing waivers of subrogation shall be operative provided that no policy of insurance required herein is invalidated thereby.

7.2 **Tenant's Insurance Obligation.** Tenant further covenants and agrees that it will carry and maintain during the entire Lease Term hereof, at Tenant's sole cost and expense, the following types of insurance in the amounts and forms hereinafter specified:

(a) **General Commercial Liability and Property Damage.** Tenant agrees to maintain throughout the term or renewal terms, if any, of this Lease, at Tenant's own expense, public liability insurance with respect to Tenant's use and occupancy of the Premises, with initial limits of at least \$1,000,000 per occurrence/\$2,000,000 general aggregate, or such additional amounts as Landlord shall reasonably require from time to time, upon Landlord's good faith determination that the present insurance coverage is inadequate, such amounts to be consistent with requirements of other Landlord's in similar circumstances. All such bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property contained in Section 8.1 hereof. Such policies shall include, without limitation, coverage for fire, explosion and water damage legal liability coverage.

(b) **Workers' Compensation.** Tenant shall carry Workers' Compensation insurance for all of Tenant's employees as required by law.

7.3 **Policy Requirements.** All policies of insurance provided for herein shall be issued by insurance companies with a general policy holder's rating of not less than A and a financial rating of not less than Class VII as rated in the most current available Best's Insurance

Reports and qualified to do business in the State of Arizona. All such policies shall name Landlord as an additional insured and, if requested by Landlord, Landlord's first mortgagee or beneficiary and/or Landlord's lessor, which policies shall be for the mutual and joint benefit and protection of Landlord, Tenant, Landlord's first mortgagee or beneficiary, and/or Landlord's lessor. Executed copies of such policies of insurance or original certificates thereof approved by Landlord shall be delivered to Landlord within ten (10) days after delivery of possession of the Premises to Tenant and thereafter at least thirty (30) days prior to the expiration of the Term of each such policy. All public liability and property damage policies shall contain a provision that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery under such policies for any loss occasioned to it, its servants, agents, or employees by reason of any act or omission of Tenant or its servants, agents, employees or contractors. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant pursuant to the terms of this Article VII. All policies of insurance delivered to Landlord must contain a provision that the company writing such policy will give to Landlord at least thirty (30) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amount of or other material change of insurance. All public liability, property damage and other casualty policies maintained by Tenant shall be written as primary policies, and any insurance maintained by Landlord shall be excess insurance only.

7.4 Increase in Coverage. In the event Landlord or Landlord's first mortgagee or beneficiary deems it necessary to increase the amounts or limits of insurance required to be carried by Tenant hereunder, Landlord may reasonably increase such amounts or limits of insurance, and Tenant shall increase the amounts or limits of the insurance required to be carried by Tenant hereunder and shall provide Landlord with policies or original certificates indicating the increased amounts or limits as provided in Section 7.3 hereof.

7.5 Blanket Coverage. Tenant's obligations to carry insurance provided for in this Article may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that (i) Landlord and Landlord's lender approves such blanket insurance including, without limitation, the amount of any deductibles, (ii) Landlord, or Landlord's lender and Landlord's lessor, if any, shall be named as an additional insured thereunder as their respective interests may appear; (iii) any general aggregate limit under Tenant's liability policy shall apply separately to the Premises and to each other location of Tenant; (iv) the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied, and (v) Tenant has a net worth acceptable to Landlord and Landlord's lender for purposes of such blanket insurance. Tenant agrees to permit Landlord at all reasonable times to inspect the policies of insurance of Tenant covering risks upon the Premises for which policies or copies of certificates thereof are not required to be delivered to Landlord.

7.6 Landlord's Insurance Obligations. Landlord shall maintain in effect a policy or policies of insurance covering the building of which the Premises are a part in an amount equal to its full replacement cost (excluding excavations, foundations and footings), or such lesser amount as determined by Landlord in its good faith business judgment and approved by Landlord's lender, during the Lease Term, providing protection against any peril generally included within the classification "Fire and Extended Coverage" (and "Earthquake Insurance," "Terrorism Insurance," "Rental Loss Insurance," and "Flood Insurance" if Landlord or its lender deems such insurance to be necessary or desirable), together with insurance against sprinkler damage, vandalism and malicious mischief and such further insurance as Landlord or Landlord's lender deems necessary or desirable. Landlord's obligation to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance.

7.7 Insurance Use Restrictions. Tenant agrees that it will not at any time during the Lease Term carry any stock of goods or do or permit anything to be done in or about the Premises which will tend to increase the insurance rates upon the building of which the Premises are a part. Tenant agrees to pay to Landlord forthwith upon demand the amount of any increase in premiums for insurance against loss by fire or any other peril normally covered by fire and

extended coverage insurance that may be charged during the Lease Term on the amount of insurance to be carried by Landlord on the building of which the Premises are a part resulting from the foregoing or from Tenant doing any act in or about the Premises which does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of Tenant. If Tenant installs upon the Premises any electrical equipment which constitutes an overload on the electrical lines of the Premises, Tenant shall at its own expense make whatever changes or provide whatever equipment safeguards are necessary to comply with the requirement of the insurance underwriters and any governmental authority having jurisdiction thereover, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading.

Article VIII TENANT'S ALTERATIONS

Landlord agrees that Tenant may, from time to time during the Lease Term, at Tenant's sole cost and expense and after giving Landlord at least thirty (30) days' prior written notice of its intention to do so, make such alterations, additions and changes in and to the interior of the Premises (except those of a structural nature or visible from the exterior of the Premises) as Tenant may find necessary or convenient, provided that the value of the Premises is not thereby diminished, and provided that no alterations, additions or changes costing in excess of Two Thousand Five Hundred Dollars (\$2,500.00) may be made without first procuring the prior written consent of Landlord. In no event shall Tenant make any alterations, additions or changes to the storefront, exterior walls, or roof of the Premises, visible from the exterior of the Premises, or that require a roof penetration or requires work on the roof of the Premises' building, or affect the building structure, HVAC, electricity (including electrical distribution), plumbing or other utility or mechanical systems, nor shall Tenant erect any mezzanine or increase the size of same, if one be initially constructed, unless and until the written consent of Landlord shall first have been obtained, which consent may be withheld in Landlord's sole discretion. Tenant shall not make or cause to be made any penetration through the roof or demising walls of the Premises without the prior written consent of Landlord. Landlord hereby reserves the right to condition Landlord's consent to any alteration, addition or change to the Premises by Tenant upon Landlord's receipt from Tenant of a written agreement, in form and substance acceptable to Landlord, pursuant to which Tenant shall agree to remove any such alteration, addition or change from the Premises upon expiration or earlier termination of the Lease Term and restore the Premises to its original condition prior to such alteration, addition or change. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article. All alterations, additions, or changes to be made to the Premises shall be performed in accordance with this Lease and this Article VIII.

Article IX MECHANICS' LIENS

9.1 Tenant's Lien Obligations. Tenant agrees that it will pay, or cause to be paid, all costs for work done by it or caused to be done by it on the Premises and that it will keep the Premises and the Center free and clear of all mechanics' liens and other liens for or arising from work done by or for Tenant or for persons claiming under it. Tenant agrees to, and shall indemnify and save Landlord free and harmless from and against, liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of contractors, subcontractors, laborers or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under it. If any laborer, person or firm supplying or providing labor, materials or equipment or services to Tenant, or to any of Tenant's contractors or subcontractors for Tenant's Work, shall make any claim or demand against Landlord, the Premises or the Center, or shall file any claim, stop notice, lien, or otherwise, against Landlord, the Premises, the Center or the lender for the Center and Tenant shall not cause the effect of such claim, stop notice or lien to be removed, rescinded or dismissed including, without limitation, the posting of a bond, as the case may be, and in the event Tenant shall fail to do so within five (5) days after written demand by Landlord to cause the effect of said claim, stop notice or lien to be removed, rescinded or dismissed, such failure shall constitute a default hereunder. In such event, in addition to such other remedies it may have, Landlord shall have the right (but not the obligation) to use whatever means in its discretion it may deem appropriate to cause said claim,

stop notice, or lien to be rescinded, discharged, compromised, dismissed or removed including, without limitation, (a) posting a bond; or (b) paying a sum sufficient to discharge, in full, any and all such claims, demands, or liens. Any such sums paid by Landlord, including attorneys' fees and bond premiums, shall be immediately due and payable to Landlord by Tenant.

