

# AFFIDAVIT

The undersigned has signed a lease dated 6-26 <sup>July 24</sup>, 2013 with DDR-SAU MEMPHIS AMERICAN WAY, L.L.C., for the occupancy of Unit No. 2, AMERICAN WAY in Memphis, Tennessee. The Lease business terms were negotiated with Christopher B. Milkie, as a representative of Landlord. Except as expressly provided in this Lease, (i) no representative, agent or employee of Landlord represented, suggested, promised or implied that the undersigned would be given an exclusive use in the Shopping Center for the operation of the business to be conducted in the Premises, or that Landlord would not lease space in the Shopping Center to a competing or other tenant, (ii) no representative, agent or employee of Landlord made any representations, inducements or promises about the Premises or the entry into the Lease, and (iii) no representative, agent or employee of Landlord made any representations, inducements or promises about the characteristics or conditions of or pertaining to the Premises or the Shopping Center. The undersigned has independently investigated the potential of the success of its operations in the Shopping Center and has not relied upon any representations, inducements or promises by Landlord's representatives, agents or employees, other than those contained in the Lease.

Dated this 26 day of June, 2013.

TENANT: Abundant Life Fellowship, Inc.,  
a Tennessee corporation

By: James E. Henderson  
JAMES E. HENDERSON (Print Name)

Its: \_\_\_\_\_

STATE OF TN

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) SS:

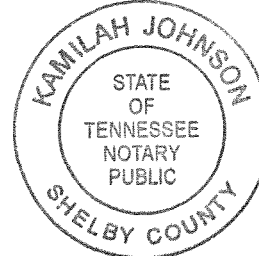
COUNTY OF Shelby

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Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, James E. Henderson, known to me to be the pastor of Abundant Life Fellowship, Inc., the corporation which executed the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors, and that the same is his/her free act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ this 26<sup>th</sup> day of June, 2013.

Kamilah Johnson  
Notary Public



My Commission Expires August 24, 2013

## LEASE

THIS LEASE, entered into at Beachwood, Ohio, as of this 24 day of July, 2013 ("Effective Date") by and between DDR-SAU MEMPHIS AMERICAN WAY, L.L.C., a Delaware limited liability company ("Landlord"), and Abundant Life Fellowship, Inc., a Tennessee corporation ("Tenant").

### WITNESSETH:

IN CONSIDERATION of the mutual covenants hereinafter contained, and each act performed hereunder by either of the parties, Landlord and Tenant agree as follows:

- I. **BASIC LEASE PROVISIONS.** This Article I is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following, whenever used in this Lease shall have the meanings set forth in this Article I:
- A. Shopping Center: AMERICAN WAY situated in the City of Memphis, State of Tennessee (Article II).
  - B. Premises: Unit No. 2 containing approximately 3,119 square feet of gross floor area (Article II).
  - C. Lease Term:
    - 1. Five (5) lease years following the Rent Commencement Date (Article III).
    - 2. Rent Commencement Date: Outside Opening Date (Article III).
    - 3. Outside Opening Date: One hundred eighty (180) days following Landlord's delivery of the Premises to Tenant (Article III).
    - 4. Options to Renew: One (1) consecutive period containing five (5) lease years ("Renewal Term"); three hundred sixty-five (365) days prior notice to exercise required (Article XXIII).
  - D. Rent: (Article IV).
    - 1. Minimum Rent (Article IV)

	\$ PSF	\$ Monthly	\$ Annum
Year 1-5	\$5.77	\$1,499.72	\$17,996.63
Option 1 Yrs. 6-10	\$6.73	\$1,749.67	\$20,996.07
    - 2. Annual Percentage Rent during Lease Term - None (Article IV).
  - E. Real Estate Tax Charge: (Article V).
    - 1. None.
  - F. Landlord's Work: As Is (Article VI).
  - G. Estimated Delivery of Possession Date: (Article VI).
    - 1. Within five (5) days following the mutual execution of this Lease by Landlord and Tenant.
  - H. Common Area Maintenance (CAM) Charge: (Article VII).
    - 1. Initial Estimate: None.
    - 2. Reserve Account: None.
  - I. Permitted Use: (Article IX).
    - 1. Subject to any existing use covenants or use restrictions encumbering the Shopping Center as of the Effective Date of this Lease, the Premises shall be used for the operation of a day care facility, which services shall be provided by qualified personnel subject to rules and regulations established by local state or other agencies having control over such services. The Premises shall be used for no other purpose whatsoever.
  - J. Tenant's Trade Name: Abundant Life Fellowship Church (Article IX).
  - K. Insurance Charge: No (Article XII).
    - 1. Initial Estimate: None.
  - L. Notice Address: (Article XVII)

1. Tenant Notice Address:

Abundant Life Fellowship, Inc.  
3747 Knight Arnold Road  
Memphis, Tennessee 38118  
Federal Identification Number: 78-0001703

2. Landlord Notice Address:

DDR-SAU MEMPHIS AMERICAN WAY, L.L.C.  
3300 Enterprise Parkway  
Beachwood, Ohio 44122  
Attention: Executive Vice President-Leasing  
Federal Identification Number: 20-3886612

3. With Copies To:  
(for Landlord)

DDR Corp.  
3300 Enterprise Parkway  
Beachwood, Ohio 44122  
Attention: General Counsel

M. Security Deposit: \$1,500.00 (Article XVIII).  
Prepaid Rent: \$1,500.00

N. Miscellaneous:

1. Relocation: Yes (Article XXIII).
2. Promotional Fund: None (Addendum).
3. Guarantor(s): James E. Henderson and Bethelyn F. Henderson, (husband and wife)  
2125 Lakeiland CV  
Horn Lake, Mississippi 38637

II. Premises.

- A. Landlord leases to Tenant, and Tenant leases from Landlord, the premises described in Article I(B), as measured from the exterior face of any exterior walls and to the centerline of common walls and outlined in red on Exhibit "A" attached hereto and made a part hereof. The shopping center described in Article I(A) ("Shopping Center") is depicted on Exhibit "A" attached hereto, but shall not include those areas crosshatched on said Exhibit "A". Landlord shall have the right from time to time, in its sole discretion, to increase, reduce and/or otherwise alter (i) the Shopping Center, including, without limitation, the sale and/or acquisition of land, whether or not currently subdivided, and/or (ii) the buildings comprising the Shopping Center.
- B. Landlord reserves the right to maintain, repair, and replace utility lines under, over, upon or through the Premises as may be reasonably necessary or advisable for the servicing of the Premises or other portions of the Shopping Center. Landlord further reserves the right to use (or grant to other parties the right to use) and Tenant will have no right title or interest in (i) the roof of the buildings within the Shopping Center, including the Premises, (ii) exterior non-storefront portions of the Premises (including, without limitation, neutral piers, demising walls, and outer walls of buildings in which the Premises are located), (iii) air rights above the Shopping Center, including the Premises, and (iv) the right to land and improvements below the floor level of the Premises. Landlord shall have the exclusive right to lease any rooftop within the Shopping Center, including the rooftop of the Premises.

III. Term.

- A. **Lease Term.** The terms and provisions of this Lease (excluding specifically, payment of Minimum Rent ([hereinafter defined]) shall become effective on the Effective Date. The Lease Term shall commence upon the Rent Commencement Date and shall expire on the last day of the last consecutive full lease year set forth in Article I (C), Section 1, following the Rent Commencement Date established pursuant to Article I (C), Section 3, unless sooner terminated. The term "lease year" shall mean a period of twelve (12) consecutive full calendar months. If the Rent Commencement Date does not occur on the first day of a calendar month, the first lease year shall include any partial calendar month.

#### **IV. RENT.**

- A. Minimum Rent.** Tenant agrees to pay to Landlord, at its office or other place as Landlord may from time to time designate, as "Minimum Rent" for the Premises during the Lease Term, without any deduction or setoff, the amount(s) set forth in Article 1, Section D (1), in advance, on the first day of each calendar month. Minimum Rent (as hereinafter defined) shall be prorated on a per diem basis (based upon a thirty (30) day calendar month) for any partial month included in the first lease year.

Notwithstanding Tenant's obligation to pay Minimum Rent as of the first day of each month during the Lease Term, in the event that an insolvency, bankruptcy or similar proceeding is filed by or against Tenant, Tenant shall be obligated to pay all such Minimum Rent on a ratable basis from the date of the commencement of any such proceeding through the end of the month in which such proceeding is commenced.

- B. Prepaid Rent.** The amount set forth in Article I, Section M as "Prepaid Rent" shall be due and payable upon Tenant's execution of this Lease.
- C. Percentage Rent.** None.
- D. Gross Sales** Intentionally deleted.

#### **V. Taxes.**

- A. Real Estate Taxes and Assessments** Intentionally deleted.
- B. Rental Taxes.** If any governmental taxing authority shall levy, assess, or impose any tax, excise or assessment (other than income or franchise tax) upon or against the rents payable by Tenant to Landlord ("Rent Tax"), either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, Tenant shall directly pay, or reimburse Landlord for, the Rent Tax, as the case may be.
- C. Impact Fees.** Tenant shall pay all impact fees, including, without limitation, any commercial impact fees for water and sewer, attributable to Tenant's usage of such utilities at the Premises and/or based on the number of square feet within the Premises. Tenant shall reimburse Landlord for any such fees previously paid by Landlord and attributable to the Premises.

