

**RETAIL LEASE**

**FOR**

**THE SOLARY**

**OVIEDO LANDING, LLC, a Florida  
limited liability company, AS LANDLORD**

**AND**

**CHECK FIVE LLC, a Delaware  
limited liability company, as TENANT**

**The submission of this document for examination does not constitute an option or offer to lease space. This document shall have no binding effect on the parties unless executed by the Landlord and the executed copy is delivered to the Tenant.**

## RETAIL LEASE

This Retail Lease (this "Lease") is made this \_\_\_ day of March, 2022 by and between **OVIEDO LANDING, LLC**, a Florida limited liability company ("Landlord"), and **CHECK FIVE LLC**, a Delaware limited liability company d/b/a Success TMS ("Tenant").

### 1. BASIC LEASE PROVISIONS:

- 1.1 Shopping Center Name: The Solary  
1890 County Road 419  
Oviedo, FL 32765  
The Shopping Center is more particularly described in Schedule 1.
- 1.2 Unit/Suite No.: Suite 1020-1030
- 1.3 Premises: 2,663 square feet of Net Rentable Area (defined below) as reflected on the site plan attached hereto as **Schedule 2** (the "Site Plan"). It is stipulated and agreed that: (i) that the square footage for the Premises is an approximation which is reasonable and any payments based thereon are not subject to reduction whether or not the actual size is more or less than stated herein; and (ii) the square footage figure has been agreed upon by Tenant as final and correct and is not subject to challenge or dispute by Tenant.
- 1.4 Tenant's Percentage Share: Initially, Tenant's Percentage Share will be 16.6% based upon a fraction of which the numerator is 2,663 (the Net Rentable Area contained within the Premises) and the denominator is 16,023 (the Net Rentable Area in the Shopping Center). However, Tenant's Percentage Share shall vary each time that either the Net Rentable Area of the Premises changes and/or the Net Rentable Area of the Shopping Center changes in the same manner as determined above.
- 1.5 Commencement Date: Upon Substantial Completion of Tenant Improvements as specified in **Schedule 3**.
- 1.6 Abatement Period: Tennant will have eight (8) months of free Base Rent commencing on the first day of the first month following the Commencement Date. During this period, Tennant will pay its Operating Expenses.
- 1.7 Rent Commencement Date: The first day of the first month following the conclusion of the Abatement Period.
- 1.8 Expiration Date: The date that is the last day of the ninety-eighth (98th) full calendar month after the Rent Commencement Date. Notwithstanding the foregoing, Tenant will have the option to terminate the lease after the seventy-second (72) month after Rent Commencement Date with one hundred eighty (180) days' notice, in which case the Expiration Date shall be the last day of the seventy-second (72) month after Rent Commencement Date.

1.9 Security Deposit: Equal to One (1) month gross rent and sales tax (subject to financial review and approval). (See Paragraph 23).

1.10 Base Rent:

Period (Months after Rent Commencement Date)	Annual Base Rent	Monthly Base Rent
9 – 12	\$66,575.00	\$5,547.92
13 – 24	\$67,906.50	\$5,658.88
25 – 36	\$69,264.63	\$5,772.05
37 – 48	\$70,649.92	\$5,887.49
49 – 60	\$72,062.92	\$6,005.24
61 – 72	\$73,504.18	\$6,125.35
73 – 84	\$74,974.26	\$6,247.86
85 – 96	\$76,473.75	\$6,372.81
97 – 98	\$78,003.22	\$6,500.27

1.11 Operating Expenses: Tenant's Percentage Share of Operating Expenses. The estimated monthly charge for Tenant's pro rata share of Operating Expenses during the first calendar year of the Term (or portion thereof) is \$6.92 per square foot or \$1,535.66 (plus applicable Florida sales tax). (See Paragraph 6).

1.12 Base Year: Intentionally omitted.

1.13 Percentage Rent: Intentionally omitted.

1.14 Trade Name(s): Success TMS. (See Paragraph 7.4).

1.15 Guarantor(s): Success Behavioral Holdings LLC, a Delaware limited liability company.

1.16 Address for payment of rent and notices:

Landlord:

Oviedo Landing, LLC  
c/o Harbert Realty Services of  
Florida, LLC  
2450 Maitland Center Pkwy  
Suite 200  
Maitland, FL 32751

Tenant:

Success TMS  
c/o Alex Eastwood  
Avison Young  
135 W. Central Blvd, Suite 700  
Orlando, FL 32801  
[alex.eastwood@avisonyoung.com](mailto:alex.eastwood@avisonyoung.com)

With a copy of all legal Notices only  
(not Rent payments) to:

The Bernstein Law Firm  
Attn: Michael I. Bernstein  
3050 Biscayne Boulevard, Suite 403  
Miami, Florida 33137  
Email: [michael@blfmiami.com](mailto:michael@blfmiami.com)

Check Five, LLC d/b/a SuccessTMS  
1555 Palm Beach Lakes Blvd.  
Suite 1105  
West Palm Beach, FL 33401

1.17 Broker: Landlord's Broker is Harbert Realty Services of Florida, LLC. (See **Paragraph 39**). Tenant's Broker is Avison Young.

1.18 Permitted Use: Tenant shall use the Premises solely for operation of a mental health clinic and therapy center for the provision of transcranial magnetic stimulation therapy and for no other purposes. (the "Permitted Use", See Section 7.2)

1.19 Minimum Hours of Operation:

Monday - Friday: 9:00 a.m. - 5:00 p.m.

Saturday: Intentionally omitted.

Sunday: Intentionally omitted.

1.20 Minimum Hours of Illumination (of Exterior Windows of the Premises):

Monday - Friday: 10:00 a.m. - 9:00 p.m.

Saturday: 10:00 a.m. - 9:00 p.m.

Sunday: 10:00 a.m. - 5:00 p.m.

1.21 Renewal Option(s): Two (2) Three (3) year options to renew, provided however (a) Tenant provides Landlord with not less than one hundred eighty (180) days advance written notice, and (b) Tenant is not in default at the time of giving notice.

1.22 Base Rent for Renewal Term: Rent shall increase 2% per annum during both

the Term and Option Period(s).

2. **DEFINITIONS:** Unless the context otherwise specifies or requires, the following terms will have the meanings set forth below:
- 2.1 Common Areas. All areas and facilities outside the Premises and within the exterior boundaries of the Shopping Center that are not leased to other tenants and that are provided and designated by Landlord, in its sole discretion from time to time, for the general use and convenience of Tenant and other tenants of the Shopping Center and their authorized representatives, employees, invitees and the general public. Common Areas include, but are not limited to, areas within and outside of the buildings in the Shopping Center, such as pedestrian walkways, patios, landscaped areas, sidewalks, service corridors, elevators, restrooms, stairways, decorative walls, plazas, mall throughways, loading areas, parking areas and roads.
- 2.2 Gross Sales. Intentionally omitted.
- 2.3 Lease Year. The first Lease Year shall be the period from the Commencement Date through the last day of the twelfth (12th) full calendar month after the Rent Commencement Date, and all subsequent Lease Years shall be the successive twelve (12) month periods thereafter.
- 2.4 Net Rentable Area. All floor area within the Premises measured at floor level from the midpoint of all demising walls to the exterior surface of all exterior walls and exterior glass separating the Premises from the Common Areas (without deduction for columns or projections necessary to the Shopping Center or Premises).
- 2.5 Operating Expenses. All costs of operating, servicing, administering, repairing and maintaining the Shopping Center (excluding costs paid directly by Tenant and other tenants in the Shopping Center or otherwise reimbursable and actually reimbursed to Landlord), the landscaping of Common Areas and the parking lot within the Shopping Center, including any and all reasonable and necessary costs to maintain the Shopping Center in a condition that is consistent with similarly situated shopping centers in the metropolitan center in which the Shopping Center is located. For example, Operating Expenses shall include, but shall not be limited to: (a) wages, salaries, fringe benefits and payroll burden for employees on-site utilized in the day to day operation of the Shopping Center; (b) public liability, flood, property damage and all other insurance premiums and deductibles paid by Landlord with respect to the Shopping Center, including any amounts that would be charged as premiums or deductibles if Landlord self-insures any of the insurance risks; (c) liability disclaimers; (d) water, sewer, heating, air conditioning, ventilating and all other utility charges (other than with respect to utilities separately metered and paid directly by Tenant or other tenants); (e) Taxes (defined below), including, but not limited to, the good faith, reasonable cost of contesting the validity or amount of such Taxes (regardless of whether such efforts succeed or not); (f)

janitorial services; (g) access control; (h) window cleaning; (i) elevator maintenance, if applicable; (j) fire detection and security services; (k) landscaping costs; (l) all costs of snow and ice removal; (m) trash, rubbish, garbage and other refuse removal; (n) pest control; (o) painting; (p) facade maintenance; (q) lighting; (r) exterior and partition (demising) wall repairs; (s) roof repairs; (t) maintenance of all steam, water and other water retention and discharging piping, lakes, culvers, fountains, pumps, weirs, lift stations, catch basins and other areas and facilities, whether or not on-site; (u) canal embankment and related maintenance; (v) maintenance, repair and repainting of sidewalks and general resurfacing and maintenance of parking areas; (w) sanitary control; (x) depreciation of any and all capital items used in any of such maintenance and repair activities; (y) repair, maintenance and replacement of signage located in the Shopping Center; (z) management fees (provided such management fees shall be reasonably comparable to management fees charged at other properties that are reasonably comparable to the Shopping Center, are located in the greater Orlando, Florida area, and are managed by professional third party property managers); (aa) the costs (amortized together with a reasonable finance charge) of any capital improvements that are: (i) made to the Shopping Center by Landlord primarily for the purpose of reducing Operating Expenses (regardless of whether such reduction occurs or not); or (ii) made to the Shopping Center by Landlord to comply with any Legal Requirements (defined below) that was not required of Landlord on the Commencement Date; and (bb) the costs of supplies, materials and tools used for any of the above.

Operating Expenses shall not include: (i) depreciation on the Shopping Center or any Common Areas; (ii) costs of space planning, tenant improvements, marketing expenses, finders fees and real estate broker commissions; (iii) any and all expenses for which Landlord is reimbursed (either by an insurer, condemnor, tenant or other person or entity), but only to the extent of such reimbursement; (iv) that portion of the salaries for on or off site personnel to the extent any of them work for other projects owned by Landlord or the Shopping Center's managing agent; (v) costs in connection with services or benefits of a type which are not otherwise Operating Expenses and are not available to Tenant, but are available to another tenant or occupant; (vi) mark-ups on utilities in excess of Landlord's costs therefor; (vii) Landlord's general overhead and administrative expenses not directly allocable to the operation of the Shopping Center; (viii) attorneys' fees and cost related to negotiating or enforcing any tenant lease, or resolving disputes with any lender of Landlord or obtaining any financing for the Shopping Center; (ix) cost of capital improvements unless expressly provided for in the foregoing paragraph; (x) interest on debt or amortization payments on any mortgage/deed of trust, or rent on any ground lease; (xi) federal and state taxes on income, death, estate or inheritance; or franchise taxes; (xii) reserves; (xiii) cost of repairs or replacements incurred by reason of fire or other casualty (to the extent covered by Landlord's property insurance required to be carried by Landlord pursuant to this Lease) or condemnation; (xiv) any cost or expense related to removal,

cleaning, abatement or remediation of Hazardous Substances in or about Shopping Center; (xv) costs and expenses incurred by Landlord in curing, repairing or replacing any structural portion of the Shopping Center made necessary as a result of defects in design, workmanship or materials; and (xvi) the cost of any judgment, settlement or arbitration award resulting from any negligence or misconduct of Landlord.