9.2 Notice. Tenant shall immediately give Landlord notice of any claim, demand, stop notice or lien made or filed against the Premises or the Center or any action affecting the title to such Premises or Center.

9.3 Inspection. Landlord or its representative shall have the right to go upon and inspect the Premises at all reasonable times, and shall have the right to post and keep posted thereon notices as permitted or provided by law or which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give to Landlord a written notice of its intention to do so in sufficient time to enable Landlord to file and record such notices.

Article X SIGNS

Tenant shall not affix or maintain upon the glass panes or supports of the show windows, or within sixty (60) inches of any window or upon the doors, roof or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items except those approved in writing in advance by Landlord as to the size, design, type, color, location, copy, nature and display qualities of such item. Failure of Landlord to disapprove any such item within thirty (30) days of Tenant's submission of same to Landlord shall constitute disapproval of same. Tenant shall provide Landlord with drawings of its storefront sign which Landlord may approve or disapprove in its reasonable discretion. All signs erected or maintained by Tenant shall be at Tenant's sole cost and expense and shall comply with all applicable laws, ordinances, regulations, CC&Rs and other declarations then in effect. In addition, in no event shall any sign cover more than more than twenty-five percent (25%) of any window of the Premises, and no advertising medium shall be utilized by Tenant the sound or effect of which extends beyond the Premises including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. Tenant shall not display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area or structure of the Center, whether belonging to Tenant or to Tenant's agents or to any other person; nor shall Tenant distribute, or cause to be distributed, in the Center any handbill or other advertising devices. In the event Tenant shall violate any provision of this Article X hereof, Tenant hereby grants to Landlord the right to enter the Premises and correct such violation at Tenant's sole cost and expense. If any such violation shall occur in the common areas, Landlord shall have the immediate right to cure such violation, which right shall include, without limitation, removal of any and all unapproved signage.

Article XI TRADE FIXTURES AND PERSONAL PROPERTY

11.1 Ownership. Any trade fixtures (specifically excluding the HVAC and any tenant improvements), signs and other personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right, provided Tenant is not in default under the terms of the Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs and other personal property which it may have stored or installed in the Premises including, but not limited to, counters, shelving, showcases, mirrors and other movable personal property. Nothing contained in this Article shall be deemed or construed to permit or allow Tenant to remove any personal property without the immediate replacement thereof with similar personal property of comparable or better quality, so as to render the Premises unsuitable for conducting the type of business described in Section 1.1. Tenant, at its expense, agrees to immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, signs, and other personal property and, upon expiration or earlier termination of this Lease, Tenant agrees to leave the Premises in a neat and broom-clean condition and free of trash and debris. All trade fixtures, signs and other personal

property installed in or attached to the Premises by Tenant shall be new or of new quality when so installed or attached.

11.2 Removal. If Tenant fails to remove any of its trade fixtures, furniture and other personal property upon expiration or the sooner termination of this Lease, Landlord may, at Landlord's option after ten (10) days' written notice to Tenant (i) retain all or any of such property, and title thereto shall thereupon automatically vest in Landlord, or (ii) Landlord may remove same from the Premises and dispose of all or any portion of such property, in which latter event Tenant shall, upon demand, pay to Landlord the actual expense of such removal and disposition together with the cost of repair of any and all damage to the Premises resulting from or caused by such removal.

11.3 Personal Property Tax. Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its trade fixtures, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Landlord, such assessment shall be divided between Landlord and Tenant to the end that Tenant shall pay only its equitable portion of such assessment as conclusively determined by Landlord. No taxes, assessments, fees or charges referred to in this paragraph shall be considered as real property taxes under the provisions of Section 4.2 hereof.

Article XII **ASSIGNMENT, SUBLEASE AND OTHER TRANSFERS**

12.1 Restrictions.

(a) Landlord and Tenant agree that the Center consists of an interdependent group of retail enterprises and that the realization of the benefits of this Lease, both to Landlord and Tenant, is dependent upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further agree that the "tenant mix" of the Center is also vital to the realization of the benefits of this Lease, both to Landlord and Tenant. Accordingly, Tenant shall not transfer, assign, sublet, mortgage or otherwise hypothecate or encumber this Lease, or Tenant's interest in and to the Premises nor enter into any license or concession agreements with respect to the Premises, or permit any other person or entity to assume all or any portion of this Lease, or any of Tenant's rights or obligations under the Lease, or occupy all or any portion of the Premises without in each instance procuring the prior written consent of Landlord. Any such attempted or purported transfer, assignment, subletting, mortgage or hypothecation, license or concession agreement, assumption or occupancy agreement (hereinafter collectively a "**Transfer**") without Landlord's prior written consent shall be void and of no force and effect, shall not confer any interest or estate in the purported transferee, and shall at Landlord's sole, exclusive, and absolute discretion, entitle Landlord to terminate this Lease upon written notice to Tenant.

(b) The consent of Landlord required hereunder shall not be unreasonably withheld; provided, however, Landlord and Tenant agree that it shall not be commercially unreasonable for Landlord to withhold its consent to any proposed Transfer for any commercially-reasonable reason including, but not limited to:

(i) A conflict between the contemplated use of the Premises by the proposed transferee, assignee, or sublessee following the proposed Transfer (hereinafter referred to as the "**Transferee**") with the "Use of Premises" clause contained in Section 1.1 hereof or with the then-existing or contemplated tenant mix of the Center (as determined by Landlord in its sole good faith discretion);

(ii) The financial worth and/or financial stability of the Transferee is less than that of Tenant hereunder at the commencement of the Lease Term or not reasonably suitable to Landlord in Landlord's sole discretion so as to insure the ability of the Transferee to perform Tenant's obligations under the Lease for the full Lease Term;

(iii) A Transferee whose reputation or proposed use of the Premises would have an adverse effect upon the reputation of the Center and/or the other business located therein;

(iv) A Transferee which would breach any covenant of or affecting Landlord concerning radius, location, use or exclusivity in any other lease, financing agreement, or other agreement relating to the Center; and

(v) The proposed Transfer would, in Landlord's sole and exclusive discretion, require an amendment to any material Term of the Lease.

12.2 Procedure for Transfer. Should Tenant desire to make a Transfer hereunder, Tenant shall, in each instance, give written notice of its intention to do so to Landlord at least sixty (60) days before the intended effective date of any proposed Transfer, specifying in such notice whether Tenant proposes to assign or sublet, or enter into license, franchise or concession agreements, the proposed date thereof, and specifically identifying the proposed Transferee, the net worth and previous business experience of the proposed Transferee including, without limitation, copies of the proposed Transferee's last two (2) years' income statement, balance sheet and statement of changes in financial position (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the proposed Transferee. Such notice shall be accompanied, in the case of a proposed assignment, subletting, license, franchise or concession agreement, by a copy of the proposed assignment, sublease, license, franchise or concession agreement or, if same is not available, a letter of commitment or a letter of intent. In the case of a proposed sale of Tenant's business, Tenant shall provide a copy of the proposed sale and financing agreements. Landlord shall, within thirty (30) days after its receipt of such notice of a proposed Transfer, by giving written notice to Tenant of its intention to do so: (a) withhold consent to the Transfer; (b) consent to the Transfer; or (c) terminate this Lease, such termination to be effective thirty (30) days after receipt of such notice by Tenant. Failure of Landlord to give Tenant written notice of Landlord's action with respect to any request for Landlord's consent to a proposed Transfer shall not constitute or be deemed Landlord's consent to such Transfer. Landlord's consent to a proposed Transfer shall only be given if and when Landlord has notified Tenant in writing that Landlord consents to such proposed Transfer. No Transfer of this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, no modification of this Lease by Landlord and the Transferee, whether with or without Tenant's consent, or any indulgences, waivers or extensions of time granted by Landlord to any Transferee or any failure by Landlord to take action against any Transferee, shall relieve Tenant (as defined in Section 1.1 above) of this Lease from primary liability under this Lease. In the event of any default by the Transferee, Landlord may proceed directly against Tenant, or anyone else responsible for the performance of Tenant's obligations under this Lease, including any assignee or sublessee, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord. Landlord hereby reserves the right to condition Landlord's consent to any assignment, sublease or other transfer of all or any portion of Tenant's interest in this Lease or the Premises upon Landlord's receipt from Tenant of a written agreement, in form and substance acceptable to Landlord, pursuant to which Tenant shall pay over to Landlord all Rent or other consideration received by Tenant from any such assignee, sublessee, or transferee either initially or over the term of the assignment, sublease or transfer, in excess of the Rent called for hereunder.