#### **VI. Construction.**

- A. Landlord's Work.** Landlord shall have no obligation to perform or cause the performance of construction of any improvements to the Premises prior to delivery thereof to Tenant.
- B. Delivery of Premises.** Landlord shall use reasonable efforts to deliver the Premises to Tenant on or before the Estimated Delivery of Possession Date set forth in Article I(G), herein, in an "as is" condition, subject to delays caused by any circumstances beyond Landlord's reasonable control. In no event shall Landlord be liable to Tenant for any failure or delay by Landlord in delivering the Premises to Tenant on the date set forth above. Tenant hereby acknowledges that, except as set forth below, Landlord has made no representations or warranties to Tenant with respect to the condition of the Premises or the working order of any systems or improvements therein existing as of the date of delivery. Notwithstanding the foregoing, Landlord hereby warrants and represents to Tenant that upon Landlord's delivery of the Premises to Tenant the HVAC unit serving the Premises shall be in working order.
- C. Tenant's Construction.** Within fifteen (15) days from the date of this Lease, Tenant shall prepare and deliver to Landlord detailed plans and specifications of the improvements to the Premises to be constructed by Tenant in compliance with Exhibit "B" attached hereto and made a part hereof. Within fifteen (15) days following Landlord's receipt of Tenant's plans and specifications Landlord shall notify Tenant whether Tenant's plans and specifications are acceptable to Landlord. If Tenant's plans and specifications are not acceptable to Landlord, Landlord will advise Tenant of the required modifications to Tenant's plans and specifications. Tenant shall modify and deliver to Landlord its revised plans and specifications within five (5) days from receipt of Landlord's required modifications. Landlord and Tenant will continue this process until Landlord has approved Tenant's plans and specifications ("Tenant's Work"). Within ten (10) days from receipt of Landlord's approval of Tenant's plans and specifications, Tenant will apply for any and all permits and other governmental approvals necessary to perform Tenant's Work and Tenant will diligently pursue such application until approved. Tenant shall not modify Tenant's plans and specifications approved by Landlord without Landlord's prior written consent. Upon Landlord's delivery of the Premises, and provided Landlord has approved Tenant's plans and specifications, Tenant will commence construction of Tenant's improvements to the Premises in accordance with the plans and specifications approved by Landlord. Tenant shall not commence any work in the Premises until Tenant delivers to Landlord a policy of public liability and property damage insurance in accordance with the requirements of Article XII of this Lease. In the event Tenant has not complied with each of the foregoing conditions, Landlord may, in its sole and absolute discretion, reasonably control Tenant's access to the Premises to the extent Landlord deems

necessary without such actions resulting in any postponement or delay of the Rent Commencement Date set forth in Article I of this Lease. Tenant will complete construction of Tenant's improvements, fixture and stock the Premises and initially open for business to the public on or before the Outside Opening Date provided in Section C (3) of the Basic Lease Provisions. Tenant shall submit to Landlord for Landlord's approval Tenant's plans and specifications for Tenant's exterior signage in accordance with Exhibit "C" attached hereto and made a part hereof. Tenant must receive Landlord's consent to its exterior signage plans and specifications prior to installation of Tenant's exterior signage upon the Premises. Landlord requires Tenant to install its approved exterior signage, at Tenant's sole cost and expense, prior to the date Tenant opens for business to the public from the Premises.

- D. Coming Soon Sign.** On or before the Estimated Delivery of Possession Date, Landlord shall install a "Coming Soon" sign ("Coming Soon Sign") as identified on Exhibit "C-1" attached hereto, on the interior window surface within the Premises. The location and dimension of the Coming Soon Sign shall be determined by Landlord in Landlord's sole discretion. Tenant agrees to pay to Landlord upon execution of this Lease the sum of Fifty and 00/100 Dollars (\$50.00) to reimburse Landlord for the cost incurred by Landlord to fabricate and install the Coming Soon Sign within the Premises. Landlord agrees to use commercially reasonable efforts to incorporate Tenant's trademarks or logos on the Coming Soon Sign, if applicable, provided such information is presented to Landlord with Tenant's plans and specifications depicting Tenant's proposed improvements to the Premises. Upon Tenant's opening in the Premises for business to the public, Tenant shall remove the Coming Soon Sign.
- E. Miscellaneous.** Tenant shall be required to control and retain noise, dust or other materials within the Premises, subject to directives from Landlord. Tenant shall be required to clean all HVAC filters clogged with dust, or other materials resulting from its construction activities.

## **VII. Common Areas.**

- A. Common Areas.** Landlord grants to Tenant and Tenant's customers and invitees the non-exclusive right to use the areas designated by Landlord from time to time as Common Areas. The term "Common Areas" shall mean the parking areas, roadways, pedestrian sidewalks, loading docks, delivery areas, exterior surfaces of Shopping Center buildings, landscaped areas, service courts, open and enclosed courts and malls, fire corridors, meeting areas and public restrooms, and all other areas or improvements which may be provided by Landlord for the common use of the tenants of the Shopping Center. Landlord does not represent or warrant that the Common Areas will be free from interruption of service or use for reasons beyond Landlord's reasonable control. In no event shall Landlord be liable for compensatory, incidental or consequential damages by reason of such interruption. Landlord hereby reserves the following rights with respect to the Common Areas:

1. To establish reasonable rules and regulations for the use thereof;
2. To use or permit the use by others to whom Landlord may have granted such rights for promotional activities;
3. To close all or any portion thereof as may be deemed necessary by Landlord to prevent a dedication thereof or the accrual of any rights to any person or the public herein;
4. To change the layout of such Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise, and shall have the right to retain revenue from income producing events whether or not conducted for promotional purposes;
5. To erect and install signs, kiosks, landscaping (including planters), fountains, sculptures, free standing buildings and other structures, additional stories to existing buildings or otherwise; and
6. To operate, manage, equip, light, repair and maintain said Common Areas for their intended purposes in such manner as Landlord shall in its sole discretion from time to time determine.

**B. Common Area Charges** Intentionally deleted.

**C. Reserve Account** Intentionally deleted.

## **VIII. Utilities and Rubbish Disposal.**

- A. Utility Charges.** Commencing on the date Landlord delivers the Premises to Tenant, Tenant shall pay for all utilities provided to or for the benefit of the Premises, including but not limited to water/sewer, demand or reservation fees, connection fees, tap fees, gas, electricity, fuel, light, heat, power, telephone, cable, and trash and garbage removal, together with all taxes levied or other charges on such utilities and governmental charges based on utility consumption. Tenant shall, at its sole cost and expense, pay for the

cost of installation of meters for the Premises and any and all related costs and expenses if such meters do not exist at the Premises on the date possession of the Premises is made available to Tenant.

If any utilities are not separately metered or are only partly separately metered and are used in common with other tenants of the Shopping Center, Tenant shall pay to Landlord its share of such utility costs computed by Landlord, in Landlord's sole discretion, to reasonably reflect Tenant's consumption of such utility from the Premises. Such payments shall be made pursuant to Section C of this Article VIII.

Notwithstanding the foregoing, Landlord shall have the right, but not the obligation, to supply Tenant with any or all utility services provided to or for the benefit of the Premises and Tenant shall pay to Landlord or Landlord's agent the cost of such utilities provided to Tenant at the Premises pursuant to Section C of this Article VIII. Landlord shall, in Landlord's sole discretion, compute Tenant's cost of such utilities to reasonably reflect Tenant's consumption of such utilities from the Premises. In no event, however, shall the cost of such utility service(s) supplied by Landlord exceed a rate which Tenant would otherwise pay for such utility service(s) if Tenant obtained such utility service(s) directly from the applicable utility supplier. Landlord and Tenant further agree that Landlord shall have the right to discontinue supplying such utility service(s) upon ten (10) days prior written notice to Tenant, provided Landlord shall not discontinue such utility service(s) until Tenant has obtained the discontinued utility service(s) from the applicable utility supplier and Tenant has provided Landlord with written notice thereof.

Landlord and Tenant hereby acknowledge that electrical service to the Premises may be furnished by one or more companies providing electrical generation, transmission and/or distribution services. Landlord hereby reserves the right to charge Tenant for the cost of electrical service to the Premises as a single charge or divided into and billed in a variety of categories such as distribution charges, transmission charges, generation charges, public good charges or other similar categories. Landlord further reserves the right, at its sole discretion, to select the company(ies) providing electrical service(s) to the Shopping Center, including the Premises, to aggregate the electrical service for the Premises and other premises within the Shopping Center, to purchase electricity for the Shopping Center, including the Premises, through a broker and/or buyers group and to change the providers and/or manner of purchasing electricity from time to time. Landlord shall be entitled to receive a reasonable fee (if permitted by law) for the services provided by Landlord in connection with the selection of utility companies and the negotiation and administration of contracts for the generation of electricity to the Shopping Center. In addition, if Landlord bills Tenant directly for the cost of electricity service to the Premises, the cost of electricity service may include (if permitted by law) an administrative fee to reimburse Landlord for the cost of reading meters, preparing invoices and related costs.

- B. Rubbish Disposal.** Landlord reserves the right to implement a program of rubbish removal for the Shopping Center. Landlord shall implement such program by (i) the initial acquisition by purchase or lease of disposal facilities, including but not limited to, compactor(s), baling machine(s) and/or incinerator(s), and the cost of initial acquisition and installation of such equipment or facilities shall be reimbursable to Landlord within thirty (30) days from receipt of Landlord's invoice based upon a proration from each tenant according to the projected use of such facilities, (ii) the implementation of uniform and objective rules and regulations for the storage, separation and disposal of rubbish, and (iii) establishment of guidelines for the scheduled and permitted uses of any such facilities, alternate methods of disposing of any rubbish which is not compatible with the facility, and a schedule of costs and fees to each tenant for the use of said facilities (inclusive of the cost of any required maintenance of such facilities and the cost of removal of the by-product from the Shopping Center). Landlord, in its sole discretion, shall have the right to retain the services of an independent consultant the cost of which shall be included in the total cost of the program.
- C. Payment.** If and to the extent Landlord shall bill Tenant for utilities and/or rubbish disposal pursuant to this Article VIII, such charges shall be paid by Tenant in monthly installments on the first day of each month based upon the annual amount to be reasonably estimated by Landlord from time to time. Subsequent to the expiration of the period used by Landlord in estimating Tenant's share of such cost, Landlord shall furnish to Tenant a statement of the actual amount of Tenant's proportionate share of utilities and/or rubbish disposal for such period and within fifteen (15) days, Tenant shall pay to Landlord or Landlord shall remit to Tenant, as the case may be, the difference between the estimated amounts previously paid by Tenant and the actual amount of Tenant's utilities and/or rubbish disposal charges for such period as shown by Landlord's statement.
- D. Landlord Utility Indemnification.** In no event shall Landlord be liable for the quality, quantity, failure, or interruption of the foregoing utility and rubbish disposal services to the Premises.

**IX. USE OF PREMISES BY TENANT.**

- A. Tenant's Use of Premises.** Tenant shall use the Premises only for the uses set forth in Article I(1), Section 1, of this Lease and for no other purpose.
- B. Operation of Business.** Tenant agrees to open its store for business on or before the Outside Opening Date, fully fixtured, stocked and staffed and to continuously conduct in 100% of the Premises, at least, in any event, from 7:30 A.M. to 10:00 P.M., on all business days during the Term of this Lease and any renewal or extension thereof, the business described in Article I, Section I(1), above, except where Tenant is prevented from doing so by strikes, casualty or other causes beyond Tenant's control. In no event, however, will Tenant first open for business on any day before 7:30 A.M. or remain open for business after 10:00 P.M. without Landlord's prior written consent.