- 2.6 Ready for Occupancy. Intentionally omitted.
- 2.7 Taxes. All real and personal property taxes, assessments (whether they be general or special), sewer rents, rates and charges, transit taxes, taxes based upon the receipt of Rent and any other federal, state or local government charge, general, special, ordinary or extraordinary (but not including income or estate taxes), which may now or hereafter be levied or assessed against the land upon which the Shopping Center stands or the Shopping Center for such year, or the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances used in connection with the Shopping Center for the operation thereof.
- 2.8 Environmental Law. Shall mean any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).
- 2.9 Hazardous Substance. Shall mean any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant", which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products, or which becomes hazardous to the health and welfare of any occupants in the Shopping Center.
- 2.10 Legal Requirements. Shall mean any and all statutes, ordinances and requirements of all local, municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and/or the Shopping Center occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans With Disabilities Act, as amended from time to time.
- 2.11 Schedules: shall mean the Schedules attached hereto and incorporated herein by reference. This Lease contains the following Schedules:

- Schedule 1** Legal Description of Shopping Center
- Schedule 2** Site Plan
- Schedule 3** Tenant Acceptance Letter
- Schedule 4** Rules and Regulations

- Schedule 5 Prohibited Uses
- Schedule 6 Sign Criteria

2.12 Term. shall mean the period that shall commence on the Commencement Date and end on the Expiration Date, unless sooner terminate as provided herein or extended pursuant to the terms of this Lease.

**3. PREMISES:**

3.1 Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and subject to the agreements, covenants, conditions and provisions set forth in this Lease, to which Landlord and Tenant hereby mutually agree, the Premises. The parties hereby stipulate the number of square feet of Net Rentable Area in the Premises and both parties waive the right either may have to remeasure the same. Tenant agrees to accept the Premises in its "AS-IS" condition and acknowledges that no representations with respect to the condition of the Premises have been made by Landlord, but for the improvements as specified in **Schedule 3** ("Tenant Improvements"). Upon occupancy of the Premises by Tenant, Tenant shall promptly execute and deliver to Landlord the Tenant Acceptance Letter attached hereto as **Schedule 3**, verifying the completion of Tenant Improvements as referenced therein and acceptance of the Premises.

3.2 Shopping Center. The Premises are a part of the Shopping Center. Landlord may increase, reduce or change the number, dimensions or locations of the walks, buildings, mall areas, parking and other Common Areas and other improvements located in the Shopping Center in any manner that Landlord, in its sole discretion, shall deem proper. Landlord further reserves the right to make alterations and/or additions to and to build or cause to be built additional stories on the building in which the Premises are situated and to add any buildings adjoining the Premises or elsewhere in the Shopping Center. Without limiting the generality of the foregoing, Landlord reserves the right to, in its sole discretion, at all times, and from time to time throughout the Term, without incurring any liability to Tenant and without it constituting an eviction: (a) install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Shopping Center, (b) add additional tenants, retail shops, buildings, parking facilities anywhere in the Shopping Center (as may be expanded in accordance with this subparagraph), (c) to renovate the Shopping Center (such renovation shall include, but not be limited to, the right to erect scaffolding, alter the configuration of all interior and exterior portions of the Common Areas); (d) change the size and layout of the Shopping Center; (e) build and/or demolish structures and buildings, expand and/or alter the parking facilities, relocate existing buildings and structures; and (f) and install or move columns, pipes, and utility lines. Landlord shall use reasonable efforts (which shall not include any obligation to employ labor at overtime rates) to avoid unreasonable

disruption of Tenant's business during such renovation, except in the case of an emergency. Once Landlord commences any such renovation, Landlord shall diligently pursue such renovation to completion. Any addition or reduction of the Net Rentable Area of the Shopping Center resulting from Landlord's actions provided for above, shall result in recalculating Tenant ' s Percentage Share in accordance with **Paragraph 1** above.

Furthermore, Landlord shall have the right to change the Shopping Center's name without notice, to change the Shopping Center's street address upon ninety (90) days' prior notice, to grant to any person or entity the exclusive right to conduct any business or render any service in or to the Shopping Center, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose set forth in **Paragraph 1.17**, to retain at all times master keys or passkeys to the Premises, and to place such signs, notices or displays as Landlord reasonably deems necessary or desirable upon the roof and exterior of the Shopping Center.

3.3 Relocation of Tenant. Intentionally omitted.

**4. COMMON AREAS:**

4.1 Tenant's Right to Use Common Areas. Landlord grants Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas with others who are entitled to use the Common Areas subject to Landlord's rights as set forth in this Lease.

4.2 Landlord's Control. In addition to the rights Landlord maintains concerning the Shopping Center described in **Paragraph 3.2**, Landlord has the right to: (a) establish and enforce reasonable rules and regulations applicable to tenants of the Shopping Center concerning the maintenance, management, use and operation of the Common Areas, the initial rules and regulations are attached to the Lease as **Schedule 4**; (b) close, if necessary, any of the Common Areas to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas; (c) close temporarily any of the Common Areas for maintenance purposes or for health and safety purposes (e.g. bomb threat, hurricane); (d) select a person, firm or corporation, which may be an entity related to Landlord, to maintain and operate any of the Common Areas; and (e) designate other lands outside the exterior boundaries of the Shopping Center to become part of the Common Areas. Notwithstanding the provisions of this Paragraph, in exercising its rights hereunder, Landlord shall provide Tenant with a means of reasonable access to and from the Premises.

**5. BASE RENT:**

5.1 Base Rent. Tenant will pay to Landlord as Rent for the use and occupancy of the Premises at the times and in the manner provided below, Base Rent in the

amount specified in **Paragraph 1.9** payable in U.S. funds, in advance, starting on the Rent Commencement Date and on or before the first day of each and every successive calendar month thereafter during the Term, without demand, setoff or deduction plus applicable Florida sales tax (see Paragraph 5.7). The obligation of Tenant to pay all Rent and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise. Tenant waives and relinquishes all rights which Tenant might have to claim any nature of lien against or withhold, or deduct from or offset against any Rent and other sums provided hereunder to be paid Landlord by Tenant. Tenant waives and relinquishes any right to assert, either as a claim or as a defense, that Landlord is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of Landlord not expressly herein set forth.

- 5.2 Percentage Rent. Intentionally omitted.
- 5.3 Annual Sales Reports. Intentionally omitted.
- 5.4 Books and Records/Audit Rights. Intentionally omitted.
- 5.5 Retention of Records/Cost of Audit. Intentionally omitted.
- 5.6 Yearly Statement/Adjustment. Within thirty (30) days after the end of each full or partial calendar year during the Term Tenant will furnish to Landlord a statement in writing certified to be correct showing the total gross sales by months made in, on or from the Premises during the preceding calendar year.
- 5.7 Sales Tax; Additional Rent. In addition to the Base Rent, Tenant agrees to pay Landlord monthly all sales or use taxes or excise taxes imposed or levied by the State in which the Shopping Center is located or any other governmental body or agency against any Rent or any other charge or payment required hereunder to be made by Tenant to Landlord, but only if any such taxes are charged. All sums of money as shall become due and payable by Tenant to Landlord under this Lease, including, without limitation, sales tax and Tenant's Percentage Share of Operating Expenses, shall be Additional Rent which Tenant shall be obligated to pay. Landlord shall have the same remedies for default in the payment of Additional Rent as are available to Landlord in the case of a default in the payment of Base Rent. All charges to Tenant by Landlord accruing under this Lease, shall be considered as "Additional Rent" and be collectible in the same manner as all other components of Rent hereunder. Base Rent, Additional Rent and all other sums payable by Tenant to Landlord hereunder shall be collectively referred to herein as "Rent."

- 5.8 Tenant's Efforts. During the Term hereof, neither Tenant nor any person, firm, or corporation who or which controls or is controlled by Tenant, shall directly or indirectly, either individually or as a partner or stockholder or otherwise, own, operate, or become financially interested in any similar or competing business within a radius of five (5) miles from the outside boundary of the Shopping Center (which Tenant acknowledges is a reasonable area).
- 5.9 Taxes Payable by Tenant. Tenant shall be directly responsible for taxes upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant other than the initial improvements to be installed by Landlord, if any, regardless of whether title to such improvements is in Tenant or Landlord.
- 5.10 Late Fee / Default Interest. Any installment of Rent not paid within five (5) business days of when due and payable shall bear interest at twelve percent (12%) per annum from the date due until paid and shall be subject to a late charge in the amount equal to five percent (5%) of the amount due. In the event any check, bank draft or negotiable instrument given for any payment under this Lease shall be dishonored at any time for any reason whatsoever not attributable to Landlord, Landlord shall be entitled, in addition to any other remedy that may be available, to an administrative charge of Two Hundred Fifty and 00/100 Dollars (\$250.00). No late fee, default interest or the like chargeable by Landlord hereunder shall exceed those charges permitted by the applicable Legal Requirements.
- 5.11 First Month's and Last Month's Rent. The Base Rent installment and Operating Expense Rent installment (plus applicable taxes) due for the first full calendar month after the Rent Commencement Date and the last full calendar month of the Term, along with the Security Deposit, shall be delivered to Landlord by Tenant with the delivery of this Lease to Landlord for execution.

## 6. OPERATING EXPENSES:

- 6.1 Operating Expense Rent. In addition to Base Rent, commencing on the earlier of the Rent Commencement Date or (ii) the date Tenant commences operations of its business at the Premises, and on or before the first day of each and every successive calendar month during the term hereof, without demand, setoff or deduction, Tenant shall pay Tenant's Percentage Share, as specified in **Paragraph 1.4**, of the Operating Expenses paid or incurred by Landlord in such year ("Operating Expense Rent"). In addition to Operating Expense Rent, Tenant shall also pay to Landlord an administrative charge equal to fifteen percent (15%) of the Operating Expense Rent, to be paid concurrently and in the same manner with Tenant's payment of Operating Expense Rent. If the Shopping Center consists of more than one building, the Landlord reserves the

right to contract for services and/or utilities on a building wide or Shopping Center wide basis. In such instance, Tenant' s Percentage Share for such services, utilities or other costs shall be calculated based upon the Net Rentable Area of the building in which the Premises is located compared to the Net Rentable Area of the Shopping Center or vice versa. Notwithstanding the foregoing, the portion of the Operating Expense Rent based upon costs that are subject to the control of Landlord shall not be increased by more than five percent (5%) per annum (this cap provision expressly excludes real estate taxes and insurance).

- 6.2 Payment. During December of each calendar year or as soon thereafter as practicable, Landlord shall provide Tenant with a written notice of its estimate of Operating Expense Rent for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord 1/12th of such estimated amounts, provided that if such notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given. If at any time or times it appears to Landlord that the amounts payable for Operating Expense Rent for the current calendar year will vary from its estimate by more than ten percent (10%), Landlord, by written notice to Tenant, will revise its estimate for such year, and subsequent payments by Tenant for such year will be in an amount so that by the end of such year Tenant will have paid a total sum equal to such revised estimate.
- 6.3 Statement. Within one hundred twenty (120) days after the close of each calendar year or as soon after such one hundred twenty (120) day period as practicable, Landlord will deliver to Tenant a statement of amounts of Operating Expense Rent payable under this Lease for such calendar year. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant will pay the deficiency to Landlord within thirty (30) days after delivery of the statement. If the total of the estimated monthly installments paid by Tenant during any calendar year exceeds the actual Operating Expense Rent due from Tenant for such calendar year and provided Tenant is not in default hereunder, such excess shall, at Landlord' s option, be either credited against payments next due hereunder or refunded by Landlord to Tenant, or if such adjustment occurs at the expiration of the Term, Landlord shall refund Tenant's overpayment within thirty (30) days after Tenant vacates the Premises in full accordance with this Lease.
- 6.4 Gross Up. Intentionally omitted.
- 6.5 Proration. If for any reason other than the default of Tenant, this Lease terminates on a day other than the last day of a calendar year, the amount of Operating Expense Rent payable by Tenant applicable to the calendar year in which such termination occurs will be prorated on the basis which the number of days from the commencement of such calendar year to and including such

termination date bears to three hundred sixty-five (365).