12.3 Required Documents. Each Transfer to which Landlord has consented shall be evidenced by a written instrument, the form and content of which is satisfactory to Landlord, executed by Tenant and Transferee under which the Transferee shall agree in writing for the benefit of Landlord to perform and to abide by all of the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant, including the payment of all amounts due or to become due under this Lease directly to Landlord and the obligation to use the Premises only for the purpose specified in Section 1.1 hereof. Tenant agrees to reimburse Landlord for Landlord's reasonable attorneys' and administrative fees incurred in conjunction with the processing of and documentation for each proposed Transfer, whether or not the Transfer is consummated.

12.4 Merger and Consolidation. If Tenant is a corporation which, under the current laws, rules or guidelines promulgated by the governmental body or agency having jurisdiction and authority to promulgate the same, is not deemed a public corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation, in the aggregate of more than twenty-five percent (25%) of the total outstanding stock or interest in such corporation, association or partnership, shall be deemed a Transfer within the meaning and provisions of this Article and shall require Landlord's prior written consent.

12.5 Assignment of Sublease Rentals. Tenant shall not assign this Lease or sublet any portion of the Premises, or allow any other persons except the agents or employees of Tenant to occupy the Premises without prior written consent of the Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord consents to Tenant subleasing the Premises to Maricopa Domestic Water Improvement District. Landlord shall be free to sell the Premises and/or assign this Lease, to any persons or entities, at any time during the term of this Lease, without prior approval of Tenant.

Article XIII OPERATION OF TENANT'S BUSINESS

13.1 Continuous Operation. Tenant covenants and agrees that it will operate and conduct within the Premises, continuously and uninterruptedly during the Lease Term, the business which it is required to operate and conduct under the provisions hereof, except during temporary closures of the Premises approved by Landlord for repairs and remodeling (which shall be diligently pursued) and while the Premises are untenable by reason of fire or other unavoidable casualty, and that it will at all times keep and maintain within and upon the Premises an adequate stock of merchandise and trade fixtures and have sufficient personnel to service and supply the demands and requirements of its customers. Landlord and Tenant agree that, if Tenant shall fail to continuously and uninterruptedly operate the business which it is required to operate under the terms of this Lease, monetary damages will be inadequate to compensate the Landlord. Landlord and Tenant agree that injunctive relief shall be appropriate in the event of the failure on the part of Tenant to continuously operate, and Landlord shall be entitled to injunctive relief ordering Tenant to operate. In the event Tenant fails to continuously operate its business in the Premises as required by this Section 13.1 for a period of ten (10) or more consecutive days and such failure is not due to any casualty, condemnation or approved remodeling, then in addition to all remedies available to Landlord (including, without limitation, injunction and/or damages), Landlord may, but is not obligated to, elect to terminate this Lease upon written notice of Landlord's intent to Tenant, whereupon this Lease shall terminate, and Tenant shall vacate the Premises upon the date specified in Landlord's notice to Tenant. Landlord's notice pursuant to this Section shall be in lieu of, and not in addition to, the notice and cure period set forth in Article XVII or any notice and cure period required under applicable statute.

13.2 Operating Hours. Commencing with the opening for business by Tenant in the Premises, and for the remainder of the Lease Term, Tenant shall remain open for business during the days and hours set forth in Section 1.1. It is agreed, however, that the foregoing provision shall be subject to any governmental regulations to which Tenant may be subject concerning the hours of operation of Tenant's business.

13.3 Rules and Regulations. Tenant shall observe faithfully and comply with and shall cause its employees and invitees to observe faithfully and comply with reasonable rules and regulations governing the Center as may from time to time be promulgated and amended by Landlord, which rules and regulations shall include the provisions of Exhibit "C" hereof.

Article XIV REPAIRS AND MAINTENANCE

14.1 Tenant's Maintenance Obligations. Tenant agrees at all times from and after delivery of possession of the Premises to Tenant, and at its own cost and expense, to repair and maintain the Premises and every part thereof in good and tenantable condition including, but not limited to, floor coverings, utility meters, pipes and conduits, all fixtures, equipment and

appurtenances thereof, lighting and plumbing fixtures, interior surfaces of demising walls, heating and air conditioning equipment, systems and ducting (“HVAC”), exterior doors and entrances, the storefront or storefronts, including plate glass, all Tenant’s signs, locks and closing devices, and all window sash, casement or frames, doors and door frames, damage from burglary or attempted burglary of the Premises, and all items of repair, maintenance and improvement or reconstruction as may at any time or from time to time be required with respect to the Premises by any governmental agency having jurisdiction, but excluding the roof structure, exterior walls, structural portions of the Premises and structural floor, unless the same are required to be modified because of Tenant’s use of the Premises or Tenant’s alterations, improvements, additions, fixtures or personal property. Notwithstanding the foregoing, Landlord shall have the right to enter into a service contract for the routine maintenance of the Premises’ roof. In such event, Tenant shall reimburse Landlord for the cost of such roof maintenance service contract pursuant to Section 14.2 below or, at Landlord’s election, its Pro Rata Share of the cost of the roof maintenance service contract for the Center’s buildings as a part of common area expenses pursuant to Section 4.2. Tenant agrees that it will keep the Premises in a neat, clean and orderly condition and that all trash and rubbish generated by it shall be deposited within prescribed receptacles in designated service areas within the Center. Tenant further agrees to cause such receptacles to be emptied and trash removed at its own cost and expense so as, on its part, to keep such service areas in a clean and orderly condition. Tenant agrees to operate the HVAC serving the Premises during all business hours so that inside temperatures of the Premises are maintained within a range in which a majority of adults will be comfortable in the Premises. All glass, both exterior and interior, shall be maintained at Tenant’s sole cost and expense, and any glass broken shall be promptly replaced by Tenant with glass of the same kind, size and quality. Tenant’s failure to replace broken glass within seventy-two (72) hours following the occurrence of the breakage, or the failure by Tenant to replace same with glass of the same kind, size and quality, shall constitute a material and incurable breach hereof which may, at Landlord’s sole discretion, entitle Landlord to terminate this Lease upon written notice to Tenant.

14.2 Landlord’s Maintenance Obligations. Subject to the foregoing paragraph and reimbursement under Section 4.2, above, Landlord shall keep and maintain in good and tenantable condition and repair and replace as necessary the roof structure, exterior walls, structural parts and structural floor servicing the Premises; provided, however, that Landlord shall not be required to make any repairs necessitated by reason of the negligence or willful misconduct of Tenant, its servants, agents, employees or contractors, or anyone claiming under Tenant, or by reason of the failure of Tenant to perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions or improvements made by Tenant or anyone claiming under Tenant. Anything to the contrary notwithstanding contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs as herein specifically required of it unless Tenant has previously notified Landlord, in writing, of the need for such repairs, and Landlord has failed to commence and complete said repairs within a reasonable period of time following receipt of Tenant’s written notification. Tenant shall pay Tenant’s pro-rata share of the cost of such repair and replacement to the building of which the Premises are a part to Landlord on the first day of each calendar month in such amounts as Landlord shall from time to time estimate. Tenant shall pay its pro-rata share of such cost concurrently with the first monthly installment of Base Rent or at such later time as Landlord may designate. Landlord shall deliver to Tenant at least once annually a statement setting forth the actual cost of such repair, maintenance and replacement allocable to the Premises. If such actual expenses exceed Tenant’s payments hereunder, Tenant shall pay the deficiency to Landlord within ten (10) days after receipt of such statement. If payments made by Tenant for such year exceed such actual expenses, Landlord shall have the option of (a) paying such excess to Tenant upon Landlord’s delivery of such statement; or (b) allowing Tenant to credit the excess against payments next thereafter to become due to Landlord for such expenses. Under no circumstances shall Tenant be entitled to terminate this Lease as a result of Landlord’s failure or alleged failure to make repairs hereunder.