Recognizing the difficulty or impossibility of determining Landlord's damages for loss of Percentage Rent anticipated from occupants of the Shopping Center or for loss of values of the Shopping Center because of diminished salability, mortgagability, adverse publicity or appearance which may result if Tenant shall (i) fail to open for business fully fixtured, stocked and staffed on the Outside Opening Date and/or (ii) fail to operate its business within the Premises in accordance with this Article IX, Section B, and/or (iii) vacate or abandon the Premises and/or (iv) fail to operate in the Premises as otherwise required by Landlord, then and in any such event the Landlord shall, in addition to any other remedy available to Landlord under this Lease, have the right to collect from Tenant in addition to and together with Minimum Rent due under this Lease, and as liquidated damages for such breach, an amount equal to One Hundred Dollars (\$100.00) per day for each day during such time as any one or more of the aforementioned events shall continue. The parties hereby acknowledge and agree that such additional amount represents a reasonable estimate of Landlord's damages sustained by reason of Tenant's breach. For purposes of this Article IX, the terms "vacate" and "abandon" shall not be abrogated because Tenant may have left all or any part of its trade fixtures, furniture, furnishings or stock-in-trade within the Premises

**X. TENANT'S COVENANTS WITH RESPECT TO OCCUPANCY.** Tenant agrees:

1. To occupy the Premises in a safe and careful manner and in compliance with all laws, ordinances, rules, regulations and orders of any governmental bodies having jurisdiction over the Premises, and without committing or permitting waste;
2. To neither do nor suffer anything to be done or kept in or about the Premises which contravenes Landlord's insurance policies or increases the premiums therefor;
3. To keep its show or display windows, canopy and electric signs lighted until at least 9:30 P.M. local time of each day or until thirty (30) minutes after the close of each business day, whichever is the later;
4. To permit no reproduction of sound which is audible outside the Premises or permit odors to be unreasonably dispelled from the Premises;
5. To place no sign on the exterior of the Premises or on the interior surface of any windows of the Premises without Landlord's prior written consent and in accordance with the requirements of Exhibit "C" attached hereto. Tenant shall maintain all signs placed upon the Premises by Tenant in good condition and repair. Except as provided in Article VI, Section D above, Tenant agrees not to display any banners, pennants, search lights, window signs, balloons, or similar advertising media on or about the Premises. Upon vacating the Premises, Tenant agrees to remove all signs installed by Tenant and repair all damage caused by such removal in accordance with Article XI, Section D, of this Lease;
6. To place no merchandise, sign or other thing of any kind in the vestibule or entry of the Premises or on the sidewalks or other Common Areas adjacent thereto;
7. To park Tenant's vehicles and to require all employees to park only in such places as may be designated from time to time by Landlord for the use of Tenant and its employees, and specifically not to permit parking of any Tenant or employee vehicles in any service court area. Landlord reserves the right to impose fines against Tenant for any violation of these parking restrictions by Tenant and/or Tenant's employees and to have towed, at Tenant's cost and expense, any automobile parked in violation of this Section;
8. To keep any rubbish, garbage and waste generated by Tenant from the Premises in proper dumpsters provided by Tenant adjacent to the Premises or such other area designated by Landlord from time to time until such rubbish, garbage and waste is removed from the Shopping Center and to permit no refuse to accumulate around the exterior of the Premises;
9. To neither load nor unload or permit the loading or unloading of merchandise, equipment or other property from any doors of the Premises that open onto the front sidewalk areas, nor from any other

doors except from the rear of the Premises and to use its best efforts to prevent the parking or standing of vehicles and equipment upon Shopping Center land except when actually engaged in loading or unloading. In the event Tenant violates this covenant, Tenant shall have twenty-four (24) hours following receipt of notice from Landlord (which notice may be given by personal delivery to the Premises including, but not limited to, oral notice by Landlord's representative at the Shopping Center) to cease such activity or be deemed to be in default under this Lease, notwithstanding any cure periods set forth in Article XVI, and Landlord shall have the immediate right to invoke any legal or equitable remedies to enjoin Tenant from such activity;

10. To conduct no auction, fire, bankruptcy, liquidation, going-out-of-business, moving, relocating or any other similar sale without the prior written consent of Landlord;
11. To permit Landlord free access to the Premises at all reasonable times for the purpose of examining or making repairs to the Premises that Landlord may deem necessary or desirable for the safety or preservation thereof;
12. Not to permit to be attached or recorded against the Premises or any other portion of the Shopping Center any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or materialman for or at the request of Tenant. Tenant will not enter into any mortgages, conditional sale, security agreement or like instrument nor suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired or diminished. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises is filed against the Premises or any part of the Shopping Center, Tenant will, within ten (10) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, letter of credit or other adequate security. If Tenant fails to cause such lien or notice of lien to be discharged within such period, Landlord, its managing agent, or Landlord's lender, may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Tenant shall, immediately upon demand, reimburse Landlord, its managing agent, or Landlord's lender for any and all costs and expenses incurred by Landlord, its managing agent, or Landlord's lender, to discharge such lien including, without limitation, all attorneys' fees, court costs and similar expenses, plus an administrative fee equal to One Thousand and 00/100 Dollars (\$1,000.00). In addition, Tenant shall indemnify and hold Landlord, its managing agent, and Landlord's lender, if any, harmless from and against all loss, cost, expense and liability whatsoever (including Landlord's or its managing agent's cost of defending against the foregoing, such cost to include attorneys' fees) resulting or occurring by reason of any claims or causes of actions that may arise as a result of any lien, notice of lien or, claim relating to work and/or materials furnished to the Premises at the request of Tenant, its employees, agents or contractors;
13. To solicit no business in the Common Areas, nor distribute handbills or other advertising matter to customers, nor place the same in or on automobiles in the Common Areas, nor conduct any promotional activity whatsoever in the Common Areas;
14. To comply with all reasonable rules and regulations which Landlord may from time to time establish for the use and care of the Premises and the Common Areas;
15. To advertise with a display-type advertisement a minimum of six (6) times during each lease year with a total of at least 120 column inches per lease year in the printed media approved by Landlord;
16. To shut off all exhaust fans, if any, servicing the Premises at all times when the Premises are closed; to keep the Premises adequately heated and cooled to comfortable room temperature year round and, if applicable, to at least the same minimum temperature (in the case of heat) or at the same maximum temperature (in the case of air-conditioning) as Landlord shall attempt to maintain in the enclosed Common Areas, if any;
17. To prohibit the operation on the Premises or in any part of the Shopping Center of any coin or token-operated vending machines, video games or similar devices;
18. To permit Landlord or its agents, during the ninety (90) day period preceding the expiration of the Term of this Lease, to show the Premises to potential tenants, and to place on the Premises notices offering the Premises for lease or sale; and
19. That it shall make no installations upon or any penetrations through the roof or the exterior walls of the Premises without the prior written consent of Landlord. Any unauthorized roof installations or penetrations by Tenant shall be subject to immediate removal and repair, at Tenant's sole cost and expense, upon notice from Landlord. Repairs shall be made with materials of equal or better quality and by contractors approved by Landlord;



20. In the event Landlord elects to make any additions or changes to the Premises and/or Shopping Center, Tenant shall, at its sole cost and expense, upon Landlord's request: (i) temporarily relocate Tenant's signage and/or remove Tenant's signage; and/or (ii) modify Tenant's signage to conform to Landlord's signage criteria, then in effect, that applies to the Shopping Center, provided such requirements are uniformly applied and enforced;
21. Tenant shall, at its sole cost and expense, contract for termite and pest extermination services covering the Premises to be rendered as required by Landlord; provided, however, Landlord reserves the right to implement a program for termite and pest extermination for portions of the Shopping Center and Tenant shall participate in such program at Tenant's sole cost and expense upon notice from Landlord.

#### **XI. REPAIRS AND ALTERATIONS.**

- A. **Repairs by Landlord.** Landlord shall keep the foundations, roof, and structural portions of the outer walls of the Premises in good repair, except for repairs required thereto by reason of the acts of Tenant, Tenant's employees, agents, invitees, licensees, or contractors. Tenant shall give Landlord written notice of the necessity for repairs coming to the attention of Tenant following which Landlord shall have a reasonable time to undertake and complete such repairs. The provisions of this Article XI, Section A, shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain, in which events the obligations of Landlord shall be controlled by either Article XIII or Article XV hereof.

It is expressly understood that Landlord shall not be responsible for any portions of the Premises constructed by Tenant or any prior occupant of the Premises.

- B. **Repairs by Tenant.** Except as provided in Article XI, Section A, Tenant shall keep the Premises and any fixtures, facilities, signs or equipment contained therein, in good condition and repair, including, but not limited to, exterior and interior portions of all doors, door checks and operations, windows, plate glass, and showcases surrounding the Premises, the heating, air conditioning, electrical, plumbing and sewer systems, the exterior doors, window frames, and all portions of the store front area, and shall make any replacements of the foregoing and of all broken and/or cracked plate and window glass which may become necessary during the Term of this Lease, and any renewals thereof. In connection with Tenant's obligation to maintain the HVAC system serving the Premises, Tenant shall, during the Term of this Lease, and any renewals thereof, at its sole cost and expense, maintain a service contract for the routine performance of standard HVAC system maintenance, including but not limited to, periodic replacement of filters, oiling of mechanical components and inspection for wear and tear. Landlord reserves the right to designate an HVAC contractor with whom Tenant shall contract for such routine HVAC system maintenance so long as the fee charged by Landlord's designated contractor shall be the same or less than the fee charged by Tenant's contractor for similar services. If Tenant fails to commence or complete repairs promptly and adequately, Landlord may make or complete said repairs and Tenant shall pay the cost thereof to Landlord upon demand, together with the sum of fifteen percent (15%) of said costs for overhead and an additional sum equal to ten percent (10%) of said amount for profit.

Notwithstanding anything to the contrary contained herein, provided Tenant shall not then be in default of any term or provision of this Lease, and so long as Tenant has provided proper routine maintenance as required under the terms and conditions of this Lease, then in the event the HVAC system serving the Premises requires repair and the cause of such repair was not due to the negligent or intentional act or omission of Tenant, its employees, agents or contractors, Landlord shall pay the cost of any repair in excess of Five Hundred and 00/100 Dollars (\$500.00) incurred by Tenant (as evidenced by copies of Tenant's invoices and canceled checks for payment of such repair).