- 6.6 Audit Rights. Tenant has the right, exercisable no more than once each calendar year on reasonable notice and at a time reasonably acceptable to Landlord, to cause an audit to be performed by a certified public accountant, working on a non-contingency fee basis, at Tenant's sole cost and expense, of Landlord ' s operations and/or books and records pertaining to Operating Expense Rent for the preceding calendar year. In the event Landlord has overstated Operating Expense Rent, within thirty (30) days after demand therefore by Tenant accompanied by Tenant' s commercially sufficient verification of such overcharges and paid invoices delivered and accepted by Landlord, Landlord will reimburse Tenant for all overcharges.

## 7. USE OF PREMISES:

- 7.1 Quiet Enjoyment. Tenant shall, and may peace fully have, hold, and enjoy the Premises, subject to the other terms hereof, provided that Tenant timely pays the Rent within any applicable notice and grace period, and timely performs all of Tenant' s covenants and agreements herein contained. This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only with respect to breaches occurring during its or their respective periods of ownership of Landlord' s interest hereunder.
- 7.2 Use Restrictions. Tenant will use and occupy the Premises for the Permitted Use specified in **Paragraph 1.17** and for no other use or purpose. For the purposes of **Paragraph 1.17**, "primary use" shall mean that seventy-five percent (75%) or more of the fees earned by Tenant at the Premises (on a calendar year basis) are from the sales generated by the Permitted Use. For purposes of **Paragraph 1.17**, "incidental" shall mean twenty-five percent (25%) or less of the fees earned by Tenant at the Premises (on a calendar year basis) are from the sales related or ancillary to the Permitted Use. Tenant shall comply with the Rules and Regulations set forth in **Schedule 4** hereto. Furthermore, Tenant shall not suffer or permit the Premises or any part of them to be used in any manner, or suffer or permit anything to be done in or brought into or kept in the Premises, which would in any way: (a) violate any Legal Requirements; (b) cause injury to the Shopping Center or any part thereof; (c) constitute a public or private nuisance; (d) alter the appearance of the exterior of the Shopping Center or of any portion of the interior other than the Premises pursuant to the provisions of this Lease; (e) involve the use, generation, storage or disposal of Hazardous Substances, or (f) use any portion of the Premises for purposes which will increase the existing rate of insurance upon the Shopping Center, or cause cancellation of insurance policies covering the Shopping Center. If Landlord's rates increase because of Tenant's activities, Tenant shall pay the difference to Landlord within ten (10) days of demand.

In addition Tenant agrees to use and maintain the Premises in compliance with

all Legal Requirements from time to time in force which shall affect (i) Tenant's use of the Premises, (ii) the manner or conduct of Tenant's business or operation of Tenant's installations, equipment or other property therein, (iii) any cause or condition created by or at the instance of Tenant, and Tenant shall pay all the costs, expenses, fines, penalties and damages which may be imposed upon Landlord by reason of or arising out of Tenant's failure to fully and promptly comply with and observe such laws or which Landlord may incur as a result of Tenant's breach of the above covenants. Tenant shall give prompt notice to Landlord of any notice Tenant receives of the violation of any Legal Requirements with respect to the Premises or the use or occupancy thereof. If Landlord shall be required under this Lease or pursuant to any Legal Requirements to take measures to comply with such Legal Requirements affecting the Premises, Landlord may, at Landlord's option, elect to terminate this Lease by giving not less than thirty (30) days' notice thereof to Tenant unless Tenant shall give evidence satisfactory to Landlord within fifteen (15) days after the giving by Landlord of such notice of termination, that Tenant has commenced steps reasonably calculated to comply with Laws and Regulations at Tenant's sole cost and expense. Furthermore, all personal property placed or moved into the Premises shall be at the risk of Tenant or other owner and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from the bursting or leaking of water pipes or otherwise from any act or omission of any cotenant or occupant of the Shopping Center or of any other person.

- 7.3 Continuous Operation. Tenant will not leave the Premises unoccupied or vacant and will continuously conduct and carry on in the Premises the Permitted Use. Tenant will maintain an adequate sales force to properly serve all customers and operate Tenant's business in an efficient and diligent manner. Tenant agrees to be continuously open for business during the hours set forth in **Paragraph 1.18**, except when Tenant is prevented from doing so by strikes, lockouts or other causes beyond the reasonable control of Tenant. Tenant will also have its window displays, exterior advertising displays adequately illuminated during the hours set forth in **Paragraph 1.19**.

Landlord may at any time and from time to time modify the Shopping Center hours and/or designate additional Shopping Center hours. Landlord, in its sole discretion, shall have the right to reduce or eliminate operating hours on any or all of the following holidays: New Year's Eve, New Year's Day, Easter Sunday, Thanksgiving Eve, Thanksgiving Day, Christmas Eve, Christmas Day, Labor Day, Memorial Day, and the Fourth of July. If Tenant shall request Landlord's approval of the opening of the Premises for business for periods exceeding those specified above and Landlord shall approve such request, Tenant shall pay for any additional costs incurred by Landlord in connection with Tenant's opening the Premises for business during such additional hours, including, but not limited to, any additional amounts of Landlord's costs for heating, ventilating and air-conditioning the Common Areas and the Premises, and additional

utilities furnished to the Premises by Landlord.

7.4 Trade Name. Intentionally omitted.

7.5 Prohibited Uses. In addition, and not by way of limitation of the restrictions on Tenant's use of the Premises set forth herein, Tenant shall not use or permit the use of the Premises in any manner that violates any of the uses listed on **Schedule 5** labeled "Prohibited Uses" applicable to the Shopping Center. In addition, Tenant shall not use or permit the use of the Premises in any manner that violates any exclusive use or other prohibited use that applies to the Shopping Center.

## 8. **PARKING:**

8.1 Tenant's Parking Rights. Within the Common Areas, Landlord will provide parking areas with necessary access for the non-exclusive use by Tenant and its customers, employees and invitees on a "first come first serve" basis. Only automobiles and pickup trucks will be permitted on the parking areas. Landlord reserves the right to establish parking charges with appropriate provisions for parking ticket validation by Tenant.

8.2 Landlord's Control Over Parking. Tenant and its authorized representatives will park their cars only in areas specifically designated for that purpose by Landlord. Within five (5) business days after written request by Landlord, Tenant will furnish to Landlord the license numbers assigned to its cars and the cars of all of its authorized representatives. If Tenant or its authorized representatives fail to park their cars in the designated parking areas, Landlord may charge Tenant, as and for liquidated damages, Fifteen and 00/100 Dollars (\$15.00) per each day or partial day for each car parked in areas other than those designated. Tenant will not park or permit the parking of any vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. Landlord shall have the right, in Landlord's sole discretion, to designate parking spaces for the exclusive use of a particular tenant or particular tenants. Landlord will have the right to institute reasonable procedures and/or methods to enforce the terms of this Paragraph.

8.3 Parking Ratio. 4/1,000 unreserved spaces as of Commencement Date.

## 9. **SIGNS**

9.1 Exterior Signage. Subject to Tenant: (i) complying with all applicable Legal Requirements and all other rules and regulations that apply to the Shopping Center, (ii) obtaining all necessary approvals, permits and consents from the applicable governmental authorities, and (iii) obtaining Landlord's prior reasonable approval to the plans and specifications, Tenant shall have the right to install: (i) one (1) sign on the exterior of the front side of the Premises; and

(ii) one (1) Pylon sign, Channel separate letters, plastic faces, flush against stucco, no race-ways; required for fascia signage. Pylon sign shall be granted to the Tenant, Tenant will have both sides of Pylon sign, to be provided at Landlord's sole cost and expense (collectively, "Exterior Signage") as soon as practically possible after the Commencement Date. The cost of design, fabrication, installation, removal and governmental approvals (collectively, "Signage Costs") for the Exterior Signage, other than the Pylon sign as referenced above, shall be at Tenant's sole cost and expense. Landlord shall review and approve the plans and specifications for the Exterior Signage prior to submission to any governmental authority and shall also have the right to approve any changes to the plans and specifications. The Exterior Signage shall not create any structural issues for the Shopping Center and shall be of a design, color scheme and type consistent with the appearance of the Shopping Center as determined by Landlord and all signs, decorations and advertising media shall conform to the sign criteria attached as **Schedule 6**. Landlord may designate a uniform type of sign for the Shopping Center to be installed and paid for by Tenant. Landlord shall reasonably cooperate with Tenant in connection with Tenant obtaining any necessary permits, approvals and consents for the Exterior Signage; however, Tenant shall reimburse Landlord for any reasonable costs incurred by Landlord in connection with such cooperation. Tenant shall be responsible for maintaining, repairing and insuring the Exterior Signage throughout the Term and any extension thereof. Tenant shall, at its sole cost and expense, also be responsible for removing the Exterior Signage upon termination of the Term and restoring any damage caused by the removal of the same. If Tenant fails to timely remove the Exterior Signage, Landlord shall have the right, but not the obligation to remove the same, restore any damage caused thereby, and charge Tenant, as Additional Rent hereunder, the cost of the removal and the restoration plus a ten percent (5%) administrative fee. Tenant's inability to obtain the necessary permits, approvals or consents for the Exterior Signage shall not entitle Tenant to terminate this Lease, seek a reduction in Rent or obtain any other concessions from Landlord. The parties acknowledge that the Tenant's ability to install the Exterior Signage is at Tenant's sole risk. The obligations of Tenant under this Paragraph of the Lease shall survive any expiration or termination hereof.

- 9.2 Exterior. In addition, Tenant shall not, without Landlord's prior written consent make any changes to or paint the store front; or install any exterior lighting, decorations or paintings; or erect or install any other signs, banners, window or door lettering, placards, decorations or advertising media of any type visible from the exterior or interior of the Premises. All signs, decorations and advertising media shall conform to the sign criteria attached as **Schedule 6**. Landlord may designate a uniform type of sign for the Shopping Center to be installed and paid for by Tenant. For all Tenant signs, at the end of the Term or upon termination of Tenant's right to possess the Premises, or upon the removal or alteration of a sign for any reason, Tenant shall repair, paint, and/or replace the building fascia surface where signs are attached.

9.3 Pylon and Monument Signs. See **Paragraph 9.1**.

**10. ASSIGNMENT AND SUBLETTING; ENCUMBRANCE**

10.1 Prohibition. Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord, which consent shall not be unreasonably withheld, provided Tenant is not in default under the Lease at the time of such request. The parties agree that it shall be reasonable for Landlord, among other things to withhold consent if (i) Landlord is not satisfied with the financial condition, identity, reputation or business character of the proposed assignee or sublessee, (ii) if Landlord or its agents have shown any space in the Shopping Center to or attempted to negotiate lease terms with such proposed assignee or sublessee regarding other available space in the Shopping Center within the preceding six months, or (iii) if such proposed assignee or the sublessee desires to change the Permitted Use or if the intended use would violate the list of Prohibited Uses set forth on **Schedule 5** attached hereto or any other exclusive uses or prohibited uses that apply to the Shopping Center. Any change in the majority ownership, interest or control of Tenant, if Tenant is a corporation, partnership, limited liability company or other similar type entity, shall constitute an assignment for purposes of this Paragraph. Notwithstanding any consent by Landlord, Tenant shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment, contemporaneously with the granting of Landlord's consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant. No usage of the Premises different from the Permitted Use shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease.

10.2 Consent Process. If Tenant requests Landlord's consent to an assignment of this Lease or subletting of all or part of the Premises, Landlord may, at its option: (i) approve such sublease or assignment (subject to Paragraph 10.1 above regarding liability under this Lease); (ii) negotiate directly with the proposed subtenant or assignee and, in the event Landlord is able to reach agreement with such proposed subtenant or assignee, upon execution of a lease with such subtenant or assignee, terminate this Lease (in part or in whole, as appropriate) upon thirty (30) days' notice; (iii) recapture the Premises or applicable portion thereof, as appropriate, from Tenant and terminate this Lease (in part or in whole, as appropriate) upon thirty (30) days' notice in which case Landlord shall

be permitted to lease the Premises to any third party; or (iv) if Landlord should fail to notify Tenant in writing of its decision within a thirty (30) day period after Landlord is notified in writing of the proposed assignment or sublease, Landlord shall be deemed to have refused to consent to such assignment or subleasing, and to have elected to keep this Lease in full force and effect. If Landlord consents to any assignment or sublease, Tenant shall pay to Landlord, on demand as Additional Rent, an administrative fee of One Thousand and 00/100 Dollars (\$1,000.00) and will reimburse Landlord for all reasonable attorneys' fees and costs associated with Landlord's consent to the assignment or sublease.