14.3 Tenant’s Failure to Maintain. If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any portion thereof, including Tenant’s storefront(s), in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, the cost of such work shall be paid by

Tenant promptly upon receipt of bills therefor. Failure of Tenant to pay any of said charges within ten (10) days of receipt of bills therefor shall constitute a default hereunder. Upon any surrender of the Premises, Tenant shall deliver the Premises to Landlord, upon the expiration or earlier termination of this Lease, in good order, condition and state of repair, ordinary wear and tear excepted, and excepting such items of repair as may be Landlord's obligation hereunder.

14.4 Definition of Exterior Walls. As used in this Article, the expression "exterior walls" shall not be deemed to include storefront or storefronts, plate glass, window cases, or window frames, doors or door frames, security grilles or similar enclosures. It is understood and agreed that Landlord shall be under no obligation to make any repairs, alterations, renewals, replacements or improvements to or upon the Premises or the mechanical equipment exclusively serving the Premises at any time except as otherwise provided in this Lease.

14.5 Right to Enter. Tenant agrees to permit Landlord and its authorized representatives to enter the Premises with reasonable notice (except in the event of an emergency, to make emergency repairs) for the purpose of making repairs during usual business hours and for the purpose of inspecting the same. Tenant further agrees that Landlord may go upon the Premises and make any necessary repairs thereto and perform any work therein which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, any fire rating bureau, or of any similar body, or that Landlord may deem necessary to prevent waste or deterioration in connection with the Premises if Tenant does not make or cause such repairs to be made or performed or cause such work to be performed promptly after receipt of written demand from Landlord. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which, under provisions of this Lease, Tenant may be required to do, nor shall Landlord's failure to elect to perform such work constitute a waiver of Tenant's default. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby, to any abatement of Rent, or to terminate this Lease.

14.6 Grant of License. Tenant hereby grants to Landlord such licenses and/or easements in, over, and under the Premises or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits, shafts, pipes or other facilities to serve any other portion of the Center including, but not by way of limitation, the premises of any other occupant of the Center; provided, however, that Landlord shall pay for any alteration required on or to the Premises as a result of any such exercise, occupancy under or enjoyment of any such license or easement and, provided further, that no exercise, occupancy under or enjoyment of such license or easement shall result in any unreasonable permanent interference with Tenant's use, occupancy or enjoyment of the Premises as contemplated by this Lease.

14.7 Heating and Air Conditioning Equipment. Landlord shall maintain the HVAC serving the Premises, in which event, Tenant shall pay to Landlord all costs and expenses for the repair, maintenance and replacement of the HVAC serving the Premises pursuant to Section 14.2 above or, at Landlord's election, as a part of common area expenses pursuant to Section 4.2. Expenses incurred in connection with the operation, maintenance, repair and replacement of the HVAC shall include, but not be limited to, all sums expended in connection with such heating and air conditioning equipment for all general maintenance, lubrication and/or adjustments, cleaning and/or replacing filters, replacing belts, repairing and/or replacing worn-out parts, repairing and/or replacing utilities, duct work and machinery, maintenance and insurance contracts carried on the heating and air conditioning equipment, and all other items of expense incurred by such party in connection with the operation, maintenance, repair and replacement of the heating and air conditioning equipment.

Article XV **DAMAGE OR DESTRUCTION**

15.1 Insured Casualty. In the event that the Premises are partially or totally destroyed by fire or any other peril covered by insurance maintained by Landlord, Landlord shall, within a period of one hundred eighty (180) days after the occurrence of such destruction, but only to the extent that proceeds of such insurance are available to Landlord for such purpose, commence reconstruction and restoration of the Premises and prosecute the same diligently to completion,

in which event this Lease shall continue in full force and effect. In the event insurance proceeds are not sufficient to pay the cost of such reconstruction, or if the damage or destruction is due to the acts or omissions of Tenant, its agents, employees or contractors, or if Landlord is restricted by any governmental authority, Landlord may elect to either terminate this Lease or pay the cost of such reconstruction. Such reconstruction shall be only to the extent necessary to restore the Landlord's responsible areas in the Premises, and Tenant shall be obligated for the restoration of all of Tenant's leasehold improvements, trade fixtures and other personal property on the Premises.

15.2 Uninsured Casualty. In the event that the Premises are partially or totally destroyed as a result of any casualty or peril not covered by Landlord's insurance, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction (a) commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or (b) notify Tenant in writing that it elects not to so reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of service of such notice, unless Tenant is unable to continue the operation of its business after the occurrence of such destruction, in which event this Lease shall cease and terminate as of the date of such destruction. In the event of any reconstruction of the Premises by Landlord following destruction as a result of any casualty or peril not covered by Landlord's insurance, such reconstruction shall be only to the extent necessary to restore the Landlord's responsible areas in the Premises, and Tenant shall be obligated for the restoration of all of Tenant's leasehold improvements, trade fixtures and other personal property on the Premises.

15.3 Damage to the Center. Notwithstanding anything to the contrary herein contained, in the event of a total destruction of the Center or a partial destruction of the Center, the cost of restoration of which would exceed one-third (1/3) of the then replacement value of the Center, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore the Center, in which event this Lease shall cease and terminate as of the date of such destruction.

15.4 Damage Near End of Term. Notwithstanding the foregoing, in the event that the Premises are partially or totally destroyed during the last two (2) years of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease by giving written notice to the other of the exercise of such option within thirty (30) days after such destruction, in which event this Lease shall cease and terminate as of the date of service of such notice; provided, however, Tenant may nullify Landlord's election to terminate the Lease pursuant to this Section 15.4 if Tenant gives Landlord written notice that Tenant elects to exercise its option under Section 3.4 to extend the Lease Term within fifteen days after the date of Landlord's termination notice. If Tenant timely elects to nullify Landlord's termination of the Lease pursuant to this Section 16.4, the Lease shall continue in full force and effect. For the purposes of this Article, partial destruction shall be deemed to be a destruction to an extent of at least one-third (1/3) of the full replacement cost of the Premises as of the date of destruction.

15.5 Release of Liability. In the event of any termination of this Lease in accordance with this Article, the parties shall be released thereby without further obligation to the other party coincidental with the surrender of possession of the Premises to Landlord except for items which have theretofore accrued and are then unpaid or unperformed, and except for Tenant's indemnity obligations, which shall survive the termination of the Lease.

15.6 Abatement of Rent. In the event of reconstruction and restoration as herein provided, and provided Tenant has maintained the business interruption or loss of income insurance required pursuant to Article VII, to the extent that the proceeds of such business interruption or loss of income insurance may be exhausted during the period of reconstruction and restoration, Base Rent payable hereunder shall be thereafter abated proportionately with the degree to which Tenant's use of the Premises is impaired during the remainder of the period of reconstruction and restoration; provided, however, the amount of Base Rent abated pursuant to this Section 15.6 shall in no event exceed the amount of loss of rental insurance proceeds

actually received by Landlord. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay additional rent and all other charges, except the entire Base Rent, shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such destruction, reconstruction or restoration.

Article XVI COMMON AREAS

16.1 Use of Common Areas. There shall be available in the Center certain areas and facilities to be used for automobile parking and for the general use, convenience and benefit of the customers and patrons of Tenant and of the other tenants, owners and occupants of the Center, which areas together with the service corridors and all other service facilities and equipment are referred to herein as "**common areas.**" Except as otherwise specifically provided in this Lease, Tenant and its employees and invitees are authorized, empowered and privileged to use the common areas in common with other authorized persons, as determined by Landlord, during the Lease Term. Landlord shall keep or cause to be kept said common areas in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof.