- C. **Alterations or Improvements by Tenant.** Tenant shall not, without Landlord's prior written consent, make, or permit to be made, any alterations, additions or improvements to the Premises, which consent Landlord may withhold in its sole discretion. Any alterations which may be permitted by Landlord shall be based upon plans and specifications submitted by Tenant and approved by Landlord and upon the condition that Tenant shall promptly pay all costs, expenses, and charges thereof, shall make such alterations and improvements in accordance with applicable laws and building codes and ordinances and in a good and workmanlike manner, and shall fully and completely indemnify Landlord, its managing agent, and Landlord's lender against any mechanic's lien or other liens or claims in connection with the making of such alterations, additions, or improvements. Tenant shall promptly repair any damages to the Premises, or to the buildings of which the Premises are a part, caused by any alterations, additions or improvements to the Premises by Tenant.
- D. **Removal of Improvements.** At the expiration or earlier termination of the Lease Term, all improvements included in Landlord's Work, if any, all heating and air conditioning equipment, and all alterations, additions

and other improvements by Tenant shall become the property of Landlord and shall not be removed from the Premises. All trade fixtures, furniture, furnishings, and signs installed in the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed upon the expiration of the Lease Term, provided that Tenant shall repair any damage caused to the Premises by the removal of any such items that are affixed to the Premises. If Tenant fails to remove such items from the Premises prior to the expiration or earlier termination of this Lease, or if Tenant has not fully performed all of the covenants and agreements to be performed by Tenant under the provisions of this Lease, all such trade fixtures, furniture, furnishings, and signs shall become the property of Landlord. In such event, Landlord shall have the right to remove and sell such trade fixtures, furniture, furnishings, and signs to pay for the cost of removal and/or repairs to the Premises. To the extent the revenue received by Landlord's sale of such trade fixtures, furnishings, and signs is insufficient to recover Landlord's cost of removing the same and/or repairs to the Premises, then Landlord shall have the right to proceed directly against Tenant to recover any balance. Notwithstanding anything contained to the contrary in this Lease, if Tenant removes such items from the Premises but fails to repair any damage caused by such removal, Landlord may make or complete said repairs without providing Tenant notice prior to the commencement of said repairs. To the extent Landlord exercises self help under this paragraph, Tenant shall reimburse Landlord the cost thereof upon demand, together with the sum of fifteen percent (15%) of said costs for overhead and an additional sum equal to ten percent (10%) of said amount for profit. Tenant's obligations under this Section D shall survive the termination of this Lease.

## **XII. INDEMNITY AND INSURANCE.**

- A. Indemnification by Tenant.** Tenant will indemnify and hold Landlord, its managing agent, and Landlord's lender harmless from and against all loss, cost, expense, and liability whatsoever (including Landlord's cost of defending against the foregoing, such cost to include attorney's fees and including damage to other tenant's contents and improvements) resulting or occurring by reason of (i) the negligent or willful act or misconduct of Tenant, its employees, agents and contractors, occurring within the Shopping Center, and (ii) Tenant's construction, use or occupancy of the Premises.
- B. Tenant's Insurance.** Effective as of the date Tenant first enters the Premises and continuing throughout the Lease Term and any extensions or renewals thereof, including, without limitation, any holdover with or without Landlord's consent, Tenant shall procure, pay for and keep in full force and effect, the following types of insurance:
  - 1. Commercial General Liability Insurance Policy insuring the Premises and Tenant's use thereof, together with contractual liability endorsements covering Tenant's obligations set forth in Article XII, Section A, above, in a form satisfactory to Landlord with companies having an A.M. Best Rating or its equivalent of A-VIII or better, and with a minimum limit of One Million and 00/100 Dollars (\$1,000,000.00) on account of bodily injuries to or death or property damage for each occurrence and a minimum limit of Two Million Dollars (\$2,000,000.00) annual general aggregate. The aggregate limit may be satisfied through a combination of primary and umbrella/excess liability insurance. Such insurance shall also provide that the general aggregate limits apply separately to each insured location, if applicable. The foregoing policy shall name Landlord and DDR Corp., and such other parties as Landlord may from time to time designate in writing to Tenant as additional insureds under Tenant's insurance policy and shall bear endorsements to the effect that the insurer agrees to notify all additional insureds not less than thirty (30) days in advance of any modification or cancellation thereof;
  - 2. Special Form Cause of Loss Property Insurance Policy, including extended coverage endorsements insuring all leasehold and building improvements in the Premises, Tenant's stock-in-trade, trade fixtures, furniture, furnishings, special equipment, floor and wall coverings, and all other items of personal property of Tenant located on or within the Premises, such coverage to be in an amount equal to one hundred percent (100%) of the replacement cost thereof, and business interruption or loss of income insurance in an amount equal to the Minimum Rent and any other Additional Rent (hereunder defined) payable under this Lease for a minimum period of twelve (12) months. The foregoing policy shall name Landlord and DDR Corp., and such other parties as Landlord may from time to time designate in writing to Tenant as loss payee under Tenant's insurance policy with regard to the permanent leasehold improvements within the Premises, including mechanical equipment and permanent fixtures and shall bear endorsements to the effect that the insurer agrees to notify all loss payees not less than thirty (30) days in advance of any modification or cancellation thereof;
  - 3. Workers' compensation insurance (meeting the requirements of the workers' compensation laws of the State in which the Premises is located) and employer liability insurance covering all of Tenant's employees at the Premises. Tenant shall also use good faith efforts to ensure all

contractors, sub-contractors, vendors, leased employees, and temporary employees are properly insured for workers' compensation;

4. Plate glass insurance covering all plate glass on the Premises at full replacement value; and,
5. Commercial automobile liability insurance for hired, owned/registered under Tenant's name and non-owned vehicles, including contractual liability with a single limit of liability not less than \$1,000,000 per accident for bodily injury and property damage combined; and
6. Any insurance policies reasonably designated necessary by Landlord with regard to Tenant's, or Tenant's contractors' construction of Tenant's Work, as well as with regard to the construction of alterations including, but not limited to, contingent liability and "all risk" builders' risk insurance.

Tenant shall deposit with Landlord prior to the date of any use or occupancy of the Premises by Tenant certificates evidencing Tenant's compliance with each of the required coverages. To the extent that any of the foregoing policies shall change in name and/or coverage due to general changes in the insurance industry, Tenant shall obtain and maintain the equivalent policies and coverages as are then recognized in the insurance industry.

- C. **Mutual Waiver of Subrogation.** All insurance policies required to be carried by either party pursuant to the terms set forth in this Article XII shall, to the extent permitted by law, expressly waive any right on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement. The failure of any insurance policy to include such waiver clause or endorsement shall not affect the validity of this Lease. Tenant and Landlord further agree to waive all claims, causes of action and rights of recovery against the other, and their respective agents, officers, and employees, for any injury to or death of persons or any damage or destruction of persons, property or business which shall occur on or about the Premises originating from any cause whatsoever including the negligence of either party and their respective agents, officers, and employees to the extent such injury, death or property damage is required to be covered by a policy or policies maintained by either Landlord or Tenant pursuant to this Lease. Notwithstanding the above, Landlord and Tenant agree and acknowledge that the waiver of subrogation herein contained shall expressly extend to and include any uninsured loss paid by the insured in the form of a deductible or self-funded retention cost.
- D. **Landlord's Liability.** Landlord shall not be liable (i) for any damage to Tenant's property located in the Premises, regardless of the cause of such damage, (ii) for any acts or omissions of other tenants of the Shopping Center, nor (iii) for any condition of the Premises whatsoever unless Landlord is responsible for the repair thereof, and has failed to make such repair after notice from Tenant of the need therefor, and expiration of a reasonable time for the making of such repair.
- E. **Landlord's Insurance.** Landlord agrees to carry insurance under a Special Form Cause of Loss Policy (or an equivalent policy that becomes the insurance industry standard in the future) on the Shopping Center improvements constructed by Landlord in an amount equal to at least eighty percent (80%) of the insurable value of such improvements, together with endorsements insuring against such other risks as Landlord deems appropriate (including, but not limited to, earthquake, flood, boiler and machinery, plate glass, power failure, mold, windstorm, terrorism, seepage or leakage and loss of rent) and in such amounts, with such terms and with such insurers, all as Landlord deems appropriate in Landlord's sole discretion. Such insurance shall specifically exclude Tenant's personal property and the interior leasehold improvements, mechanical equipment and permanent fixtures that Tenant is obligated to maintain pursuant to the terms of this Lease. Landlord shall also maintain in full force and effect throughout the Term commercial general liability insurance with regard to the Common Areas with minimum limits of \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, death and property damage liability. Landlord shall have the right to carry its insurance under "blanket" and/or "umbrella" policies covering the Shopping Center and other properties. Any insurance policies maintained by Landlord may include deductibles, self-insured retentions or the like in amounts determined by Landlord, in Landlord's sole discretion. Landlord shall have the right, but not the obligation, to maintain commercial insurance policies covering some or all of the deductibles, self-insured retentions or the like which are provided in any of Landlord's other insurance policies. The insurance policies maintained by Landlord pursuant to this Section are individually and collectively referred to herein as "Landlord's Insurance." Tenant shall have no rights in said policy or policies maintained by Landlord and shall not, by reason of such reimbursement, be entitled to be a named insured thereunder.
- F. **Insurance Charge** intentionally deleted.

- XIII. **DAMAGE AND DESTRUCTION.** In the event the Premises are damaged by any peril covered by the insurance policies that Landlord is required to maintain pursuant to Article XII of this Lease, the damage shall, except as hereinafter provided, promptly be repaired by Landlord, at Landlord's expense; provided, however

that in no event shall Landlord be required to repair or replace any of the property or improvements described in Article XII, Sections (B)(2) and (B)(4) which shall be the obligation of Tenant to replace to at least equal condition immediately prior to such damage. In the event (a) the Premises are damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, (b) the buildings on the Shopping Center are damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damages to the Premises, or (c) the building containing the Premises is damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damage to the Premises, or (d) any damage to the Premises occurs during the last three (3) years of the Term of this Lease, Landlord may elect either to repair or rebuild the Premises or the buildings on the Shopping Center, as the case may be or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the event causing the damage. If the casualty, repairing, or rebuilding shall render the Premises untenantable, in whole or in part, a proportionate abatement of the Minimum Rent in proportion to the sales floor area of the Premises rendered untenantable shall be allowed until the date Landlord completes the repairs or rebuilding only so long as cause of damage was not due to acts or omissions of Tenant or its employees, agents and contractors.

- XIV. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease nor sublet the Premises or any part thereof, without in each case the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Tenant shall not permit any business to be operated in or from the Premises by any concessionaire or licensee without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. In the event Tenant shall request Landlord's consent to an assignment of this Lease or subletting of the Premises, Tenant shall pay Landlord, as a condition to obtaining Landlord's consent the reasonable costs and expenses incurred by Landlord to review and/or prepare documents in connection with such assignment or sublease (including Landlord's reasonable attorneys' fees) and, in addition, a consent fee of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per request, regardless of whether such assignment or sublease is consummated by Tenant or consented to by Landlord. No consent by Landlord shall operate to relieve Tenant and/or Guarantor, if any, from primary liability for the performance of Tenant's obligations under this Lease.