- 10.3 No Profit. All cash or other consideration received by Tenant as the proceeds of any assignment or sublease of Tenant' s interest in this Lease and/or the Premises, whether consented to by Landlord or not, shall be paid to Landlord, notwithstanding the fact that such proceeds exceed the Rent due hereunder, unless retention of such funds is in violation of any Legal Requirements or Landlord agrees to the contrary in writing, and Tenant hereby assigns all rights it might have or ever acquire in any such proceeds to Landlord. This covenant and assignment shall benefit Landlord and its successors in ownership of the Shopping Center and shall bind Tenant and Tenant 's heirs, executors, administrators, personal representatives, successors and assigns. Any assignee, sublessee or purchaser of Tenant' s interest in this Lease, by occupying the Premises and/or assuming Tenant' s obligations hereunder, shall be deemed to have assumed liability to Landlord for all amounts paid to persons other than Landlord in consideration of any such sale, assignment or subletting, in violation of the provisions hereof.

## 11. MAINTENANCE, REPAIRS, ALTERATIONS:

- 11.1 Tenant's Obligations. At Tenant 's sole cost, Tenant will comply with all Legal Requirements. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the Landlord, be deemed a breach thereof. Tenant has agreed to accept the Premises in its " AS IS" condition without any representation or warranty of any kind. Upon entry into the Premises, Tenant acknowledges that the Premises are in good order and repair. Tenant shall, at its own expense and at all times, perform all necessary maintenance, repairs and replacements to the Premises (except as otherwise set forth in **Paragraph 11.5**) in order to maintain the Premises in good and safe condition, including plate glass, electrical wiring, plumbing and HVAC installations and any other systems or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. As part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm which is fully licensed to repair air conditioning units in the State in which the Shopping Center is located. No later

than thirty (30) days prior to the Commencement Date and annually thereafter, Tenant shall deliver to Landlord a copy of the air conditioning maintenance contract and proof that the annual premium for such contract has been paid. Such air conditioning maintenance firm shall (i) regularly service the air conditioning unit(s), changing belts, filters and other parts as required, (ii) perform emergency and extraordinary repairs on the air conditioning units, and (iii) keep a detailed record of all services performed at the Premises and prepare a yearly report to be furnished to Landlord promptly at the end of each calendar year.

- 11.2 Limitations. Tenant may not make any improvements or alterations to the Premises without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant may make any improvements or alterations to the Premises if they are nonstructural, do not affect any building system, cost less than Five Thousand and 00/100 Dollars (\$5,000.00) (in the aggregate), cannot be seen from the exterior of the Premises, and otherwise comply with all Legal Requirements and the following provisions of this Paragraph. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give Landlord at least two (2) business days written notice in order that Landlord may post appropriate notices to avoid any liability for liens. All repairs, improvements or alterations will be made by a licensed and insured contractor consented to by Landlord and performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved by Landlord.

Tenant will not place or suffer to be placed or maintained on the exterior of the Premises or in any part of the Shopping Center any sign, advertising matter or any other thing of any kind, and will not place or maintain any decoration, letter or advertising matter on the glass of any window or door of the Premises or interior sign visible from outside the Premises without first obtaining Landlord's prior written approval. Tenant will, at its sole cost and expense, maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times. Under no circumstances shall Tenant be permitted to place hand-lettered advertising on the exterior of the Premises or any glass of any window or door of the Premises.

Tenant will not paint or decorate any part of the exterior of the Premises, or any part of the interior of the Premises visible from the exterior thereof: without first obtaining Landlord's written approval. Tenant will install and maintain at all times, subject to the other provisions of this Paragraph, displays of merchandise in the windows (if any) of the Premises. All articles, and the arrangement, style, color and general appearance thereof, in the interior of the Premises, including, without limitation, window displays, advertising matter, signs, merchandise and store fixtures, shall be in keeping with the character and standards of the improvements within the Shopping Center, as determined by Landlord.

Landlord reserves the right to require Tenant to correct any nonconformity at Tenant's sole cost.

- 11.3 Liens. Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Shopping Center free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of Landlord in the Premises and the Shopping Center shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. Tenant agrees to indemnify, defend and hold harmless Landlord from and against any and all costs and liabilities (including attorneys' fees and expenses) and any and all construction, mechanic's, materialman's, laborer's or supplier's liens arising out of or pertaining to any improvements or construction done by Tenant. All persons and entities contracting or otherwise dealing with Tenant relative to the Premises or the Shopping Center are hereby placed on notice of the provisions of this Paragraph, and Tenant shall further notify in writing such persons or entities of the provisions.
- 11.4 Surrender of Premises. On the last day of the Term hereof or on any earlier termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, ordinary wear, tear and casualty excepted, and clear and free of debris. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Any of Tenant's property remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant, and Landlord, in addition to all other rights and remedies it may have, shall have the right to keep in place and use all of such property in the Premises and/or remove any or all of such property from the Premises, which may then be disposed of, or stored at the cost of and for the account of Tenant. Landlord shall not be responsible for the care or safekeeping of any such property and Tenant waives any claim against Landlord relating thereto. The provisions of this subparagraph shall survive the expiration or earlier termination of this Lease.
- 11.5 Landlord Repairs. Landlord will maintain the roof (exclusive of flashing around the rooftop air conditioning unit), foundations, and exterior walls of the Premises (except those exterior walls which contain an entrance to or exit from the Premises) and utility lines (other than those exclusively serving the Premises) outside the exterior walls of the Premises, the Common Areas and parking facilities; provided that in each case Landlord shall have received prior written notice of the necessity of such repairs from Tenant. Landlord shall have a cap on its portion of payment of costs of HVAC replacement or repairs at One Thousand and Five Hundred Dollars and 00/100 (\$1,500.00) annually. Notwithstanding the foregoing, if any such repair is required by reason of

Tenant ' s failure to comply with any of Tenant's obligations in this Lease or the negligence of Tenant or any of Tenant's agents, concessionaires, officers, employees, licensees, customers, burglar or vandal, or other person using the Premises with or without the consent of Tenant or anyone authorized by Tenant, or the result of Tenant's acts or the installation of its equipment and property, Tenant shall, at its expense, promptly make such repairs. Tenant shall promptly give Landlord written notice of any damage to the Premises requiring repair by Landlord. Landlord shall not be liable for any damages resulting from its failure to make repairs. In no event shall Landlord be liable for any damages resulting from any such damage. Except as expressly set out in this Lease, Landlord shall have no obligation to repair, maintain, alter, replace, or modify the Premises or any part thereof, or any plumbing, heating, electrical, air conditioning, or other mechanical installation therein, or serving same. Tenant hereby grants to Landlord such licenses and easements in and over the Premises or any portion or portions thereof as shall be reasonably appropriate for the installation or maintenance of mains, conduits, pipes, or other facilities to serve the Shopping Center or any part thereof. Landlord will have the right to enter the Premises at any reasonable time to inspect the condition thereof, to make necessary repairs or improvements.

- 11.6 Trash. Tenant shall keep any garbage, trash, rubbish or other refuse in containers (safe from rodents and other vermin) within the interior of the Premises, and shall deposit such trash, on a daily basis, in designated receptacles provided by Landlord or Landlord ' s trash removal agent, or trash receptacle or receptacles to be provided by Tenant at Landlord's direction and pursuant to Landlord ' s specifications, hereinafter collectively referred to as the "trash receptacles". Landlord shall arrange for the collection of trash from the trash receptacles, and Tenant shall pay a portion of the costs thereof as provided in this Paragraph. At Landlord' s option, Tenant's share of trash removal expense ("Trash Removal Charge") shall be calculated by (i) multiplying such Landlord's trash removal costs by Tenant's Percentage Share (multiplied by three (3) if Tenant uses the Premises for restaurant, nightclub, or food service operations - the cost of trash removal for restaurants, nightclubs, and food service operations being greater than that for retail operations, Landlord will allocate such costs between these types of tenants so as to take such increased costs into account; for this purpose, the cost of trash removal for restaurants, nightclubs and food service operations is stipulated to be 3 times greater than the cost for retail operations), or (ii) estimating the tonnage of trash generated by Tenant. Tenant's Trash Removal Charge shall be payable to Landlord as Additional Rent (either as a portion of Tenant's Percentage Share of Operating Expenses or as a separate assessment, as determined by Landlord). In addition, Tenant shall comply with all laws, ordinances, regulations and rules regarding recycling of trash, including any rules and regulations of Landlord with respect thereto. Tenant shall pay the costs associated with recycling in conformity with Tenant ' s share of trash removal set forth above.

**12. ENTRY AND INSPECTION:** Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times upon no less than twenty-four (24) hours verbal notice for the purpose of inspecting the same, performing any services required of Landlord hereunder and showing the Premises to potential and existing mortgagees and purchasers and prospective tenants of other space in the Shopping Center. Notwithstanding the foregoing, Landlord is not required to give notice to Tenant if Landlord must enter the Premises because of an emergency. Tenant will permit Landlord at any time within 180 days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit potential tenants to inspect the Premises.

**13. INDEMNIFICATION:**

13.1 Indemnity. Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, losses, damages, costs and expenses (including attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of Tenant's acts or omissions, or relating to Tenant's breach or default under this Lease, Tenant's use or occupancy of the Premises, or caused by Tenant or its agents, employees or invitees, unless caused by the negligence of Landlord. Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Shopping Center or by any owner or occupant of adjoining or contiguous property. Tenant agrees to pay for all damage to the Shopping Center as well as all damage to tenants or occupants thereof caused by misuse or neglect of said Premises, its apparatus or appurtenances or the Common Areas or the Shopping Center, by Tenant or Tenant's employees, agents and invitees. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease.

13.2 Release. Tenant, for themselves and their respective heirs, legal representatives, successors and assigns, do hereby fully and forever release, remise, acquit and discharge LNR Partners, LLC, Landlord and all its property management agent(s), and their respective partners, managers, members, officers, directors, employees, agents, attorneys, affiliates, subsidiaries, parents, heirs, legal representatives, successors and assigns, and each of them, of and from any and all claims, demands, debts, obligations, liabilities, bonds, notes, guaranties, controversies, agreements, actions, causes of action, suits, damages (including direct, special, consequential, remote, foreseeable, unforeseeable, and punitive damages), legal fees and other responsibilities of any nature or kind whatsoever, at law, in equity, or otherwise, liquidated or unliquidated, known or unknown, sounding in tort, in contract, or under any other legal theory, or arising under statute or under any other law or regulation, and whether contingent or matured (specifically including, without limitation, damage and liabilities allegedly arising as a result of the released parties' own negligence, gross negligence, willful misconduct, misfeasance, malfeasance or fault of any nature or kind) which the releasing parties, or any of them, now have or has or

could have against or involving the released parties, or any of them, heretofore having arisen, or arising hereafter, out of or in any way in connection with any act or omission or alleged act or omission of any of the released parties in connection with the Lease, the termination of the Lease, publication of any information relating to any dispute with Tenant (if any), threats of legal action to obtain possession of the Premises or otherwise, and the negotiation and execution of this Lease. The provisions of this Paragraph 13.2 shall survive the termination of this Lease.