16.2 Enlargement of Common Areas. Should Landlord acquire or make available additional land not shown as part of the Center on Exhibit "A" and make the same available as common areas, the expenses incurred by Landlord in connection with the operation, maintenance, repair and replacement of common areas also shall include all of the aforementioned expenses incurred and paid in connection with said additional land.

16.3 Common Area Rules and Regulations.

(a) Landlord shall at all times have the right and privilege of determining the nature and extent of the common areas, whether the same shall be surface, underground or multiple deck, and of making such changes therein and thereto from time to time which in its opinion are deemed to be desirable and for the best interests of all persons using such common areas, including the location and relocation of driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas and all other facilities thereof.

(b) Nothing contained herein shall be deemed to create any liability upon Landlord for any damage to motor vehicles of customers or employees or for loss of property from within such motor vehicles, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees.

(c) Landlord shall have the right to establish and, from time to time, to change, alter and amend, and to enforce against Tenant and the other users of the common areas, such reasonable rules and regulations (including the exclusion of, or designation of areas for, employees' parking) as may be deemed necessary or advisable by Landlord for the proper and efficient operation and maintenance of the common areas. The rules and regulations herein provided for may include, without limitation, the hours during which the common areas shall be open for use. Landlord may, if in its opinion the same be advisable, establish a system or systems of validation or similar operation, including a system of charges against non-validated parking checks of users, and Tenant agrees to conform to and abide by all such rules and regulations in its use and the use of its customers and patrons with respect to said automobile parking areas; provided, however, that all such rules and regulations and such types of operation or validation of parking checks and other matters affecting the customers and patrons of Tenant shall apply equally and without discrimination to all persons entitled to the use of such automobile parking areas.

16.4 Control of Common Area. Landlord shall at all times during the Lease Term have the sole and exclusive control of the automobile parking areas and structures, the parking

spaces therein, driveways, entrances and exits and the sidewalks and pedestrian passageways and other common areas and may, at any time and from time to time during the Lease Term, exclude and restrain any person from use or occupancy thereof excepting, however, bona fide customers, patrons and service suppliers of Tenant and other tenants of Landlord who make use of such areas in accordance with the rules and regulations established by Landlord from time to time with respect thereto. The rights of Tenant in and to the common areas shall at all times be subject to the rights of Landlord, the other tenants of Landlord, if any, to use the same in common with Tenant, and it shall be the duty of Tenant to keep all of such areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operation and to permit the use of any of such areas only for normal parking and ingress and egress by customers, patrons and service suppliers to and from the building occupied by Tenant and the other tenants of Landlord.

If in the opinion of Landlord unauthorized persons are using any of the common areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from the common areas or to restrain the use of any of such areas by unauthorized persons.

Article XVII TENANT'S DEFAULTS; REMEDIES

17.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default":

- (a) Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, for a period of five (5) days after written notice from Landlord to Tenant (provided, however, any notice shall be in lieu of, and not in addition to, any notice required under any applicable statute); or
- (b) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for fifteen (15) days after written notice thereof from Landlord to Tenant; provided that, if the nature of such default is such that the same cannot reasonably be cured within a fifteen (15)-day period, Tenant shall not be deemed to be in default if it shall commence such cure within such period and thereafter diligently pursue such cure to completion (provided, however, any notice shall be in lieu of, and not in addition to, any notice required under any applicable statute); or
- (c) Abandonment or vacation of the Premises by Tenant defined to be failure to occupy and operate Tenant's business on the Premises following the completion of Tenant's Work for ten (10) consecutive days) of the Premises by Tenant, except during temporary closures of the Premises approved by Landlord for repairs and remodeling (which shall be diligently pursued) and while the Premises are untenantable by reason of fire or other unavoidable casualty; or
- (d) To the extent permitted by law, a general assignment by Tenant for the benefit of creditors, or the filing by or against Tenant of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant the same is dismissed within ninety (90) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant, unless possession is restored to Tenant within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days.

17.2 Remedies. In the Event of Default by Tenant, Landlord shall have the following rights and remedies, in addition to any other remedies available to it at law or in equity, including injunction:

- (a) **Landlord's Right to Terminate Lease.** Landlord shall have the immediate option without further notice to Tenant to terminate this Lease all rights of Tenant hereunder, and

remove all persons and property from the Premises. In the event that Landlord shall elect so to terminate this Lease, then Landlord may recover from Tenant: (i) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom including, but not limited to, any costs or expenses incurred by Landlord in (A) retaking possession of the Premises, including reasonable attorneys' fees thereof; (B) maintaining or preserving the Premises after such default; (C) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting; (D) leasing commissions; (E) any other costs necessary or appropriate to relet the Premises; and (F) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. As used in clauses (i) and (ii) above, the "worth at the time of the award" shall be computed by allowing interest at the interest rate specified in Section 27.14. As used in clause (iii) above, the "worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

(b) Landlord's Right to Reenter the Premises. Landlord shall have the right to reenter the Premises and remove all persons and property therefrom by summary proceedings or otherwise; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant or disposed of in a reasonable manner by Landlord. Landlord shall have the right, even though Landlord may have re-entered the Premises, to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(c) Landlord's Right to Recover Rents or Relet. If Landlord does not elect to terminate this Lease, then Landlord may from time to time, without terminating this Lease, either recover all rental as it becomes due or relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. It is the intention of the parties that in addition to, and without limitation upon, all other rights and remedies set forth in this Lease, Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations.

(d) Landlord's Right to Perform Tenant's Obligation. Landlord shall have the right, but not the obligation, without further notice to Tenant, to incur any expense necessary to perform the obligations of Tenant which Tenant has failed to perform or to otherwise cure Tenant's default, and Tenant shall pay to Landlord the cost thereof upon written demand by Landlord. Additionally, Landlord shall have the right to remedy any default of an emergency nature, in the event Tenant fails to commence to cure any default creating an emergency situation promptly upon being given notice which is reasonable under the circumstances, and Landlord shall have the right to remedy such a default without notice (if the giving of notice is not reasonably practicable) in the event of an emergency. Landlord's right to perform Tenant's obligations pursuant to this paragraph shall not be deemed to: (i) impose any obligation on Landlord to do so; (ii) render the Landlord liable to the Tenant or any third party for an election not to do so; (iii) relieve the Tenant from any performance obligation hereunder; (iv) relieve the Tenant from any indemnity obligation as provided in this Lease, or (v) cure Tenant's default or limit in any manner any of Landlord's rights and remedies under this Lease including, without limitation, Landlord's right to terminate the Lease due to such default by Tenant.

For the purposes of this Section 17.2, all Rent other than Base Rent including, but not limited to, common area expenses, shall be computed on the basis of the average monthly amount thereof accruing during the twelve (12) month period immediately preceding notice to Tenant of Tenant's default unless a twelve (12)-month period of this Lease has not elapsed, in which case the average monthly amount shall be based upon the entire period of Tenant's

occupancy of the Premises. In the Event of Default, all of Tenant's fixtures, furniture, equipment, improvements, additions, alterations and other personal property shall remain on the Premises and, during the period of such default, Landlord shall have the right to require Tenant to remove the same forthwith.

17.3 Application for Rent. In the event that Landlord shall elect to relet the Premises following an Event of Default by Tenant, then rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness, other than Base Rent due hereunder, owed by Tenant to Landlord; second, to the payment of any cost of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of Base Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting, including but not limited to brokerage commissions, or in making alterations and repairs not covered by the rentals received from such reletting.

17.4 No Termination. No re-entry or taking possession of the Premises by Landlord pursuant to this Article XVII, shall be construed as an election to terminate this Lease unless a written notice of such intention be given by Landlord to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Landlord may at any time after such reletting elect to terminate this Lease for any such default by Tenant.

Should Landlord have re-entered the Premises under the provisions of Section 18.2(c) above, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer or eviction statutes of the State of Arizona and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notice and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of Tenant.

17.5 Efforts to Relet. For the purposes of this Article XVIII, Tenant's right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant's right to possession.