Any sale, assignment, bequest, inheritance, transfer or other disposition of the ownership of Tenant's entity which shall result in a change in the effective control of Tenant including, without limitation, the sale of (a) stock in a corporate tenant, (b) partnership interests in a partnership tenant, or (c) member interests in a limited liability company tenant shall be deemed an assignment of this Lease requiring Landlord's prior written consent.

- XV. EMINENT DOMAIN.** In the event the Shopping Center or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriate proceedings or by any right of eminent domain, the entire compensation award thereof, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee, shall belong to Landlord, without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title, and interest to any such award. Tenant shall have the right to recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded to Tenant.

In the event of a taking under the power of eminent domain of (i) more than twenty-five percent (25%) of the Premises or (ii) a sufficient portion of the Shopping Center so that after such taking less than fifty percent (50%) of the leasable floor area within all buildings located on the Shopping Center (as constituted prior to such taking) are occupied by tenants, either Landlord or Tenant shall have the right to terminate this Lease by notice in writing given within ninety (90) days after the condemning authority takes possession, in which event all rents and other charges shall be prorated as of the date of such termination.

In the event of a taking of any portion of the Premises not resulting in a termination of this Lease, Landlord shall use so much of the proceeds of Landlord's award for the Premises as is required therefor to restore the Premises to a complete architectural unit and this Lease shall continue in effect with respect to the balance of the Premises, with a reduction of Minimum Rent in proportion to the portion of the Premises taken.

- XVI. DEFAULT BY TENANT.** If Tenant defaults in the payment of Minimum Rent or other charges and such payment is not made within five (5) days following Landlord's written notice that same is due, or if Tenant shall default in the performance of any other of Tenant's obligations hereunder and Tenant fails to remedy such default within fifteen (15) days after written notice from Landlord (unless a shorter time period is specifically provided elsewhere in this Lease, in which event, the shorter time period will be applicable), provided that in no event shall Landlord be obligated to provide Tenant with written notice of any default, monetary or otherwise, more than once per calendar year, or if a receiver of any property of Tenant on the Premises is appointed, or Tenant's interest in the Premises is levied upon by legal process, or Tenant be adjudged bankrupt and Tenant fails within thirty (30) days to cause the vacation of such appointment, levy or adjudication, or if Tenant files a

voluntary petition in bankruptcy, disposes of all or substantially all of its assets in bulk, or makes an assignment for the benefit of its creditors, then and in any such instance, without further notice to Tenant, Landlord shall have the right to exercise any and all rights or remedies available to Landlord at law, in equity or otherwise, arising from such default, including but not limited to the right to (i) terminate this Lease, or (ii) enter upon the Premises without terminating this Lease and relet the Premises in Landlord's name for the account of Tenant for the remainder of the Term upon terms and conditions reasonably acceptable to Landlord and immediately recover from Tenant any deficiency for the balance of the Term, plus expenses of reletting. In addition to the foregoing, any time after such default and the lapse of any applicable notice period, Landlord shall have the right to make such payments in default or perform such act in default for the account and at the expense of Tenant, and all unpaid Minimum Rent other charges which are not paid when due and all sums paid by Landlord pursuant to this sentence, including reasonable attorneys' fees as specifically provided below, shall accrue interest at the annual rate of (i) fifteen percent (15%), or (ii) five percent (5%) above the prime lending rate most recently published by the Wall Street Journal, whichever is greater, which shall constitute Additional Rent under this Lease and shall be payable upon demand. Notwithstanding the foregoing, Landlord shall have no duty to mitigate the damages suffered by Landlord rising from the default by Tenant of any of its obligations under this Lease. If Tenant shall issue a check to Landlord which is dishonored by Tenant's depository bank and returned unpaid for any reason, including without limitation, due to insufficient funds in Tenant's checking account, Tenant shall (i) pay to Landlord as an administrative fee, the lesser of (a) the sum of Seventy-five and 00/100 Dollars (\$75.00), or (b) the maximum amount permitted by State law, and (ii) at Landlord's option, make all subsequent rental payments by bank certified check. The foregoing remedies shall be in addition to any other rights or remedies available to Landlord at law.

Tenant's failure to pay Minimum Rent or any other Lease costs when due under this Lease may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by any ground lease, mortgage, or deed of trust encumbering the Shopping Center. Therefore, if Landlord does not receive the Minimum Rent or any other Lease costs in full on or before the fifth (5th) day of the month it becomes due, Tenant shall pay Landlord a late charge, which shall constitute liquidated damages, equal to Fifty Dollars (\$50.00) a day for each day rent is late after the first of the month ("Late Charge"), which shall be paid to Landlord together with such Minimum Rent or other Lease costs then in arrears. The parties agree that such Late Charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment. All Late Charges and any returned check charges shall then become Additional Rent and shall be due and payable immediately along with such other Minimum Rent or other Lease costs then in arrears. Money paid by Tenant to Landlord shall be applied to Tenant's account in the following order: (i) to any unpaid Additional Rent, including, without limitation, Late Charges, returned check charges, legal fees and/or court costs legally chargeable to Tenant, and then (ii) to unpaid Minimum Rent. Nothing herein contained shall be construed so as to compel Landlord to accept any payment of Minimum Rent or other Lease costs in arrears or Late Charge or returned check charge should Landlord elect to apply its rights and remedies available under this Lease or at law or equity in the event of default hereunder by Tenant. Landlord's acceptance of Minimum Rent or other Lease costs in arrears or Late Charge or returned check charge pursuant to this clause shall not constitute a waiver of Landlord's rights and remedies available under this Lease or at law or equity.

At any time after the termination of this Lease, Landlord shall be entitled to additional damages ("Liquidated Damages"), which, at the election of Landlord shall be either:

(a) an amount equal to the Minimum Rent and Additional Rent (collectively "Rent"), which, but for the termination of this Lease, would have become due during the remainder of the Lease Term, less the amount of Rent, if any, which Landlord shall receive during such period from others to whom the Premises may be rented, in which case such Liquidated Damages shall be computed and payable in monthly installments, in advance, on the first day of each calendar month following termination of this Lease and continuing until the date on which the Lease Term would have expired but for such termination, and any suit or action brought to collect any such Liquidated Damages for any month shall not in any manner prejudice the right of Landlord to collect any Liquidated Damages for any subsequent month by a similar proceeding; or

(b) an amount equal to the present worth (as of the date of such termination) of Rent which, but for the termination of this Lease, would have become due during the remainder of the Lease Term, less the fair rental value of the Premises in which case such Liquidated Damages shall be payable to Landlord in one lump sum on demand and shall bear interest of five percent (5%) until paid. For purposes of this clause (b), "present worth" shall be computed by discounting such amount to present worth at a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank nearest to the location of the Shopping Center.

Tenant agrees to pay to Landlord upon demand, as Additional Rent, a sum equal to all costs and expenses (including attorney fees, professional fees, costs of investigation and disbursements) incurred by Landlord in enforcing any or all of its rights hereunder, specifically including the cost of collecting sums due, whether or not an action or proceeding is commenced, or levying and collecting on any judgment or arbitration award in Landlord's favor, plus an additional sum equal to fifteen percent (15%) of all such costs and expenses representing the cost of Landlord's administrative expense to enforce its rights under this Lease.

All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

#### **Legal Expenses**

(a) In the event that Landlord should retain counsel and/or institute any suit against Tenant for violation of or to enforce any of the covenants or conditions of this Lease, or should Tenant institute any action against Landlord for violation of any covenants or conditions of this Lease, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party in any such suit shall be entitled to all its costs, expenses and reasonable fees to its attorney(s) in connection therewith.

(b) In the event that a bankruptcy proceeding is filed by or against Tenant under any chapter of the Bankruptcy Code, or Tenant makes an assignment for the benefit of creditors or commences or otherwise becomes the subject of any insolvency, receivership or similar proceeding, Landlord shall be entitled to recover its reasonable attorneys' fees and costs incurred in or in connection with any such proceeding from Tenant or any trustee, custodian, receiver, assignee or other representative acting on its behalf, all of which fees and expenses shall constitute, in addition to any other sums due and owing under this Lease (i) an obligation of Tenant hereunder, and (ii) a component of any cure claim assertable by Landlord under 11 U.S.C. § 365(b) or otherwise.

**XVII. NOTICES.** Any notice or consent required to be given by or on behalf of either party to the other shall be given in writing and mailed by certified mail or by overnight courier service which provides a receipt, at the addresses stated in Article I(A), Sections L and N(3) (if any), of this Lease, or at such other address as may be specified, from time to time, by notice in the manner herein set forth. Notices shall be deemed given upon actual receipt or first rejection.

**XVIII. SECURITY DEPOSIT.** Tenant shall deposit with Landlord the amount set forth in Article I(M), herein (the "Security Deposit"). The Security Deposit shall be held by Landlord, without liability for interest, as security for the timely performance by Tenant of all the terms of this Lease which are to be observed and performed by Tenant. Landlord shall not be obligated to hold the Security Deposit as a separate fund and may commingle the Security Deposit with other funds. If any sum payable by Tenant to Landlord is unpaid, including, but not limited to, or if Landlord makes payments on behalf of Tenant, or performs any of Tenant's obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, apply the Security Deposit as may be necessary to compensate Landlord toward the payment of the sum payable by Tenant to Landlord for loss or damage sustained by Landlord due to such breach on the part of Tenant, and Tenant shall, upon demand, restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within sixty (60) days following the completion of year end net charge reconciliations for the Shopping Center for the calendar year in which this Lease expires or is terminated, less any sums payable by Tenant to Landlord, unless specifically prohibited by law. In the event of bankruptcy or other debtor/creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of rent and other charges due Landlord for all periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser of Landlord's interest in the Premises in the event that such interest be sold, and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit and this provision shall also apply to any subsequent transferees.

**XIX. MORTGAGE SUBORDINATION.** This Lease, and Tenant's rights hereunder shall be subject and subordinate to the lien of any mortgages, ground leases or deeds of trust or other similar instrument that may now exist or may hereafter be placed upon the Shopping Center and all renewals, replacements, and extensions thereof without further notice or action on the part of Landlord or Tenant. Tenant agrees to attorn to any underlying ground lessor, mortgagee or trustee, their respective affiliates, successors and assigns and any purchaser of the Shopping Center that shall succeed to Landlord's interest in this Lease in a foreclosure proceeding, by power of sale, by a deed in lieu of foreclosure or other proceeding or by any other action for the enforcement of such mortgages, deeds of trust or other similar instruments. Tenant shall execute and deliver to Landlord within fifteen (15) days from receipt of Landlord's request such instruments (including but not limited to a Memorandum of Lease and/or a Subordination, Non-Disturbance and Attornment Agreement in recordable

form) which may be required by Landlord's mortgagee or trustee to evidence such subordination and attornment.