- 14. TENANT'S INSURANCE:** At all times during the term of this Lease, Tenant shall, at its sole expense, procure and maintain the following types of insurance coverage:
- 14.1 Commercial General Liability. Commercial general liability insurance, including bodily injury and property damage liability, products and completed operations, personal and advertising injury liability, and fire damage liability against any and all damages and liability, including attorneys' fees and expenses, on account of or arising out of injuries to or the death of any person or damage to property, however occasioned, in, on or about the Premises in amounts not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate, and \$100,000 fire damage liability;
  - 14.2 Plate Glass. Insurance on all plate or tempered glass in or enclosing the Premises, for the replacement cost of such glass;
  - 14.3 Personal Property. Insurance on an "all risks" basis covering one hundred percent (100%) of the replacement cost value of property at the Premises, including, without limitation, leasehold improvements, trade fixtures, merchandise, furnishings, equipment, goods and inventory;
  - 14.4 Boiler & Machinery. Where applicable, insurance covering central heating, air conditioning and ventilating systems, refrigeration equipment, machinery and electrical equipment, boilers and other high-pressure piping and machinery, and other similar apparatus installed in the Premises, including business income loss;
  - 14.5 Business Income. (a) Business interruption insurance for a period of not less than twelve (12) months from the date of fire or casualty; and (b) Loss of rents insurance to cover rental loss of Landlord for a period of not less than twelve (12) months from the date of fire or casualty caused by Tenant or Tenant's invitees, contractors, agents or employees, naming Landlord as loss payee;
  - 14.6 Employer's Liability/Workers' Compensation. Employer's liability insurance with limits not less than \$500,000, and workers' compensation insurance providing statutory state benefits for all persons employed by Tenant in connection with the Premises as required by applicable law;

- 14.7 Sprinkler Leakage. Insurance covering damage from leakage of sprinkler systems now or hereafter installed in the Premises in an amount not less than the current replacement cost covering Tenant' s leasehold improvements, trade fixtures, merchandise, furnishings, equipment, goods and inventory; and
- 14.8 Other Insurance. Such other insurance and in such amounts as may be required by Landlord against other insurable hazards as at the time are commonly insured against by prudent owners of comparable shopping centers in the area in which the Shopping Center is located.
- 14.9 Form of Insurance/Companies. All insurance provided for in **Paragraph 14** hereof shall be in a form satisfactory to Landlord and carried with insurance companies reasonably acceptable to Landlord that are licensed or authorized to do business in the State in which the Shopping Center is located, are in good standing with the Department of Insurance in the State in which the Shopping Center is located and have a current rating issued by A.M. Best Company of not less than A-:VII, and/or whose claim paying ability is rated no lower than A by Standard & Poor's Ratings Service and A2 by Moody's Investors Service. Insurance coverage shall be written as primary policy coverage and not contributing with or excess of any coverage, which Landlord may carry, and LNR Partners, LLC, Landlord, and Landlord's managing agent shall be named as Additional Insureds with respect to Commercial General Liability and Automobile Liability, including any Umbrella or Excess policies. Tenant shall furnish Landlord at the inception of this Lease (i) a Certificate of Insurance evidencing that all such insurance is in effect and that Landlord will be given at least thirty (30) days prior written notice of cancellation or non-renewal, and (ii) proof that premiums have been paid by Tenant. Not later than fifteen (15) days prior to the expiration of any insurance policy, evidence of renewals or replacements of such policy shall be delivered to Landlord, together with proof of payment of the associated premiums. In the event Tenant shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, Landlord may, but shall not be obligated to, procure such insurance on behalf of Tenant and the cost thereof shall be payable to Landlord as Additional Rent within ten (10) days following written demand therefor.
- 14.10 Subrogation and Waiver. Landlord and Tenant shall each obtain from their respective insurers under all policies of property insurance maintained by either of them at any time during the term hereof insuring or covering the Premises, a waiver of all rights of subrogation which the insurer of one party might otherwise have, if at all, against the other party. Landlord and Tenant each waive and release each other from and against all claims for recovery against the other for any loss or damage to the property of such party arising out of fire or other casualty coverable by property insurance policies required to be carried by the parties pursuant to this Lease or actually carried by the parties to this Lease, even if such loss or damage shall be brought about by the fault or

negligence of the other party or such party's agents; provided, however, such waiver by Landlord shall not be effective with respect to Tenant's liability described in **Paragraph 20** below. This waiver and release is effective regardless of whether the releasing party actually maintains the insurance required pursuant to the terms of this Lease and is not limited to the amount of insurance actually carried, or to the actual proceeds received after a loss. In addition, Tenant assumes all risk of damage of Tenant's property within the Premises and the Shopping Center, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or other cause.

## **15. LANDLORD'S INSURANCE**

- 15.1 All Risk. Landlord (or its principals naming Landlord as an additional insured) shall maintain fire and extended coverage insurance on the Shopping Center and the Premises (which may include vandalism and malicious mischief coverage) and such endorsements as Landlord may require or is otherwise reasonably consistent with other similarly situated shopping centers) in an amount not less than the full replacement value thereof (which may be exclusive of foundations), or in such amounts as any mortgagee of Landlord shall require, with such deductibles as shall be determined by Landlord from time to time. Landlord (or its principals naming Landlord as an additional insured) reserves the right to self-insure the Shopping Center. Landlord (or its principals naming Landlord as an additional insured) also reserves the right to provide the insurance required hereunder as part of a blanket policy. The costs related to all insurance obtained by Landlord in connection with the Shopping Center shall be passed through to the tenants of the Shopping Center, including Tenant, as part of the Operating Expenses, and payments for losses thereunder shall be made solely to Landlord or Landlord's mortgagee as their interests shall appear. In the event of self-insurance, the premium cost equivalency of such policy or policies shall be a part of the Operating Expenses. In the event of blanket insurance, Landlord shall reasonably allocate the portion of the blanket premium to the Operating Expenses for the Shopping Center.
- 15.2 Liability. Landlord shall maintain a policy or policies of commercial general liability insurance with respect to the Common Areas and the activities thereon in such amounts as Landlord or any mortgagee of Landlord may require. The costs related to such liability insurance shall be passed through to the tenants of the Shopping Center, including Tenant, as part of the Operating Expenses. In the event of self-insurance (as referenced above), the premium cost equivalency of such policy or policies shall be part of the Operating Expenses.
- 15.3 Other. Landlord may purchase insurance for windstorm, flood, plate glass, sign, automobile, sinkhole, business income, rent loss, liquor liability, terrorism, earthquake and such other insurance which Landlord or any mortgagee of Landlord may require in their sole discretion and with such deductibles as

Landlord may desire. The costs of all such insurance shall be part of the Operating Expenses. Landlord may hereafter raise or lower such coverage in such amounts as may from time to time be prudent to Landlord within its sole discretion or as Landlord's mortgagee may require.

**16. UTILITIES AND SERVICES:**

16.1 Standards. Landlord will provide, at points in or near the Premises, the facilities necessary to enable Tenant to obtain for the Premises water, electricity, telephone and sanitary sewer service. Tenant shall not at any time over burden or exceed the capacity of the mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities provided by Landlord, such installation shall be subject to Landlord's prior written approval of Tenant's plans and specifications therefor. If Landlord approves such installation and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

Tenant agrees that it shall be responsible for the payment of all utilities, including water, gas, electricity, heat and other services delivered to the Premises that are separately metered. If any such services are not separately metered to the Premises, Tenant shall pay a reasonable proportion, as determined by Landlord, of all charges jointly metered with other premises.

Notwithstanding the foregoing, Landlord shall have the option to supply such utilities to the Premises. If Landlord shall elect to supply such utilities to the Premises, Tenant will purchase its requirements for such service tendered by Landlord, and Tenant will pay Landlord, within ten (10) days after mailing by Landlord to Tenant of statements therefor, at the applicable rates determined by Landlord from time to time which Landlord agrees shall not be in excess of the public utility rates for the same service, if applicable. If Landlord so elects to supply such utilities, Tenant shall execute and deliver to Landlord, within ten (10) days after request therefor, any documentation reasonably required by Landlord to effect such change in the method of furnishing of such utilities.

16.2 Temporary Interruption. Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop or interrupt or reduce any of the services listed in this Paragraph or to stop or interrupt or reduce any other services required of Landlord under this Lease, whenever and for so long as may be necessary, by reason of (i) accidents, emergencies, strikes or the occurrence of any of the other events of force majeure, (ii) the making of repairs or changes which Landlord is required by law or is permitted by this Lease to make or in good faith deems necessary, (iii) difficulty or excessive expense in securing proper supplies of fuel, steam, water,

electricity, or (iv) any other cause beyond Landlord's reasonable control, whether similar or dissimilar to the foregoing. Landlord does not warrant that the services provided for in this Lease will be free from interruption or stoppage resulting from the above causes, and specifically no reduction, interruption or stoppage of any such services for any reason, shall ever be construed as an eviction of Tenant nor shall the same cause any abatement of the Rent payable hereunder or in any manner or for any purpose relieve Tenant from any of Tenant's obligations hereunder, and in any event, Landlord shall not be liable for any loss, cost or damage, direct or consequential, of any nature arising in connection with interruption or stoppage of any of such services or for any damage to persons or property resulting therefrom; provided, however, Landlord agrees to use reasonable diligence to resume the service or to cause the same to be resumed. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Paragraph. Notwithstanding the foregoing, in the event that the services required to be provided by Landlord pursuant to this Paragraph are suspended or interrupted due solely to Landlord's gross negligence or willful misconduct, and such suspension or interruption prevents Tenant from (and Tenant in fact ceases) conducting all or a material portion of its business in the Premises and such suspension or interruption has not resulted from a failure of Tenant to perform any of its obligations under the Lease, and if such suspension or interruption and the resulting untenability of the Premises continues for a period of three (3) full consecutive business days after Tenant gives Landlord written notice of such interruption or suspension, then Tenant's rental obligations under this Lease shall be proportionately abated commencing on the expiration of such three (3) day period until such time that the services are fully restored.

- 16.3 Security. Landlord shall have no obligation to provide any security whatsoever for the Premises, the Shopping Center and/or Tenant's business therein. Tenant does hereby acknowledge and agree that it shall provide and be solely responsible for its own security, at Tenant's sole cost and expense, as may be required for the operation of Tenant's business within the Premises and Landlord shall have no liability to Tenant and its employees, agents or invitees for losses due to theft or burglary, or for damages done by unauthorized persons in the Premises, any parking facility, or the Shopping Center, or for any injury, trauma or other harm to any person, and neither shall Landlord be required to insure against any such losses. Tenant shall be responsible for all repairs and replacements of damage and/or destruction of the Premises necessitated by burglary or attempted burglary, or any other illegal or forcible entry into the Premises. Notwithstanding the foregoing, Tenant acknowledges and agrees Landlord may, but will not be required to, adopt and provide security services for the Shopping Center from time to time. Tenant shall cooperate fully in any efforts of Landlord to maintain security in the Shopping Center and shall follow

all rules and regulations promulgated by Landlord with respect thereto. However, any security services that are voluntarily undertaken by Landlord may be changed or discontinued from time to time in Landlord's sole and absolute discretion, without liability to any Tenant and its employees, agents or invitees. Tenant or any of its employees, agents or invitees waive any claims it may have against Landlord arising out of any security services provided by Landlord, or the inadequacy or absence thereof, specifically including Landlord's negligence with respect to the providing or failure to provide such services.

16.4 Release of Landlord. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining, adjacent to or connecting with the Premises or any other part of the Shopping Center, or otherwise, or for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, and water, gas, sewer or steam pipes or from theft or burglary. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises and to use such other portions of the Shopping Center as Tenant is herein given the right to use, at Tenant's own risk.