17.6 No Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and executed by Landlord.

Article XVIII **DEFAULT BY LANDLORD**

Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying the failure and state that it is a "notice of default" and, following Landlord's failure to act within such thirty (30)-day notice period, to the holder of any first mortgage or deed of trust covering the Premises, whose name and address shall have theretofore been furnished to Tenant in writing specifying wherein Landlord has failed to perform such obligation; provided, however, if the nature of Landlord's obligation is such that more than sixty (60) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. In the case of a default by Landlord, prior to Tenant's exercise of any remedy, the holder of any first mortgage or deed of trust encumbering the Center shall have the right, but not the obligation, to cure such a default. In no event shall Landlord be liable for consequential damages or Tenant's lost profits resulting from Landlord's default. If it is determined in any proceedings that Landlord has improperly failed to grant its consent or approval, where such consent or approval is required by this Lease, Tenant's sole remedy shall be to obtain declaratory relief determining such withholding to have been improper.

Article XIX **ATTORNEYS' FEES**

In the event of any legal action or proceeding brought by either party against the other arising from or based on the Lease (including, but not limited to, enforcing any indemnity provision set forth in this Lease), other than any legal action or proceeding related to or in connection with a bankruptcy case or cases in which Tenant, or any indemnitor of Landlord is a debtor, the prevailing party shall be entitled to recover from the non-prevailing party or parties its reasonable fees and costs and disbursements incurred by such prevailing party and by its attorneys in such action or proceeding, including fees and costs of appeal, if any. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as part of the judgment.

Article XX **EMINENT DOMAIN**

20.1 Taking Resulting in Termination. In the event that all or substantially all of the Premises shall be taken under the power of eminent domain, or that any portion of the Center shall be so taken so as to render the Center not reasonably suitable for continuation of business in Landlord's or Landlord's lender's absolute discretion, this Lease shall thereupon terminate as of the date possession shall be so taken. In the event that a portion of the Floor Area of the Premises shall be taken under the power of eminent domain and the portion not so taken will not be reasonably adequate for the operation of Tenant's business, notwithstanding Landlord's performance of restoration as hereinafter provided, this Lease shall terminate as of the date possession of such portion is taken. If this Lease is terminated, all Rent shall be paid up to the date that actual possession of the Premises, or a portion thereof, is taken by public authority, and Landlord shall make an equitable refund of any Rent paid by Tenant in advance and not yet earned.

20.2 Partial Taking. In the event of any taking under the power of eminent domain which does not terminate this Lease as aforesaid, any obligation of Tenant under this Lease to pay rent, and all of the other provisions of this Lease, shall remain in full force and effect, except that the Base Rent only shall be reduced in the same proportion that the amount of Floor Area of the Premises taken bears to the Floor Area of the Premises immediately prior to such taking, and Landlord shall, to the extent of the condemnation award, at Landlord's own cost and expense, restore such part of Landlord's Work in the Premises as is not taken to as near its former condition as the circumstances will permit, and Tenant shall do likewise with respect to such part of Tenant's Work as is not taken.

20.3 Award. All damages awarded for any such taking under the power of eminent domain, whether for the whole or a part of the Premises, shall belong to and be the property of Landlord, whether such damages shall be awarded as compensation for diminution in value of the leasehold or for the fee of the Premises; provided, however, that nothing herein contained shall prevent Tenant from making claim for loss or damage to Tenant's business operations (i.e., goodwill), trade fixtures and removable personal property, and relocation costs.

20.4 Transfer Under Threat of Taking. A voluntary sale by Landlord of all or any portion of the Center to a public or quasi-public body, agency or person, corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking by eminent domain.

Article XXI **SUBORDINATION; ATTORNMENT**

21.1 Subordination. This Lease is subject and subordinate to all ground and/or other underlying leases including sale and leaseback leases, mortgages and deeds of trust or other encumbrances which now affect the Center, the Premises or any portion thereof, together with all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, if the lessor under any such lease or the holder or holders of any such mortgage, deed of trust or any encumbrance shall advise Landlord that it or they desire to require this Lease to be prior and superior thereto, upon written request of Landlord to Tenant, Tenant agrees to promptly execute, acknowledge and deliver any and all documents or instruments which Landlord or such lessor, holder or holders deem necessary or desirable for purposes therefor. This Lease is further subject and subordinate to (a) all covenants, conditions, restrictions, easements and any other matters or documents of record, together with all renewals, modifications, consolidations, replacements and extensions thereof; and (b) any zoning laws of the city, county and state where the Center is situated. Tenant hereby covenants that Tenant, and all persons in possession or holding under Tenant, will conform to and will not violate the terms of said matters of record.

21.2 Future Encumbrance. Landlord shall have the right to cause this Lease to be and become and remain subject and subordinate to any and all ground and/or other underlying leases, including sale and leaseback leases, mortgages or deeds of trust or other encumbrances which may hereafter be executed covering the Center, the Premises, the real property thereunder or any portion thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advance, together with interest thereon, and subject to all of the terms and provisions thereof; and Tenant agrees, within ten (10) days after Landlord's written request therefor, to execute, acknowledge and deliver upon request any and all documents or instruments requested by Landlord or necessary or proper to assure the subordination of this Lease to any such mortgages, deeds of trust, leasehold estates or other encumbrances.

21.3 Attornment. Notwithstanding anything to the contrary set forth in this Article, Tenant hereby attorns and agrees to attorn to any person, firm or corporation purchasing or otherwise acquiring Landlord's interest in the Center, the Premises, or the real property thereunder or any portion thereof, at any sale or other proceeding or pursuant to the exercise of any rights, powers, or remedies under such mortgages or deeds of trust or ground or underlying leases as if such person, firm or corporation had been named as Landlord herein, it being intended hereby that, if this Lease shall be terminated, cut off, or otherwise defeated by reason of any act or actions by the owner or holder of any such mortgage or deed of trust, or the lessor under any such leasehold estate, then at the option of any such person, firm or corporation so purchasing or otherwise acquiring Landlord's interest in the Center, the Premises, or the real property thereunder or any portion thereof, this Lease shall continue in full force and effect. Tenant hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver any documents provided herein for and in the name of Tenant, and such power, being coupled with any interest, is irrevocable.

21.4 Estoppel Certificate. Tenant agrees to deliver to Landlord within ten (10) days after written request therefor an estoppel statement from Tenant and any assignee or sublessee of Tenant in the form attached hereto as Exhibit "B" or as reasonably required by Landlord.

Tenant's failure or refusal to timely execute and delivery such certificate(s), following an additional five (5) business days' written notice, shall constitute an acknowledgment by Tenant that the statements in such certificate are true and correct without exception.

Article XXII SALE OF PREMISES BY LANDLORD

In the event of any sale, exchange or other conveyance of Landlord's interest in the Center or any portion or portions thereof by Landlord and an assignment by Landlord of this Lease, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale, exchange or conveyance and assignment.

Article XXIII HOLDOVER BY TENANT

23.1 Holdover Tenancy. In the event that Tenant shall hold the Premises after the expiration of the Lease Term hereof with the consent of Landlord, express or implied, such holding over, in the absence of written agreement on the subject, shall be deemed to have created a tenancy from month-to-month, Terminable on thirty (30) days' written notice by either party to the other, upon a monthly rental hereinafter stated, but otherwise subject to all of the terms and provisions of this Lease. Such monthly rental shall equal one hundred fifty percent (150%) of the monthly rental payable by Tenant to Landlord for the preceding twelve (12)-month period including, but not limited to, Base Rent, and any other charges payable by Tenant under this Lease.

23.2 Failure to Surrender. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant hereby agrees to indemnify and hold Landlord harmless from loss or liability resulting from such failure including, but not limited to, any claims made by any succeeding tenant based upon Tenant's failure to surrender.

Article XXIV NOTICES

24.1 Notices. Notices, payments and communications required or permitted to be given in connection with this Lease shall be mailed, by certified or registered United States mail, postage prepaid, or delivered (either personal delivery or delivery by private express courier service such as FedEx). Notices may also be given by fax, provided that the notice is concurrently given by one of the methods described in the preceding sentence and that confirmation of completed transmission is obtained. The addresses for notices are set forth in Section 1.1 of this Lease. The person and the place to which notices are to be mailed or delivered may be changed by either party by written notice to the other party given in accordance with the provisions of this Article. Notices sent in accordance with this Article shall be effective (i) in the case of fax notices, upon receiving confirmation that the facsimile has been transmitted (provided that if the faxed notice is received outside normal business hours [i.e., after 5:00 p.m. on weekdays, and anytime on weekends or holidays], such notice shall not be effective until the next business day), and (ii) in the case of all other delivery methods, upon receipt or on the date of attempted delivery of such notice.