**XX. ESTOPPEL CERTIFICATES.** At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute and deliver to Landlord, for the benefit of such persons as Landlord names in such request, a statement in writing and in substance satisfactory to Landlord certifying to such of the following information as Landlord shall request: (i) that this Lease constitutes the entire agreement between Landlord and Tenant and is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the Minimum Rent and other charges hereunder have been paid, and the amount of any security deposited with Landlord; (iii) that the Premises have been completed on or before the date of such letter and that all conditions precedent to this Lease taking effect have been carried out; (iv) that Tenant has accepted possession, that the Lease Term has commenced, that Tenant is occupying the Premises, that Tenant knows of no default under the Lease by Landlord and that there are no defaults or offsets which Tenant has against enforcement of this Lease by Landlord; (v) the Rent Commencement Date of this Lease and the expiration date of this Lease; and (vi) that Tenant's store is open for business, provided such facts are true and ascertainable. Tenant acknowledges and agrees that Tenant's failure to execute and deliver to Landlord any estoppel certificate(s) requested by Landlord within fifteen (15) days from Tenant's receipt of Landlord's request shall be deemed Tenant's acknowledgement that the terms and conditions contained in such estoppel certificate are true and correct and that such terms and conditions may also be relied upon by any third party or parties identified in such estoppel certificate.

**XXI. QUIET ENJOYMENT.** Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Premises without any hindrance from Landlord or any person or persons lawfully claiming the Premises.

**XXII. LIABILITY OF LANDLORD.** Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Landlord, that if Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title, and interest of Landlord in the Shopping Center, as the same may then be encumbered, and neither Landlord nor any of its officers or shareholders shall be liable for any deficiency. It is understood that in no event shall Tenant have any right to levy execution against any property of Landlord other than its interest in the Shopping Center as hereinbefore expressly provided. In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the Shopping Center, Landlord shall be released from all liability and obligations under this Lease.

**XXIII. MISCELLANEOUS PROVISIONS.**

- A. Accord and Satisfaction.** No payment by Tenant, or anyone occupying the Premises by, through or under Tenant, or receipt by Landlord of a lesser amount than the rents stated herein shall be deemed to be other than on behalf of Tenant and on account of the next due rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.
- B. Waiver.** No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Landlord. No waiver by Landlord with respect to one or more tenants or occupants of the Shopping Center shall constitute a waiver in favor of any other tenant, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant. Tenant shall be deemed to have waived the right to dispute any matter relating to Tenant's obligation to pay or prior payment of Rent or Additional Rent unless Tenant provides notice to Landlord within twelve (12) months from earlier of (i) the date Tenant receives Landlord's billing statement setting forth the exact amount of such charge, or (ii) the date such payment is due pursuant to the terms of this Lease.
- C. Broker's Commission.** Tenant warrants that, except for any amounts payable by Landlord to its agent, and the amount payable by Landlord to Tenant's agent, Crye-Leike Commercial (the "Commission"), there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease, and Tenant agrees to indemnify and save Landlord harmless from any liability that may arise from such claims, including reasonable attorney's fees. In the event this Lease shall be terminated for any reason prior to the natural expiration of the initial Term of this Lease, Tenant shall pay to Landlord the unamortized portion of the



Commission, said amortization to be computed based upon a five (5) year term commencing on the Rent Commencement Date.

- D. **No Partnership.** Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.
- E. **Lease Inures to the Benefit of Assignees.** This Lease and all of the covenants, provisions, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns respectively, of the parties hereto, provided, however, that no assignment by, from, through, or under Tenant in violation of the provisions hereof shall vest in the assigns any right, title, or interest whatsoever.
- F. **Entire Agreement.** This Lease and the exhibits attached hereto set forth the entire agreement between Landlord and Tenant, and all prior promises and agreements, oral or written, between them are merged into this Lease. No amendment to this Lease shall be binding upon Landlord or Tenant unless in writing.
- G. **Abandonment, Surrender and Holding Over.** Tenant shall deliver up and surrender to Landlord possession of the Premises upon the expiration of the Lease Term, or earlier termination for any reason, in as good condition and repair as the same shall be at the commencement of said Term (damage by fire and other perils covered by standard fire and extended coverage insurance and ordinary wear and decay only excepted). At the time Tenant shall deliver and surrender possession of the Premises to Landlord, Tenant shall provide Landlord with a written statement from an HVAC contractor reasonably acceptable to Landlord who shall certify that the HVAC system serving the Premises has been properly maintained and is in good working order. In the event Tenant shall fail to provide such statement to Landlord, Landlord shall have the right, but not the obligation without prior notice to Tenant to retain an HVAC contractor of Landlord's choosing who shall inspect the HVAC system serving the Premises and report to Landlord as to the condition of said HVAC system. If such report discloses the need for repair or maintenance, Landlord shall have the right, but not the obligation, without prior notice to Tenant, to cause such repairs or maintenance. Tenant shall reimburse Landlord for all costs and expenses so incurred by Landlord in performing the inspection, maintenance and/or repairs plus an additional ten percent (10%) of such cost for and as Landlord's overhead. If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease, Tenant shall be bound by the terms and provisions of this Lease except that no tenancy or interest in the Premises shall result, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction, and Tenant shall (with no additional notice required by Landlord) pay to Landlord, as liquidated damages, a sum equal to the greater of (i) double the fair market rental value of the Premises, as determined by Landlord, in its sole discretion, or (ii) two hundred percent (200%) of the Minimum Rent payable during the calendar month immediately preceding the expiration or earlier termination of this Lease for any period during which Tenant shall hold the Premises after the stipulated Term of this Lease shall expire or may have terminated. If Tenant vacates the Premises prior to the scheduled expiration of the Lease Term, Tenant shall be in default of this Lease, and if Tenant has not re-entered the Premises and resumed the operation of the business set forth in Article IX, Section B, of this Lease within the next thirty (30) consecutive days, Tenant shall be deemed to have abandoned the Premises, and Landlord shall have the right, but not the obligation, to take sole possession of the Premises on or after the tenth (10th) day following the expiration of said thirty (30) day period and Landlord may relet said Premises in accordance with the terms in Article XVI hereof.
- H. **No Option.** The submission of this Lease by Landlord for review by Tenant does not constitute a reservation of or option for the Premises, and shall vest no right in Tenant. This Lease becomes effective as a Lease only upon execution and delivery thereof by the parties hereto.
- I. **Additional Rent.** Any amounts to be paid by Tenant to Landlord pursuant to the provisions of this Lease, whether such payments are periodic or recurring, shall be deemed to be "Additional Rent" and otherwise subject to all provisions of this Lease and of law as to the default in the payment of rent.
- J. **Power of Attorney.** In the event Tenant fails to deliver any documents required to be delivered to Landlord under the terms of Articles XIX and XX of this Lease within fifteen (15) days after Landlord's written request, Tenant does hereby make, constitute, and irrevocably appoint Landlord as its attorney-in-fact and in its place and stead to do so.
- K. **Financial Statements.** Tenant shall, within ten (10) days after receipt of a written request from Landlord, furnish to Landlord Tenant's current financial statement and such other financial information as Landlord may request. Landlord covenants that the financial information provided by Tenant shall be treated as confidential, except that Landlord may disclose such information to any prospective purchaser, prospective or existing lender or prospective or existing ground or underlying lessor upon the condition that the



prospective purchaser, prospective or existing lender or underlying lessor shall also covenant to treat such information as confidential.

- L. Severability.** In the event that any provision or section of this Lease is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Lease shall be deemed to have never been included therein, and the balance of this Lease shall continue in effect in accordance with its terms.
- M. Option to Renew.** Provided Tenant is not in default under any of the terms and provisions herein contained, Landlord hereby grants to Tenant the option to renew the Term of this Lease for the period(s) set forth in Article I(C), Section 4, commencing on the day following the expiration of the initial Term. Any such Renewal Term shall be upon all the terms and conditions as the Initial Lease Term, except that the Minimum Rent shall be increased in accordance with Article I(D), Section 1. It shall be a condition to Tenant's right to renew this Lease pursuant to this Section (M) that Tenant provide Landlord (i) Tenant's current financial statement within thirty (30) days following the date Tenant shall exercise the foregoing option to renew this Lease, and (ii) a statement certified by Tenant's chief financial officer of the annual Gross Sales made by Tenant in, on or from the Premises during the current Lease Term if Tenant is not otherwise required to report Gross Sales pursuant to Article IV, Section (C) of this Lease.

The foregoing option to renew shall be exercised by written notice to Landlord given not less than the number of days set forth in Article I(C), Section 4, above prior to the expiration of the original Term of this Lease, or any renewal thereof. Tenant's option to renew the Term of this Lease is personal to Tenant and may not be exercised by any other party other than Tenant, nor may Tenant's option to renew the Term of this Lease be assigned by Tenant without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole discretion.

- N. Net Rent** Intentionally deleted.

- O. Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart. In order to facilitate the agreements contemplated by this Lease, signatures transmitted by facsimile machine or signatures transmitted via e-mail in a "PDF" format may be used in place of original signatures on this Lease. Each party intends to be bound by such party's facsimile or "PDF" format signature on this Lease, is aware that the other parties are relying on such party's facsimile or "PDF" format signature, and hereby waives any defenses to the enforcement of this Lease based upon the form of signature. Promptly following any facsimile transmittal or e-mail transmittal of "PDF" format signatures, the parties shall deliver to the other parties the original executed Lease by reputable overnight courier to the addresses shown in Article I(L).

- P. Consents.** With respect to any provision of this Lease which provides or infers, in effect, that Landlord shall not unreasonably withhold or unreasonably delay its consent or approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim against Landlord for money damages, and Tenant hereby waives any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval, but Tenant's sole remedy shall be an action or proceeding to enforce any such provision of this Lease, or for specific performance, injunction or declaratory judgment.

- Q. Force Majeure.** In the event Landlord or Tenant is prevented or delayed in the performance of any improvement or repair or fulfilling any other obligation required under this Lease due to delays caused by fire, catastrophe, strikes or labor trouble, civil commotion, acts of God, governmental prohibitions or regulation, inability or difficulty to obtain materials or other causes beyond the performing party's reasonable control, the performing party shall, within ten (10) days of the event causing such delay, provide written notice to the other party of the event causing the delay and the anticipated period of delay, and the period of such delay shall be added to the time for performance thereof. The performing party shall have no liability by reason of such permitted delays. In the event the performing party fails to provide notice to the other party of the force majeure delay within such ten (10) day period, the performing party shall not be excused from the timely performance of such obligation regardless of the cause. This provision shall not excuse Tenant from its obligation to pay Minimum Rent and Additional Rent, except when such payment is excused pursuant to other provisions of this Lease.