17. **CONDEMNATION:** If the whole or substantially the whole of the Shopping Center or Premises should be taken for any public or quasi-public use, by right of eminent domain or otherwise or should be sold in lieu of condemnation, then this Lease shall terminate as of the date when physical possession of the Shopping Center and/or Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Shopping Center or the Premises is thus taken or sold, Landlord (whether or not the Premises are affected thereby) may, at its option, terminate this Lease by giving written notice thereof to Tenant; in which event this Lease shall terminate as of the date when physical possession of such portion of the Shopping Center or the Premises is taken by condemning authority. If this Lease is not terminated upon any such taking or sale, and if the Premises are affected, the Base Rent payable hereunder shall be diminished by an equitable amount, and Landlord shall, to the extent Landlord deems feasible, restore the Shopping Center and, if affected, the Premises to substantially their former condition, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Shopping Center, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for such taking. All amounts awarded upon a taking of any part or all of the Shopping Center or Premises shall belong to Landlord, and Tenant shall not be entitled to and expressly waives all claim to any such compensation, provided however, Tenant shall be entitled to retain any sum awarded to it for its trade fixtures or moving expenses, provided that such Tenant award shall not reduce Landlord's award.

18. **TRADE FIXTURES:** Any and all improvements made to the Premises during the Term hereof shall, unless Landlord requests their removal, belong to the Landlord

without compensation, allowance or credit to Tenant, except movable trade fixtures of the Tenant which can be removed without defacing the Premises or any portion of the Shopping Center. Tenant shall be directly responsible for taxes upon, measured by, or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is in Tenant or Landlord.

**19. DESTRUCTION OF PREMISES:**

19.1 Termination or Repair. If the Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord if Landlord does not otherwise have actual knowledge thereof. In case the Shopping Center shall be so damaged that substantial alteration or reconstruction of the Shopping Center shall, in Landlord's sole opinion, be required (whether or not the Premises shall have been damaged by such casualty), or in the event any mortgagee of Landlord's interest in the Shopping Center should require that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt, or in the event of any material uninsured loss to the Shopping Center, Landlord may, at its option, terminate this Lease by notifying Tenant in writing of such termination within ninety (90) days after the date of such casualty. If Landlord does not elect to terminate this Lease, Landlord shall commence and proceed with reasonable diligence to restore the Shopping Center and to restore the Premises to the condition in which the Premises existed as of the Commencement Date; except that Landlord's obligation to restore shall not require Landlord to spend for such work an amount in excess of the insurance proceeds actually received by Landlord as a result of the casualty. Notwithstanding anything to the contrary contained in this Paragraph, Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damage resulting from any casualty contained under this Paragraph occurs during the last twelve (12) months of the Term.

19.2 Abatement of Rent. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such casualty damage or the repair thereof; except that, subject to the previous provisions of this Lease and of the next sentence, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unfit for occupancy and Tenant fails to open for business in the Premises or damaged portion thereof. If the Premises or any other portion of the Shopping Center is damaged by fire or other casualty resulting from the fault or negligence of Tenant, or, any of Tenant's agents, contractors, employees, or invitees, the Rent hereunder shall not be diminished during the repair of such damage, and, additionally, Tenant shall be liable to Landlord for the cost of the repair and restoration of the Shopping Center caused thereby to the extent such cost and expense is not covered by insurance proceeds.

19.3 Last Year of Term. If any material damage or destruction occurs to the Premises (or the building of which the Premises is a part materially impairing use of the Premises) during the last year of the Term, Tenant may terminate the Lease upon written notice to Landlord within thirty (30) days after the occurrence of the damage or destruction.

## 20. HAZARDOUS SUBSTANCES:

20.1 Tenant's Responsibilities. At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant' s use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Shopping Center by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord, except for the routine cleaning supplies that may be deemed Hazardous Substances, provided such Hazardous Substances are stored, used and removed in compliance with all Legal Requirements and Environmental Laws. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the Term of the Lease, Tenant will cause all Hazardous Substances placed on, under or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Shopping Center, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Landlord of Tenant 's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord ' s interests with respect thereto.

20.2 Indemnification. If the Premises or the Shopping Center become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance. If (i) the Premises becomes contaminated in any manner related to the release or discharge of a Hazardous Substance during the Term of this Lease (other than a release or discharge by Landlord or by Landlord's employees, contractors or other agents) or (ii) the Shopping Center (other than the Premises) becomes contaminated in any manner related to the release or discharge of a Hazardous

Substance by Tenant or by Tenant's employees, contractors, invitees or other agents, then Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Shopping Center or the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees and expenses, consultant fees and expert fees) arising during or after the Term of this Lease and arising as a result of such contamination, release or discharge. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. This provision of this Paragraph shall survive termination of this Lease.

If the Premises or the Shopping Center become contaminated in any manner by any release or discharge of a Hazardous Substance by Landlord, its agents, employees or contractors, Landlord shall indemnify, defend and hold harmless Tenant from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including any and all sums paid for settlement of claims, attorneys' fees and expenses, consultant fees and expert fees) arising during or after the Term of this Lease and arising as a result of such contamination, release or discharge. Notwithstanding any provision in this Lease to the contrary, Tenant shall have no liability with respect to any Hazardous Substances existing at the Premises prior to the Commencement Date and in violation of applicable Environmental Laws as of the Commencement Date. This provision of this Paragraph shall survive termination of this Lease.

- 21. EVENTS OF DEFAULT:** If one or more of the following events ("**Event of Default**") occurs, such occurrence constitutes a breach of this Lease by Tenant:
- 21.1 Abandonment/Vacation. Tenant abandons or vacates the Premises or removes furniture, fixtures or personal property from the Premises, except in the normal course of business; or
  - 21.2 Rent. Tenant fails to pay any monthly Base Rent or Operating Expense Rent, if applicable, as and when the same becomes due and payable, and such failure continues for more than five (5) business days after Landlord gives written notice; or
  - 21.3 Other Sums. Tenant fails to pay any Additional Rent, other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than fifteen (15) business days after Landlord gives written notice thereof to Tenant; or
  - 21.4 Other Provisions. Tenant fails to perform or observe any other agreement,

covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is due (or immediately if the failure involves a hazardous condition), and such failure continues for more than fifteen (15) business days after Landlord gives written notice thereof to Tenant, or if the default does not involve a hazardous condition and cannot be reasonably cured within said fifteen (15) business day period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default within said 15 day business day period or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default, provided such cure does not take more than forty-five (45) days in the aggregate; or

21.5 Insolvency. Tenant (a) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing; or

21.6 Receiver. A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant and such receivership or petition is not dismissed within sixty (60) days; or

21.7 Attachments: This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within sixty (60) days; or

21.8 Assignment/Sublease: Tenant assigns this Lease or subleases all or any portion of the Premises in violation with the terms and conditions of **Paragraph 10.**

## **22. REMEDIES OF LANDLORD UPON DEFAULT:**

22.1 Termination. Upon the occurrence of an Event of Default under this Lease by Tenant, Landlord may, at its option, terminate the Lease and repossess the Premises pursuant to the laws of the State in which the Shopping Center is

located and recover from Tenant as damages:

- (a) the unpaid Rent and other amounts due at the time of termination plus interest thereon at the maximum lawful rate per annum from the due date until paid;
- (b) the present value of the balance of the Rent for the remainder of the Term after termination less the present value of the fair market value rental of the Premises for said period (both determined by applying a discount rate of the Wall Street Journal Prime Rate); and
- (c) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering the Premises.

22.2 Landlord's Options. Landlord may, in the alternative:

- (a) continue this Lease in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under the Lease, including the right to recover the Rent as it becomes due under the Lease; or
- (b) terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State in which the Shopping Center is located in which event Landlord may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Shopping Center is located), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord. For purpose of such reletting Landlord is authorized by Tenant to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient, at Tenant's expense. Tenant shall also be responsible for Rent for the period that the Premises are vacant and all costs of re-letting, including, without limitation, brokerage commissions and attorneys' fees. Tenant shall be liable for any deficiency of such rental below the Rent and all other payments herein provided for the unexpired balance of the Term of this Lease. If said breach of the Lease continues, Landlord may, at any time thereafter, elect to terminate the Lease; or
- (c) exercise any and all other rights and remedies available to Landlord at law or in equity.

22.3 Landlord's Default. Landlord shall be deemed to be in default under this Lease if Landlord fails to perform or observe any agreement, covenant, condition or provision of this Lease to be performed or observed by Landlord.

23. **SECURITY DEPOSIT:** The Security Deposit set forth in **Paragraph 1.8** shall secure the performance of the Tenant's obligations hereunder. Landlord may, but shall not be obligated to, apply all or portions of the Security Deposit to satisfy Tenant's obligations hereunder. In the event that Landlord applies all or a portion of the Security Deposit to Tenant's obligations hereunder, Tenant shall be obligated, within ten (10) days of receipt of notice from Landlord, to deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount stated in above. Failure to deposit such cash shall be a default under the terms of this Lease. Provided Tenant is not in default, any balance remaining upon the expiration of the Term, shall be returned to Tenant within a reasonable time. Tenant shall not have the right to apply the Security Deposit in payment of the last month's rent. No interest shall be paid by Landlord on the Security Deposit. In the event of a sale of the Shopping Center, Landlord shall have the right to transfer the Security Deposit to the purchaser, upon such transfer Landlord shall have no further liability with respect thereto, and Tenant agrees to look solely to such purchaser for the return of the Security Deposit. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be commingled with other funds of Landlord.
24. **LIEN FOR RENT:** Intentionally omitted.
25. **LIMITATION ON LANDLORD'S PERSONAL LIABILITY:** Tenant specifically agrees to look solely to Landlord's interest in the Shopping Center for the recovery of any judgment from Landlord, it being agreed that Landlord (and any officers, shareholders, partners, members, managers, directors or employees, affiliates, subsidiaries or parents of Landlord) shall never be personally liable for any such judgment. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Shopping Center and/or Premises referred to herein, and in such event and upon such transfer, Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations.
26. **ATTORNEYS' FEES:** In the event Tenant defaults in the performance of any of the terms, covenants, agreements or conditions contained in this Lease and Landlord places the enforcement of this Lease or the collection of any Rent due or to become due hereunder or recovery of the possession of the Premises in the hands of an attorney, Tenant agrees to pay Landlord reasonable attorneys' fees and costs. If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys' fees at all tribunal levels

(including allocated costs of Landlord's in-house attorney), incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court handling the proceeding and will be included in and as a part of such judgment.

27. **WAIVER:** No failure of Landlord to enforce any term hereof shall be deemed to be a waiver. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement contained herein or to exercise any option, right, power, or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. No payment by Tenant or receipt by Landlord of a lesser amount than the applicable Rent payment due under this Lease shall be deemed to be other than on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.
28. **SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The inadvertent failure to attach any exhibit (or schedule or addendum) described in this Lease to the fully executed version hereof shall not render this Lease invalid, incomplete, or ineffective in any way. Upon notice from one party to the other, Landlord and Tenant shall cooperate in good faith to provide any missing information regarding such missing exhibit, and shall both append the missing exhibit to their respective fully executed original of the Lease.
29. **NOTICES:** All notices or other communications required or permitted hereunder must be in writing, and be (i) personally delivered (including by means of professional messenger service), (ii) sent by overnight courier, with request for next business day delivery, or (iii) sent by registered or certified U.S. mail, postage prepaid, return receipt requested, to the addresses set forth in **Paragraph 1**. All notices sent by U.S. mail will be deemed received three (3) days after the date of mailing.
30. **HOLDING OVER:** Any holding over after the expiration or termination of this Lease shall be construed as a month-to-month tenancy at a rental of one hundred fifty percent (150%) of the Base Rent and Operating Expense Rent for the month of the Lease Term preceding the month in which the expiration or termination occurred.
31. **TIME:** Time is of the essence with respect to the obligations of any party under this

Lease.