Article XXV CAPTIONS AND TERMS

25.1 Reference Only. The captions of Articles and Sections of this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease. Except as otherwise specifically stated in this Lease, the "Lease Term" shall include the original term and any extension, renewal or holdover thereof. "Herein," "hereunder" and words of similar import refer to this Lease as an entirety and not to particular Sections or Articles of this

Lease. The word "including" shall be construed to be followed by the words "without limitation."

25.2 Parties. If more than one (1) person or corporation is named as Tenant in this Lease and executes the same as such, the word "Tenant," wherever used in this Lease, is intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with the performance of all of the terms, covenants and provisions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter as the case may be, and the use of the singular shall include the plural, as the context may require.

Article XXVI OBLIGATIONS OF SUCCESSORS

Each and all of the provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, and except as otherwise specifically provided in this Lease (including, without limitation, Article XII), their respective heirs, executors, administrators, successors and assigns, subject, however, to all agreements, covenants, and restrictions contained elsewhere in this Lease with respect to the assignment, transfer, encumbering or subletting of all or any part of Tenant's interest in this Lease or the Premises.

Article XXVII MISCELLANEOUS PROVISIONS

27.1 Separability. It is agreed that, if any provision of this Lease shall be determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect.

27.2 Warranty of Authority. If Tenant is a corporation, partnership, limited liability company or other entity, each individual executing this Lease on behalf of the entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the entity and that this Lease is binding upon the entity. If Tenant is an entity, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that (a) Tenant is a duly qualified entity and all steps have been taken prior to the Effective Date hereof to qualify Tenant to do business in the State of Arizona; (b) all franchise and other taxes have been paid to date; and (c) all forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due.

27.3 Merger. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease, and this Lease entirely supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises and shall be considered to be the only agreement between the parties hereto and their representatives and agents. None of the terms, covenants, conditions or provisions of this Lease may be modified, deleted or added to except by written Lease Amendment signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is totally upon the representations and agreements contained in this Lease.

27.4 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord in the exercise of its sole business judgment shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Center.

27.5 Arbitration. The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim of controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The

recipient shall have seven (7) days to prepare and deliver a response. Thereafter, in the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Contractor shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Contractor. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

27.6 Governing Law. The laws of the State of Arizona shall govern the validity, construction, performance and enforcement of this Lease. Should either party institute legal action to enforce any obligation contained herein, it is agreed that the proper venue of such suit or action shall be the county and judicial district in which the Center is located. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant but shall be interpreted in accordance with the general tenor of its language.

27.7 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other non-financial causes beyond the reasonable control of the party obligated to perform, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage, except the obligations, once accrued, imposed with regard to rental and other charges to be paid by Tenant pursuant to this Lease. Tenant must provide notice of any force majeure delay to Landlord within five (5) days of the occurrence of such delay or Tenant waives its right to claim a force majeure delay. In addition, delays caused by governmental authorities in obtaining Tenant's permits shall not be deemed to be a force majeure event and shall not postpone the Rent Commencement Date. Except as expressly set forth in this Lease, in no event shall Tenant's obligation to pay Rent be abated or postponed by an event of force majeure.

27.8 Cumulative Rights. The various rights, options, elections, powers and remedies contained in this Lease shall be construed as cumulative, and no one remedy shall be exclusive of any other remedy, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed.

27.9 Time. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

27.10 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of Rent nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

27.11 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee when due, then Tenant shall pay to Landlord a late charge equal to Two Hundred Fifty Dollars (\$250.00) or four percent (4%) of the amount due, whichever is higher, provided that such amount will not exceed the maximum rate permitted by law, plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder; provided, however, a late charge shall not be assessed

with respect to the first late payment of Rent in any twelve (12)-month period unless Tenant fails to pay such amount for a period of ten (10) days after written notice from Landlord to Tenant. Following the first late payment in any twelve (12)-month period, no notice by Landlord shall be required as a condition for Landlord's right to collect a late charge from Tenant. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. Tenant hereby agrees that, if Tenant is subject to a late charge more than two (2) times in any twelve (12)-month period, Base Rent for the following twelve (12) months shall automatically be adjusted to be payable quarterly, in advance, commencing upon the first day of the month following such consecutive late month and continuing for the next twelve (12) months on a quarterly basis in advance.

27.12 Financial Statements. At any time during the Lease Term, Tenant shall, upon ten (10) days' prior written notice from Landlord, provide Landlord or any institutional lender which is negotiating with Landlord for interim, construction or permanent financing, with a confidential current financial statement (dated within ninety (90) days of the date Tenant receives Landlord's notice) and financial statements for each of the two (2) years prior to the then current fiscal statement year. Such current statement shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

27.13 Real Estate Brokers. Landlord and Tenant represent and warrant that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and agree to indemnify the other against and hold it harmless from all liability arising from any such claim including, without limitation, the cost of attorneys' fees in connection therewith.

27.14 Interest. Tenant shall pay to Landlord when due all sums of money required to be paid pursuant to this Lease. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible with the next installment of Base Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord. If Tenant shall fail to pay, when the same is due and payable, any Rent or other charge, such unpaid amounts shall bear interest at the lesser of ten percent (10%) per annum or the maximum lawful rate from the date due to the date of payment. If the interest rate specified herein is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

27.15 No Offer to Lease. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, occupancy of the Premises; and this document shall become effective and binding only upon execution and delivery hereof by Tenant and by Landlord (or, when duly authorized, by Landlord's agent or employee). No act or omission of any agent of Landlord or Landlord's broker, if any, shall alter, change or modify any of the provisions hereof.

27.16 Limitation of Landlord Liability. In consideration of the benefits accruing hereunder, Tenant on behalf of itself and all successors and assigns of Tenant covenants and agrees that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: (a) the sole and exclusive remedy shall be against Landlord's interest in the Center; (b) no partner or member of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership); (c) no service of process shall be made against any partner or member of Landlord (except as may be necessary to secure jurisdiction of the partnership); (d) no partner or member of Landlord shall be required to answer or otherwise plead to any service of process; (e) no judgment will be taken against any partner or member of Landlord; (f) any judgment taken against any partner or member of Landlord may be vacated and set aside at any time after the fact; (g) no writ of execution will be levied against the assets of any partner or member of Landlord; (h) the obligations under this Lease do not constitute personal obligations of the individual partners, members, directors, officers or

shareholders of Landlord and Tenant shall not seek recourse against individual partners, members, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction in any liability in respect to this Lease; (i) in no event shall Landlord be liable to Tenant for special or consequential damages; and (j) these covenants and agreements are enforceable both by Landlord and also by any partner or member of Landlord.

27.17 Time Periods. If the time period by which any right, option or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

27.18 Conflicts of Interest. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Lease.

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

“TENANT”:

CITY OF MARICOPA, a municipal corporation
on behalf of Maricopa Domestic Water Improvement
District

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

“LANDLORD”:

DUKE PLAZA LLC,
an Arizona limited liability company

By: _____
Sean Katona, Manager

EXHIBIT "A"

SITE PLAN

(TO BE ATTACHED)

00011058 2This Site Plan is for illustration and the owner reserves the right to change, add to or omit the structures, common areas and/or land areas shown. This Plan is not intended to make any representations or warranty as to the size and nature of improvements to be constructed, or as to the identity or location of any tenant in the Center.