- R. Joint and Several Liability.** In the event Tenant shall be comprised of more than one (1) individual or business entity, each such individual or business entity comprising Tenant shall be jointly and severally liable for each and every obligation of Tenant under the terms of this Lease.

- S. Right to Relocate.** As a material inducement for Landlord to enter into this Lease with Tenant, Landlord shall, throughout the Term of this Lease and any renewals thereof, have the right at Landlord's expense to relocate Tenant to other premises ("New Premises") within the Shopping Center. In the event Landlord

elects to exercise the right of relocation, Landlord shall deliver written notice to Tenant identifying the location of the proposed New Premises ("Landlord's Notice"). In the event Tenant shall not agree to the New Premises proposed by Landlord, Tenant shall have the right to terminate this Lease within ten (10) days after the date of Landlord's Notice by delivering written notice to Landlord of its election to terminate ("Tenant's Termination Notice"). In the event Tenant elects to terminate this Lease, Landlord shall have the option to rescind Tenant's Termination Notice by delivering notice to Tenant ("Landlord's Rescission Notice") within fifteen (15) days after the date Landlord receives Tenant's Termination Notice, in which event, Tenant's Termination Notice shall be null and void and this Lease shall continue full force and effect without relocation of Tenant. If Landlord does not provide Landlord's Rescission Notice to Tenant, this Lease and the obligations of the parties, excluding any obligations of the parties that expressly survive the termination or expiration of this Lease, or have otherwise accrued as of the Termination Date (hereinafter defined), shall terminate as of the date which is twenty (20) days after the date of Tenant's Termination Notice (the "Termination Date"), provided Tenant pays to Landlord all sums and charges due and owing by Tenant to Landlord through and including the Termination Date. Any sum which cannot be exactly determined by Landlord as of the Termination Date shall be paid by Tenant to Landlord within thirty (30) days after Tenant's receipt of a statement therefor. The foregoing obligation shall survive termination of this Lease. If Tenant shall not terminate this Lease within the ten (10) day period set forth above, Tenant shall be deemed to have waived its right to terminate this Lease pursuant to this paragraph, and Tenant shall relocate to the New Premises. Landlord's rescission of Landlord's Notice shall not be deemed a waiver of Landlord's right to relocate Tenant to New Premises in the future.

- T. Payment Under Protest.** All rent and other amounts payable hereunder shall be payable without demand, offset or deduction. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions hereof, Tenant shall make such payment "under protest" and under no circumstances shall Tenant be entitled to withhold any payment due hereunder. If Tenant makes a payment "under protest" and it is subsequently determined that Tenant was not obligated to pay all or a portion of an amount paid "under protest," Landlord shall refund to Tenant the portion of the payment made "under protest" which Tenant was not obligated to pay.
- U. Waiver of Trial By Jury.** To the extent permitted by applicable law Landlord and Tenant waive all right to trial by jury in any claims, action, proceeding or counterclaim by either Landlord or Tenant against each other or any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises.
- V. Labor Disputes.** Tenant shall take no action which would violate Landlord's union contracts, if any, affecting the Shopping Center nor create any work stoppage, picketing, labor disruption or dispute or any interference with the business of the Landlord or any tenant or occupant in the Shopping Center or with the rights and privileges of any customer or other person lawfully in and upon said Shopping Center, nor cause the impairment or reduction of the goodwill of the Shopping Center.
- W. Hazardous Materials.** Tenant shall not permit or cause the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center. Tenant shall defend, protect, indemnify and hold Landlord harmless from and against any and all claims, causes of action, liabilities, damages, costs and expenses, including, without limitation, attorney fees, arising because of any alleged personal injury, property damage, death, nuisance, loss of business or otherwise, by Landlord, any employee of Landlord, or from and against any governmental act or enforcement, arising from or in any way connected with conditions existing or claimed to exist with respect to Hazardous Materials (as hereinafter defined) within the Shopping Center which are the result of Tenant's use, occupancy or operation of the Premises. As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous release (as such terms are defined in any federal, state or local law, rule, regulation or ordinance, including without, limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and other said wastes. In the event Tenant shall cause or permit the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center, Tenant shall promptly, at Tenant's sole cost and expense, take any and all action necessary (as required by appropriate government authority or otherwise) to return the areas affected thereby to the condition existing prior to the presence of any such Hazardous Materials thereon, subject to Landlord's prior written consent. The foregoing covenants shall survive termination of this Lease.
- X. Payment By Third Party.** In no event shall Landlord's acceptance of the payment of Minimum Rent or Additional Rent from any party other than Tenant constitute a release of Tenant's primary obligations under this Lease or Landlord's acceptance of any other party as an assignee or sublessee of Tenant, regardless of the number of payments accepted by Landlord or the length of time that said party made such payments.
- Y. Recording.** This Lease shall not be recorded in any public records office or department by Landlord or Tenant.

**Z. Interpretation.** This Lease, and any riders and exhibits hereto, have been mutually negotiated by Landlord and Tenant. Any ambiguities will not be interpreted in favor of either party. The captions contained herein are for convenience and reference only and will not be deemed as part of this Lease or construed in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

**AA. Certification.** Tenant represents and warrants to Landlord that (i) Tenant is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation, named by any Executive Order or the United States Treasury Department as a "terrorist", "Specially Designated National and Blocked Person", or other banned or blocked person, group, or nation (collectively, "Banned Persons") pursuant to any anti-terrorism law; (ii) Tenant is not engaged in this Lease transaction, or instigating or facilitating this Lease, directly or indirectly on behalf of any Banned Person; (iii) Tenant currently does not appear, and throughout the Lease Term, neither Tenant, nor any officer, director, shareholder, partner, member or other owner of Tenant shall appear, on any list of Banned Persons; (iv) no anti-terrorism law prohibits Landlord from doing business with Tenant; (v) Tenant, its officers, directors, or principal shareholders, partner, member, or other owner of Tenant, shall not, during the Lease Term, violate any anti-terrorism laws; and (vi) Tenant, its officers, directors, principal shareholders, partners or members shall not, during the Lease Term, do business with any party, individual, or entity that has violated or will violate any anti-terrorism laws. For purposes of this Lease, "anti-terrorism laws" shall mean Executive Order 13224 and related regulations promulgated and enforced by the Office of Foreign Assets Control, the Money Laundering Control Act, the United States Patriot Act, or any similar law, order, rule or regulation enacted in the future. Tenant hereby agrees to defend, indemnify, protect, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, expenses (including attorneys' fees) and costs arising from or related to a breach of the foregoing representations and warranties. The foregoing indemnity obligations of Tenant shall survive the termination or expiration of this Lease.

**BB. Payment.** All payments to be made to Landlord or Tenant pursuant to the terms of this Lease shall be made in lawful currency of the United States of America.

**CC. Execution.** The submission of this Lease to Tenant or its broker, or other agent, does not constitute an offer to Tenant to lease the Premises. This Lease shall have no force and effect until (a) it is executed and delivered by Tenant to Landlord, and (b) it is fully reviewed and executed by Landlord; provided, however, that upon execution of this Lease by Tenant and delivery to Landlord, such execution and delivery by Tenant shall, in consideration of the time and expense incurred by Landlord in reviewing the Lease and Tenant's credit, constitute an offer by Tenant to lease the Premises upon the terms and conditions set forth herein (which offer to lease shall be irrevocable for twenty (20) business days following the date of delivery).

**DD. Exhibits.** The following Exhibits are attached to this Lease and incorporated herein by reference:

- Exhibit "A" - Site Plan of Shopping Center
- Exhibit "B" - Construction
- Exhibit "C" - Signage Criteria
- Exhibit "C-1" - Coming Soon Sign

(signature blocks on following page)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed, in triplicate, as of the date and year first above written.

WITNESSES AS TO LANDLORD:

LANDLORD: DDR-SAU MEMPHIS AMERICAN WAY, L.L.C.,  
a Delaware limited liability company

Karen A. Robinson

By: [Signature]  
Marc A. Hays, Senior Vice President of Leasing

Karen A. Robinson (Print Name)

[Signature]

Wade Mulloy (Print Name)

WITNESSES AS TO TENANT:

TENANT: Abundant Life Fellowship, Inc.,  
a Tennessee corporation

By James E. Henderson James E. Henderson  
James E. Henderson (Print Name)

Bethelyn F. Henderson Its: \_\_\_\_\_  
Bethelyn F. Henderson (Print Name)

STATE OF OHIO

)

)SS:

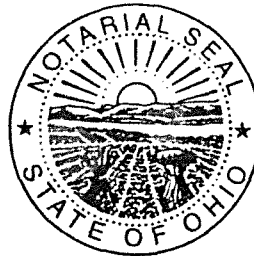
COUNTY OF CUYAHOGA

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BEFORE ME, a Notary Public in and for said County and State, personally appeared Marc A. Hays, known to me to be the Senior Vice President of Leasing of DDR-SAU MEMPHIS AMERICAN WAY, L.L.C., the limited liability company which executed the foregoing instrument, who acknowledged that he did execute the foregoing instrument on behalf of said limited liability company and the same is his free and voluntary act and deed as such, and is the free act and deed of said limited liability company for the uses and purposes therein set forth.

24 IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio this day of July, 2013.

Notary Public



ROBERTA W. RUSEK  
Notary Public, State of Ohio  
Cuyahoga County  
My Commission Expires  
October 5, 2015

STATE OF TN

)

) SS:

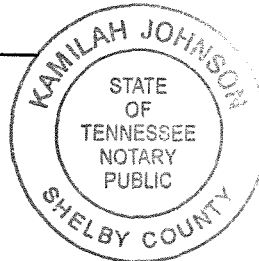
COUNTY OF Shelby

)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, James E. Henderson, known to me to be the Pastor of Abundant Life Fellowship, Inc., the corporation which executed the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors, and that the same is his/her free act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at this 26th day of June, 2013.