32. **HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the assigns and successors in interest of Landlord and is binding upon and inures to the benefit of Tenant and Tenant's heirs and successors and, to the extent assignment may be approved by Landlord hereunder, Tenant's assigns. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed. Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third-party beneficiary except rights contained herein for the benefit of a mortgagee of Landlord.
33. **SUBORDINATION:** This Lease is and shall always be subject and subordinate to the lien of any mortgages which are now or shall at any future time be placed upon the Shopping Center, the Premises or Landlord's rights hereunder, and to any renewals, extensions, modifications or consolidations of any such mortgage. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument that Landlord may reasonably request.
34. **ESTOPPEL CERTIFICATE; FINANCIAL STATEMENTS:**
- 34.1 Content. Tenant shall at any time upon not less than fifteen (15) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any security deposit, and the date to which the Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises. At Landlord's option, Tenant's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Tenant: (A) that this Lease is in full force and effect, without modification, except as may be represented by Landlord; (B) that there are no uncured defaults in Landlord's performance; and (C) that not more than one month's Rent has been paid in advance or such failure may be considered by Landlord as a default by Tenant under this Lease. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises.
- 34.2 Financial Statements. Tenant shall furnish Landlord, within ten (10) business business days after Landlord's request therefor, its most recent financial statement of Tenant. Unless: (i) Landlord has reason to believe there has been a material reduction in the financial worth of any of such parties; or (ii) requested by any current or proposed lender, investor or purchaser of Landlord or the

Shopping Center, such financial statement(s) shall not be required to be furnished more than twice each calendar year. If Tenant is a publicly traded company and Tenant's financial information is publicly available, this provision shall be deemed complied with by Tenant.

**35. AUTHORIZATION:**

35.1 Tenant. Tenant represents and warrants that: (i) there are no proceedings pending or, to the knowledge of Tenant, threatened before any court or administrative agency that would materially adversely affect the ability of Tenant to enter into this Lease or the validity or enforceability of this Lease; (ii) there is no provision of any existing mortgage, indenture, contract or agreement binding on Tenant which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (iii) if Tenant is a corporation, limited liability company, partnership or other legal entity, the person executing this Lease on behalf of Tenant represents and warrants that this Lease has been authorized and approved by the appropriate officers, members, managers, partners, beneficiaries, shareholders or other beneficial owner(s) of Tenant as may be required by law; (iv) Tenant is in good standing, qualified to do business in the State in which the Shopping Center is located; (v) Tenant has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease, in the manner and upon the terms contained herein, with no other person needing to join in the execution hereof in order for this Lease to be binding on Tenant; and (vi) the financial information provided by Tenant to Landlord materially and accurately depicts the financial condition of Tenant as of the date of this Lease.

35.2 Landlord. Landlord represents and warrants to Tenant that Landlord has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease, in the manner and upon the terms contained herein, and to grant the estate herein demised.

**36. JOINT AND SEVERAL LIABILITY:** In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder.

**37. FORCE MAJEURE:** Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by cause or causes beyond Landlord's absolute control which shall include, without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums or controls, fire or other casualty, inability to obtain any material, services or financing or Acts of God.

**38. RECORDING:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of Landlord, which may be withheld

in Landlord's sole discretion.

39. **BROKERS:** Landlord and Tenant each represent and warrant one to the other that except for the Brokers set forth in **Paragraph 1.16**, neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense or liability with respect to any claims for commissions, finder's fees or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord shall be responsible for paying any commission due Landlord's Broker in connection with this transaction pursuant to a separate written agreement between Landlord and Landlord's Broker. Landlord's Broker shall be responsible for any payment due to Tenant's Broker pursuant to a separate written agreement between Landlord's Broker and Tenant's Broker.
40. **ENTIRE AGREEMENT:** The foregoing, together with all Exhibits and Schedules attached hereto, constitutes the entire agreement between the parties and may only be modified in writing signed by both parties.
41. **GOVERNING LAW:** This Lease shall be construed in accordance with the laws of the State in which the Shopping Center is located. Exclusive venue in any legal proceeding related to or arising out of this Lease shall be in the county and state where the Premises are located, and Tenant submits to personal jurisdiction and venue in such forum.
42. **EFFECT OF DELIVERY OF THIS LEASE: LANDLORD HAS DELIVERED A COPY OF THIS LEASE TO TENANT FOR TENANT'S REVIEW ONLY, AND THE DELIVERY HEREOF DOES NOT CONSTITUTE AN OFFER TO TENANT OR OPTION TO LEASE. THIS LEASE SHALL NOT BE EFFECTIVE UNTIL A FULLY EXECUTED COPY OF THIS LEASE HAS BEEN DELIVERED TO BOTH LANDLORD AND TENANT.**
43. **WAIVER OF THE RIGHT TO TRIAL BY JURY: LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT LANDLORD OR TENANT MAY HERINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE OR THE LEASED PREMISES WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.**
44. **BANKRUPTCY:** Landlord and Tenant understand that, notwithstanding certain provisions to the contrary contained herein, a trustee or debtor in possession under the United States Bankruptcy Code may have certain rights to assume or assign this Lease. Landlord and Tenant further understand that, in any event, Landlord is entitled under the United States Bankruptcy Code to adequate assurances of future performance of the provisions of this Lease. The parties agree that, with respect to any such assumption or assignment, the term "adequate assurance" shall include at least the following:

- 44.1 In order to assure Landlord that the proposed assignees will have the resources with which to pay all Base Rent, Operating Expense Rent or other sum payable by Tenant pursuant to the provisions of this Lease, any proposed assignee must have, as demonstrated to Landlord's satisfaction, a net worth (as defined in accordance with generally accepted accounting principles consistently applied) of not less than the net worth of Tenant on the date this Lease became effective, increased by seven percent (7%), compounded annually, for each year from the Commencement Date through the date of the proposed assignment. It is understood and agreed that the financial condition and resources of Tenant were a material inducement to Landlord in entering into this Lease.
- 44.2 Any proposed assignee must have been engaged in the conduct of business for the five (5) years prior to any such proposed assignment, which business does not violate the Permitted Use, and such proposed assignee shall continue to engage in the Permitted Use and will not cause Landlord to be in violation or breach of any provision in any other lease, financing agreement, operating agreement or other agreement relating to the Shopping Center. It is understood and agreed that Landlord's asset will be substantially impaired if the trustee in bankruptcy or any assignee of this Lease makes any use of the Premises other than the Permitted Use.
- 44.3 Any proposed assignee of this Lease must assume and agree to be bound by the provisions of this Lease.
45. **SURVIVAL:** Anything contained in this Lease to the contrary notwithstanding, the expiration or earlier termination of the Term of the Lease, whether by lapse of time or otherwise, shall not relieve Tenant from Tenant's obligations accruing prior to the expiration or termination of the Term, all of which shall survive the same, whether or not same is expressly stated in the particular paragraph of this Lease, including, without limitation, Tenant's obligations with respect to: (a) the payment of Rent; (b) any provisions of this Lease with respect to indemnities of Landlord made by Tenant; and (c) the removal of all property of Tenant required to be removed hereunder and the repair of all damage to the Premises caused by such removal at the expiration or termination of this Lease to the extent required hereunder.
46. **COUNTERPARTS:** This Lease may be executed in any number of counterparts, which when taken together shall constitute one complete document.
47. **CONFIDENTIALITY:** Tenant agrees, on behalf of Tenant and Tenant's employees, agents, contractors, consultants, partners, affiliates, assignees and subtenants, not to disclose the terms of this Lease or the results of any audit of Landlord's books and records under this Lease to any third party except (i) legal counsel to Tenant, (ii) any assignee of Tenant's interest in this Lease or any subtenant of Tenant relative to the Premises (or any portion thereof), (iii) as required by applicable law or by subpoena or other similar legal process, or (iv) for financial reporting purposes.

48. **DAYS:** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.
49. **OFAC REPRESENTATION:** For purposes hereof, " List" shall mean the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, and "OFAC" shall mean the Office of Foreign Assets Control, Department of the Treasury. Each party represents and warrants to the other that (i) each Person owning a ten percent (10%) or greater interest in such party is (A) not currently identified on the List, and (B) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States and (ii) each party has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. Each party shall comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect and shall use reasonable efforts to notify the other in writing if any of the foregoing representations, warranties or covenants are no longer true or have been breached or if such party has a reasonable basis to believe that they may no longer be true or have been breached. In addition, at the request of a party, the other party shall provide such information as may be requested by the requesting to determine the other party' s compliance with the terms hereof.
50. **DISCLAIMERS:**
- 50.1 LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.
- 50.2 IT IS UNDERSTOOD AND AGREED BY TENANT THAT LANDLORD AND LANDLORD' S AGENT HAVE MADE NO REPRESENTATIONS OR PROMISES WITH RESPECT TO THE PREMISES OR THE MAKING OR ENTRY INTO THIS LEASE EXCEPT AS IN THIS LEASE EXPRESSLY SET FORTH AND THAT NO CLAIM OR LIABILITY, OR CAUSE FOR TERMINATION SHALL BE ASSERTED BY TENANT AGAINST LANDLORD FOR, AND LANDLORD SHALL NOT BE LIABLE BY REASON OF, BREACH OF ANY REPRESENTATIONS OR PROMISES

NOT EXPRESSLY STATED IN THIS LEASE.

51. **GUARANTOR:** Success Behavioral Holdings LLC, a Florida limited liability company, ("**Guarantor**") hereby (and with any other guarantors, if applicable) jointly and severally, expressly unconditionally, absolutely and irrevocably, guarantees to Landlord (i) the prompt payment when due of the Rent and Additional Rent (as defined in the Lease Agreement) and all other sums due in connection with or under the Lease Agreement by Tenant, and (ii) to pay on demand any and all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in enforcing any rights under this Guaranty (collectively, the "**Obligations**"). This Guaranty shall be absolute, continuing and unlimited, and Landlord shall not be required to take any proceeding against Tenant, or give any notice to Guarantor, before Landlord has the right to demand payment or performance by Guarantor upon default by Tenant. This Guaranty and the liability of Guarantor hereunder shall in no way be impaired or affected by any one or more assignments which may be made of the Lease, or any one or more sublettings thereunder, or by any one or more extension(s) of the payment of any rental or any other sums provided to be paid by Tenant, or by any one or more forbearances or delays in enforcing any terms, conditions, covenants, or provisions of the Lease or any one or more amendments, modifications or revisions of the Lease. The liability of Guarantor shall not be deemed to be waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant including, but not limited to, any release or discharge pursuant to any reorganization, readjustment, insolvency, receivership or bankruptcy proceedings or the rejection or disaffirmance of the Lease in any proceeding. No assignment of the Lease shall be deemed a release of this Guaranty. There shall be no modification of the provisions of this Guaranty unless the same is in writing and signed by Guarantor and Landlord. Guarantor hereby expressly and knowingly waives any right Guarantor may have to raise any defense to any obligations that Tenant could raise under the Lease, except for the defense of payment. Guarantor agrees that no modification of the terms of the Lease shall in any way impair or affect the obligations of Guarantor hereunder. Any collection costs shall be taxed against the non-prevailing party in any action under this Guaranty which shall include all fees and court costs incurred, including reasonable attorney and paralegal fees, whether such costs and fees are incurred out of court, in litigation, at trial, on appeal, or in any bankruptcy proceeding. If any term or provision of this Guaranty, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the Guaranty, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by applicable law. This Guaranty and the rights and obligations of the parties hereto are governed by the laws of the State of Florida. This is a guaranty of payment and collection. This guaranty by the Guarantor is a material inducement to Landlord entering into this Lease.

52. **PROMOTIONAL PROGRAM:** Intentionally omitted.