EXHIBIT "A"

EXHIBIT "B"
FORM OF ESTOPPEL CERTIFICATE

To: _____

Re: That certain Retail Lease dated January 1, 2018, by and between DUKE PLAZA LLC, an Arizona limited liability company, as "**Landlord**," and CITY OF MARICOPA, a municipal corporation on behalf of Maricopa Domestic Water Improvement District, as "**Tenant**," for a forty-three (43) month term which commenced on January 1, 2018 (the "**Lease**"), of the premises (the "**Premises**") containing approximately Nine Hundred Ninety (990) square feet of Floor Area within that certain shopping center located at 19756 N. John Wayne Parkway, Suite 109, Maricopa, Arizona (the "**Center**").

Gentlemen:

Tenant hereby certifies, acknowledges and agrees as follows:

1. Tenant has accepted the Premises, presently occupies the same, and is paying rent on a current basis.
2. The Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except as follows:
3. The Lease represents the entire agreement between the parties as to said leasing.
4. The Rent Commencement Date of the Lease is _____.
5. There is an unexpired term under said Lease of _____ (____) years, and the term of the Lease commenced on _____, 20__ and expires on _____, 20__.
6. Tenant's current Base Rent under the Lease is _____
____ Dollars (\$_____).
7. Tenant's estimated payment to Landlord for common area expenses, real property taxes, and Landlord's insurance expenses under the Lease is currently _____
____ Dollars (\$_____) per month.
8. Tenant's last payment of rent was made for the rental payment due _____
_____.
9. No rent has been paid by Tenant in advance under the Lease except for _____, and Tenant has no claim of offset or credits against rentals under the Lease.
10. A security deposit _____
Dollars (\$_____) has been made with Landlord.
11. Tenant is entitled to the following renewal options under the Lease:
_____.
12. The following uncompleted tenant improvement work on the Premises is required to be performed by [Tenant] [Landlord]:
13. Tenant has no set-offs, claims, or defenses to the enforcement of the Lease; and there are no periods of free rental applicable to the Term of the Lease.

14. Tenant is not in default in the performance of the Lease, has not committed any breach of the Lease, no notice of default has been given to Tenant, and Tenant is not the subject of any federal or state, bankruptcy, insolvency or liquidation proceeding.

15. Landlord is not in default in the performance of the Lease, has not committed any breach of the Lease, no notice of default has been given to Landlord, and Landlord has fulfilled all representations and warranties and all finish work on the Premises required of Landlord.

16. To the best of Tenant's knowledge, its use of the Premises during its lease term has complied and will continue to comply with all applicable federal, state, county and local laws, rules and regulations, including environmental laws, rules and regulations.

17. All insurance required of Tenant by the Lease has been provided by Tenant and all premiums have been paid.

The undersigned Tenant hereby agrees:

1. To disclaim all right, title or interest in said Premises except the rights granted by said Lease; and

2. To notify the holder of any mortgage affecting the Premises of any default on the part of Landlord which Tenant proposes to cure and deduct from rentals, or use as a basis for cancellation of the Lease and hereby grants to any such holder the option to cure said default within a reasonable length of time. Tenant neither agrees not to invoke any of its remedies under the Lease during any period that any such holder is proceeding to cure such default with due diligence, or is taking steps with due diligence to obtain the legal right to enter the Premises and cure the default.

The undersigned understands and acknowledges that ("Purchaser") may be relying upon the certifications and agreements set forth herein in connection with a purchase of the Center, and, also, that ("Lender") may be relying upon the certifications and agreements set forth herein in connection with a loan on the Center, and agrees that Purchaser and Lender, and their respective successors and assigns, may rely upon such certifications and agreements as conclusive evidence of the matters set forth herein. Notwithstanding the foregoing, the certification made herein shall not be an affirmative representation, warranty or covenant and shall in no event subject the undersigned to any liability whatsoever, the sole effect of the same being to estop the undersigned from taking the position against Landlord, Lender or their successors and assigns which is inconsistent with the statements contained in the Estoppel Certificate to the extent that such parties (a) did not have knowledge of facts contrary to those contained herein, and (b) reasonably relied to their detriment on the certifications contained herein.

EXECUTED this _____ day of _____, 20___.

_____,
a _____

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT "C"
RULES AND REGULATIONS

Landlord hereby establishes the following rules and regulations for the safety, care and cleanliness of (i) the store areas (hereinafter referred to as the "**demised premises**") of any tenant or tenants of the Center (hereinafter referred to as the "**tenant**"); (ii) the common area; and (iii) the Center in general, or for the preservation of good order:

A. FOR THE STORE AREAS:

1. All floor areas of the demised premises (including vestibules, entrances, and air returns), doors, fixtures, windows, and plate glass shall be maintained in a clean, safe and good condition.
2. All trash, refuse, and waste materials shall be stored in adequate containers and regularly removed from the demised premises. These containers shall not be visible to the general public and shall not constitute a health or fire hazard, or a nuisance to any other tenant. In the event that any tenant shall fail to remedy such a health or fire hazard, or nuisance, within five (5) days after written notice by Landlord, Landlord may remedy and/or correct such health or fire hazard or nuisance at the expense of the tenant involved.
3. No portion of the demised premises shall be used for lodging purposes.
4. Neither sidewalks nor walkways shall be used to display, store, or place any merchandise, equipment or devices, except in connection with sidewalk sales held with Landlord's prior written approval. The roof of the demised premises shall not be used for the storage of merchandise or equipment.
5. No public telephone, newsstand, shoeshine stand, refreshment, vending or other coin operated machine shall be installed or placed on the sidewalk or walkway area adjacent to the demised premises or on the common areas without Landlord's prior written approval in each instance.
6. No person or persons shall use the demised premises, or any part thereof, for conducting therein a second-hand store, auction, distress or fire sale or bankruptcy sale, or "going-out-of-business" sale or "lost our lease" sale, without Landlord's prior written consent.
7. No portion of the demised premises shall be used for the storage of any merchandise, materials or other properties, other than those reasonably necessary for the operation of a tenant's business. Landlord may, from time to time, inspect the demised premises to insure compliance with the foregoing provisions.
8. Except for professionally prepared signs, Tenant shall not black out or otherwise obstruct the windows of the demised premises, without Landlord's prior written consent.
9. If a tenant provides its customers with the use of shopping carts and/or baskets, such tenant shall be responsible for causing said carts and/or baskets to be stored only in areas designated by Landlord. If such tenant fails to routinely collect and store said carts as necessary (at least twice on a daily basis), Landlord may assume the responsibility of same and may bill the tenant involved on an estimated monthly basis for such service.

B. FOR THE COMMON AREAS:

1. All tenants and their authorized representatives and invitees shall use any roadway, walkway, or mall (including the enclosed mall, if any) only for ingress and egress from the stores in the Center. Use of the common areas shall be in an orderly manner in accordance with directional or other signs or guides. Roadways shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. Walkways and malls (including the enclosed mall, if any) shall be used only for pedestrian travel.
2. All tenants and their authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner

within the painted lines defining the individual parking places. During peak periods of business activity, Landlord can impose any and all controls Landlord deems necessary to operate the parking lot including, but not limited to, the length of time for parking use.

3. No person shall use any utility area or truck loading area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. No employee shall use any area for motor vehicle parking except the areas specifically designated for employee parking. Landlord reserves the right to designate an employee parking area for each tenant, at Landlord's sole discretion. No tenant shall designate an area for employee parking except the areas designated in writing by Landlord for such tenant.

5. Without the prior written consent of Landlord, no person shall use any of the common areas for:

(a) Vending, peddling or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet, or other matter;

(b) Exhibiting any non-professional sign, placard, banner, notice or other written material;

(c) Distributing any circular, booklet, handbill, placard, or other material;

(d) Soliciting membership in any organization, group, or association, or soliciting contributions for any purpose;

(e) Parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the common areas or be detrimental to any of the business establishments in the Center;

(f) Using the common areas for any purpose when none of the business establishments in the Center are open for business;

(g) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles;

(h) Except for normal and customary sound devices for Tenant's drive-thru facilities, using a sound-making device that is grossly annoying or unpleasant to the general public; or

(i) Damaging any sign, light standard, or fixture, landscaping material or other improvement or property within the Center.

The above listing of specific prohibitions is not intended to be exclusive, but is intended to indicate the manner in which the right to use the common areas solely as a means of access and convenience in shopping at the business establishments in the Center is limited and controlled by Landlord.