53. **RENEWAL OPTION:** Intentionally omitted.
54. **EXCLUSIVE USE:** Intentionally omitted.
55. **EXPANSION OPTION:** Intentionally omitted.
56. **RIGHT OF FIRST REFUSAL:** Provided that any default (which after the passage of time shall trigger an Event of Default) or an Event of Default does not exist at such time, Tenant shall have a one-time right of first refusal to lease Suite 1010 and Suite 1040 of the Shopping Center, excluding any existing renewal or expansion rights of other tenants or occupants of the Shopping Center. Upon receipt of a lease proposal (the "Proposal") from a bona fide prospective tenant to lease Suite 1010 or Suite 1040 in the Shopping Center, which Proposal Landlord is willing to accept, Landlord shall notify Tenant of the Proposal (the "Proposal Notice") and Tenant shall have one (1) option exercisable by written notice to Landlord within twenty (20) business days after service of the Proposal Notice (the "Option"), to lease all of Suite 1010 and/or Suite 1040 of the Shopping Center upon the same terms and conditions as are contained in the Proposal.
- If Tenant fails to timely exercise this one-time Option or otherwise expressly waives the Option for Suite 1010 or Suite 1040, this Section 56 shall automatically be rendered null and void and of no further legal affect. If Tenant timely exercises the Option as it relates to either, or both, Suite 1010 and Suite 1040, Landlord and Tenant shall execute a new lease, in a form materially and substantially similar to this Lease except for the terms and conditions contained in the Proposal. Upon waiver of the Option, Landlord may enter into an agreement with the specific bona fide prospective tenant who submitted the Proposal or any other prospective tenant, without liability to Tenant. In addition to the foregoing, if Landlord and Tenant despite commercially reasonable efforts cannot enter into a lease pursuant to the Option within ten (10) business days after tenant has exercised its Option, this Section 56 shall be rendered null and void and of no further legal affect unless said period is extended by a writing executed by both parties. **This provision shall not be construed as an obligation of Landlord to lease any Suite or Unit of the Shopping Center that Landlord did not otherwise intend to make available to the public for lease, whether after the expiration of a prior lease relating to such Suite 1010, Suite 1040 or otherwise. After Landlord's Proposal Notice as to either, or both, Suite 1010 and Suite 1040, Landlord shall not be required to provide any additional notice with regard to Suite 1010 or Suite 1040, or any portion thereof, for which Landlord has already provided Proposal Notice as set forth in this section 56. Nothing herein shall be construed as a first right or option to purchase any part of the Shopping Center in which the Premises is located.**
57. **ROOF IMPROVEMENTS; SATELLITE DISH:** Intentionally omitted.
58. **COMPLIANCE AND AMERICANS WITH DISABILITIES ACT:**
- 58.1 Tenant shall, and shall cause its employees, agents, contractors, licensees,

subtenants, and assignees to use the Premises in compliance with all applicable Legal Requirements. Tenant shall, at its sole cost and expense, promptly comply with each and all of such Laws.

- 58.2 Notwithstanding anything to the contrary in this Paragraph, if the requirement of any public authority obligates either Landlord or Tenant to expend money in order to bring the Premises and/or any area of the Shopping Center into compliance with Legal Requirements as a result of: (i) Tenant's particular use or alteration of the Premises; (ii) Tenant's change in the use of the Premises; (iii) the manner of conduct of Tenant's business or operation of its installations, equipment, or other property therein; (iv) any cause or condition created by or at the instance of Tenant, other than by Landlord's performance of any other covenants or obligations under this Lease or any other work performed by Landlord or any of Landlord's agents or contractors for or on behalf of Tenant; (v) breach of any of Tenant's obligations hereunder or (vi) alterations or improvements made by or for Tenant, then Tenant shall bear all costs of bringing the Premises and/or Shopping Center into compliance with Legal Requirements. If such improvements or alterations required to comply with Legal Requirements are required in the Premises, then Tenant shall perform the necessary improvements or alterations, at Tenant's sole cost. If such improvements or alterations required to comply with the Legal Requirements are required in the Common Areas or any other part of the Shopping Center (other than the Premises), then Landlord shall perform the necessary improvements or alterations, and within thirty (30) days after receipt of a written invoice therefore, Tenant shall reimburse Landlord for its pro rata share of all costs incurred by Landlord in connection therewith.
- 58.3 Except to the extent Tenant shall comply as set forth above, during the Term Landlord shall comply, or shall require the responsible party to comply, with all applicable Legal Requirements regarding the Common Areas of the Shopping Center, including without limitation compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336) and its regulations as to the design and construction of alterations, repairs, and replacements to the Shopping Center and Common Areas thereof.


*[Signatures Appear on Following Page]*

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

**“LANDLORD”:**

OVIEDO LANDING, LLC, a  
Florida limited liability company

By: HS Capital Fund Inc., a Florida  
Corporation, its Manager

By:   
Name: Harry Spitzer  
Title: President

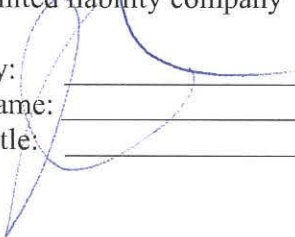
**“TENANT”:**

Check Five LLC, a Delaware limited liability  
company

By:   
Name: Kenneth Chiavolo  
Title: CFO

**“GUARANTOR”:**

Success Behavioral Holdings, LLC, a Florida  
limited-liability company

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

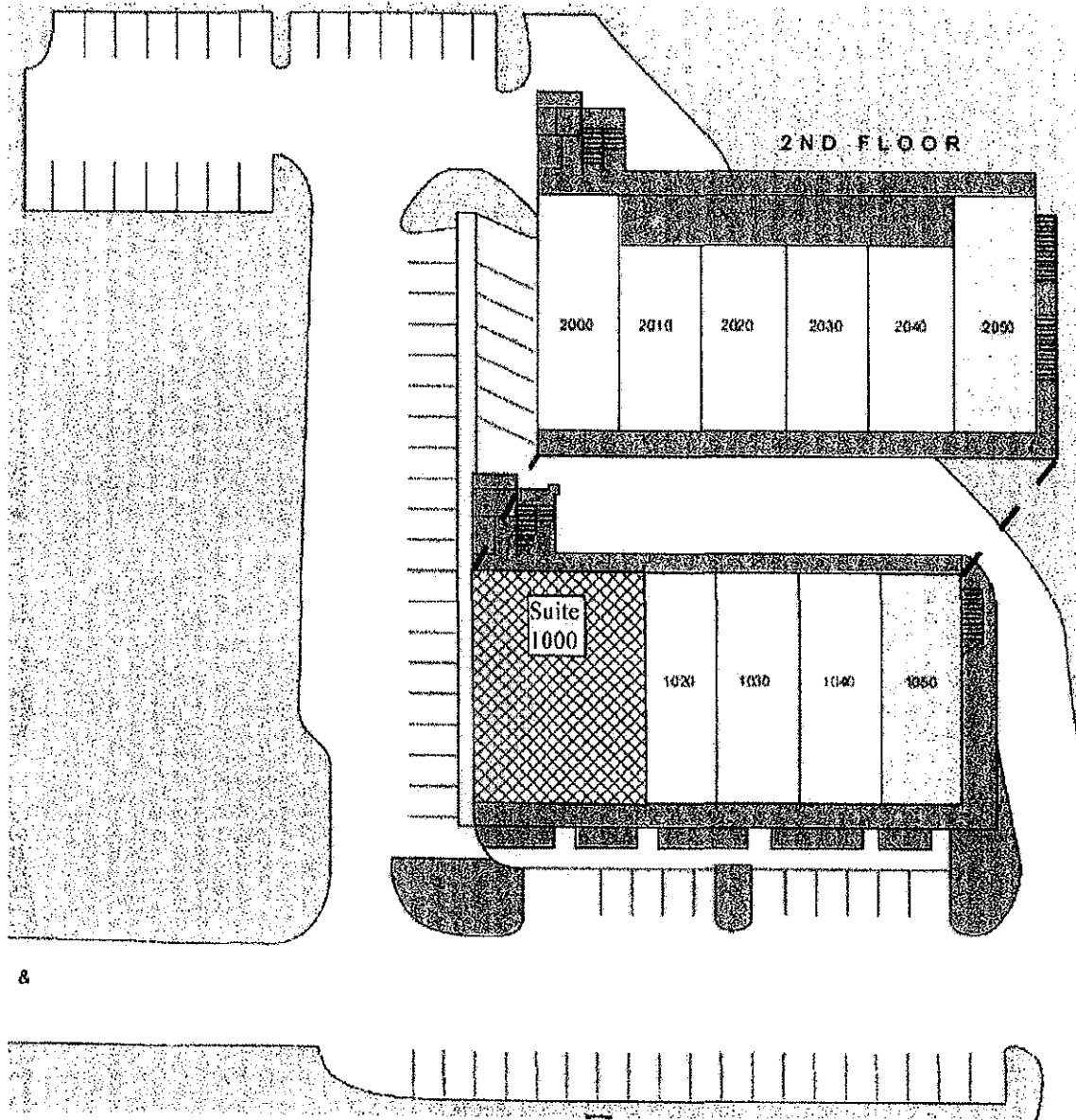
**SCHEDULE 1**

**LEGAL DESCRIPTION**

Unit 2 Oviedo Village A Landsite, Condominium ORB 6481 Page 464 Pad: 1890 W Cr 419 #1000

**SCHEDULE 2**

**SITE PLAN**



8

**SCHEDULE 3**

**TENANT ACCEPTANCE LETTER**

This declaration is hereby attached to and made part of the Retail Lease (the "Lease") dated March \_\_, 2022, entered into by and between, by and between **OVIEDO LANDING, LLC**, a Florida limited

liability company ("Landlord"),) and **CHECK FIVE LLC**, a Florida limited liability company d/b/a Success TMS ("Tenant").

Undersigned, as Tenant hereby confirms the following as of the \_\_\_ day of \_\_\_\_\_, 2022:

1. Tenant has accepted the Premises and is currently able to occupy the same.
2. The Commencement Date, as defined in the Lease is the \_\_\_ day of \_\_\_\_\_, 2022.
3. The Rent Commencement Date, as defined in the Lease, is December 15, 2022.
4. All alterations and improvements required to be performed by Landlord pursuant to the terms of the Lease to prepare the entire Premises for Tenant's initial occupancy have been satisfactorily completed, except for the following:
  - a. Frosting of all interior glass office doors;
  - b. New paint throughout the interior of the Premises as follows:
    - i. If Sherwin Williams: Walls: SW-7029 and Trim: SW-9503 or
    - ii. If Behr: Walls: HDC-NT-20 and Trim: HDC-MD-08
  - c. Standard LVT flooring throughout the interior of the Premises, as shown in Exhibit "A" hereto.
  - d. Addition of door to reception area, breakroom, and office 1, as shown in Exhibit "B" hereto.
5. As of the date hereof, Landlord has fulfilled all of its obligations under the Lease.
6. The Lease is in full force and effect and has not been modified, altered, or amended, except pursuant to any instruments described above, if any.
7. There are no offsets or credits against Base Rent or Additional Rent, nor has any Base Rent or Additional Rent been prepaid except as provided pursuant to the Terms of the Lease.
8. Tenant has no notice of any prior assignment, hypothecation, or pledge of the Lease or any Rent due under the Lease.

It is expressly understood and acknowledged by Tenant that Landlord shall not be held in default nor have any liability to tenant if Landlord is unable, despite commercially reasonable efforts, to deliver the Premises any specified date, including specifically, if such delay is caused by change orders or other plan/buildout changes requested by Tenant. Landlord shall be responsible to insure that all work is compliant with all applicable laws and governmental regulations as of the date of delivery of Tenant, with Tenant solely responsible at its cost and expense thereafter to maintain any applicable law and governmental regulation compliance.

*[Signature to Appear on Following Page]*

[signature page to Tenant Acceptance Letter]

**“TENANT”:**

CHECK FIVE LLC, a Florida limited liability  
company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit "A"





## Exhibit C

### Landlord's Work

Landlord shall provide and install LVT flooring (Exhibit A) throughout Suite 1020 & 1030

Landlord shall provide and paint all interior walls with Paint SW-7029 and SW-9503 or HDC-NT-20 and HDC-MD-08

**SCHEDULE 4**

**RULES AND REGULATIONS**

**[Attached]**

**SCHEDULE 5**

**PROHIBITED USES**

**[Attached]**

**SCHEDULE 6**

**SIGN CRITERIA**

**[Attached]**