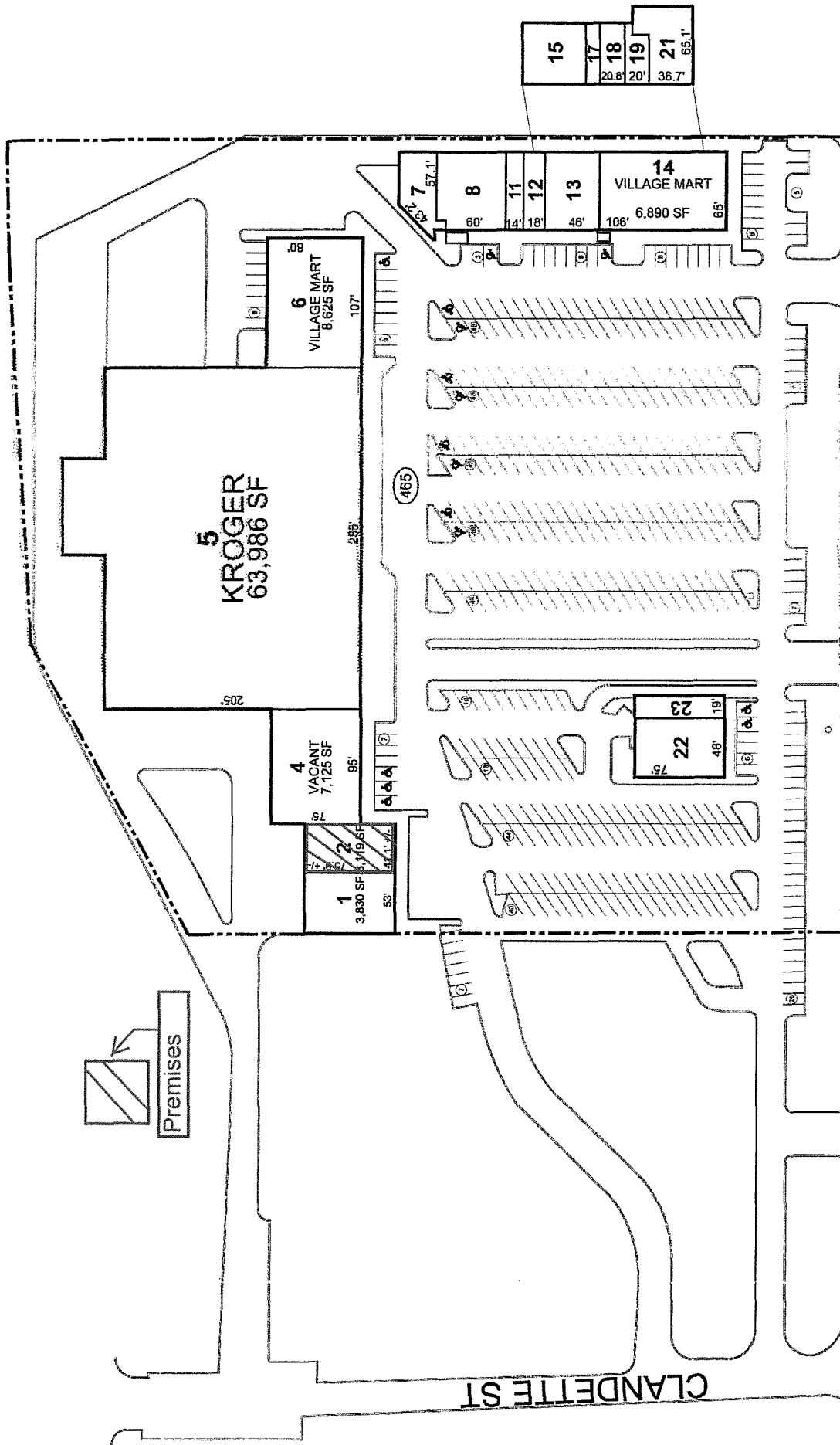
Kamilah Johnson  
Notary Public



My Commission Expires August 24, 2015

**NONE  
ADDENDUM  
PROMOTIONAL FUND**

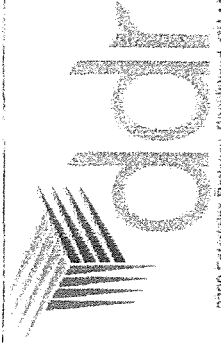
# EXHIBIT A



**AMERICAN WAY**  
 4075 American Way  
 MEMPHIS, TN 38118

REVISION: 6/18/2013

Latitude: 35.0757, Longitude: -89.9275



3300 Enterprise Parkway, Dept. 1000, CH 44122  
 Fax 218, 750, 1580 Phone 216, 759, 5500

## DISCLAIMER

THIS DRAWING IS FOR GENERAL INFORMATION PURPOSES ONLY. ANY AND ALL FEATURES, MATTERS AND OTHER INFORMATION DEPICTED HEREON OR CONTAINED HEREIN ARE FOR ILLUSTRATIVE MARKETING PURPOSES ONLY, ARE SUBJECT TO MODIFICATION WITHOUT NOTICE, ARE NOT INTENDED TO BE RELIED UPON BY ANY PARTY AND ARE NOT WARRANTIES AS TO OWNERSHIP OF THE REAL PROPERTY DEPICTED HEREON, THE SIZE AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED (OR THAT ANY IMPROVEMENTS WILL BE CONSTRUCTED) OR THE IDENTITY OR NATURE OF ANY OCCUPANTS THEREOF.



# EXHIBIT B

(As-Is )

Space - 00002

Tenant's Trade Name: Abundant Life Fellowship Church  
AMERICAN WAY in MEMPHIS, TN

*This Exhibit shall set forth the division of responsibility for work, materials and any other applicable costs and fees between the Landlord and the Tenant. Items designated under the heading "Work by Landlord" shall be performed by the Landlord, at Landlord's expense, according to all applicable codes, and the Landlord shall acquire all permits and inspections related to this work. These items shall constitute the entire scope of Landlord work, and any and all other work, whether included in this list or not, required to complete the Tenant's premises per Tenant's requirements, Landlord's criteria or code requirements shall be by the Tenant at the Tenant's sole expense.*

*In such cases where the Landlord is responsible for the construction documents necessary to perform the Landlord's work, Landlord shall provide a copy of the construction plans to the Tenant for review and approval. The Tenant shall be obligated to return review comments or approved plans to the Landlord within ten (10) days of receipt of the plans. Tenant's failure to adhere to this obligation shall result in the construction plans being deemed approved and any changes requested by the Tenant thereafter shall be performed at the Tenant's expense.*

## I. WORK BY LANDLORD

The Premises is being delivered to the Tenant in an "as-is" condition. The Landlord shall not be required to perform any work on the Premises.

Notwithstanding Section 6C of the Lease, the Landlord shall not be required to deliver outline plans and specifications to the Tenant; however, the Landlord will do so if requested and if such plans are available.

## II. WORK BY TENANT

### A. General Requirements

1. Tenant shall deliver to Landlord plans and specifications (including proposed storefront signage) for Tenant's work within the Premises. Such plans and specifications shall include proper safety measures which insure that Hazardous Materials (as defined in the Lease) are not released in, on or under the Premises or any part of the Shopping Center during the Initial Construction of the Premises and during the term of this Lease. Tenant shall submit Tenant's plans and specifications in hardcopy (three (3) sets) and electronically on a CD to Landlord within the timeframe defined in the Lease.
2. Tenant shall obtain written approval, from the Landlord, of all materials, equipment, fixtures, furnishings, etc., which become a permanent part of the structure. All work shall conform to all design criteria and construction guidelines established by the Landlord.
3. Tenant shall be responsible for obtaining all required construction document reviews with all governmental authorities in order to obtain all required permits, inspections, occupancy permits, operating licenses, etc., pertaining to the Tenant's work and nature of Tenant's business.
4. Insurance
  - a. Tenant shall require its Contractor to provide and maintain the following insurance coverages:
    - 1) For all of its employees, Worker's Compensation insurance in the minimum amounts required by the State in which the Premises is located and to comply in all respects with the employment and payment of labor insurance required by any constituted authority having legal jurisdiction over the area in which the work is performed.
    - 2) Comprehensive General Liability insurance including Contractual and Contractor's Protective Liability coverage in the minimum amount of One Million Dollars (\$1,000,000) single limit for bodily injury and/or wrongful death and a minimum of One Million Dollars (\$1,000,000) single limit for property damage. This coverage shall include the hazards of explosion, collapse and underground damage, as well as contractual endorsements.
    - 3) Comprehensive Automobile Liability insurance, including hired and non-owned automobile coverage, with a minimum of One Million Dollars (\$1,000,000) single limit for bodily injury and/or wrongful death and a minimum of One Million Dollars (\$1,000,000) single limit for property damage.
    - 4) To the extent the cost of Tenant's Work shall exceed Twenty-five Thousand and 00/100 Dollars (\$25,000.00), Tenant's contractor shall furnish and maintain performance and payment bonds in an amount equal to one hundred twenty-five percent (125%) of the construction contract price and all additions thereto, and all obligations arising in connection therewith. The performance and payment

bonds shall contain a dual obligee rider naming Landlord as an additional obligee under the performance and payment bonds.

- b. The Landlord shall be named an additional insured party on all insurance policies required hereunder and certificates of insurance evidencing complying with this paragraph shall be provided to Landlord prior to commencement of any work in the Premises. Certificates of insurance must contain an endorsement to the effect that Landlord shall be given at least thirty (30) days prior written notice in the event of cancellation or material change in such insurance coverage represented by the Insurance Certificate.
  - c. It shall be the sole and exclusive responsibility of the Tenant to require its Contractor to carry its own Builder's Risk insurance covering materials and/or work performed and/or stored on or about the Premises. Tenant shall be responsible for any deductible amount payable under Landlord's casualty insurance policy in the event a claim is paid under Landlord's policy, which is attributable to Tenant's Work.
  - d. All policies of insurance maintained by Tenant's Contractor shall be written by insurance companies qualified to do business and write coverage in the state where the Shopping Center is located having a minimum Best rating of A-/X.
5. Landlord shall have the right to disapprove all contractors employed by the Tenant including, but not limited to, the roofing and sprinkler subcontractors.
6. Tenant shall not begin Tenant's work until all required approvals have been granted by the Landlord.
7. All work undertaken by the Tenant shall be at Tenant's sole liability and expense.
8. Tenant's work shall not damage or compromise the structural integrity of the building. All work shall be done in a first-class workmanlike manner in accordance with all applicable building codes, laws, regulations and ordinances. The Tenant shall be held liable for any damage caused by the Tenant and/or Tenant's employees, vendors, and contractors.
9. All work undertaken by the Tenant shall be coordinated with and completed so as not to interfere with the Landlord's construction schedule or any other tenant's activities. All contractors employed by the Tenant shall allow other contractors to work on the Premises without interference.
10. Tenant shall be responsible for the cost and receipt of all deliveries and unloading of all materials pertaining to Tenant's work. All deliveries shall be made through the service door (where provided). Storage of equipment and materials shall be confined to the leased Premises.
11. Prior to commencing Tenant's Work in the Premises, Tenant shall have:
  - a. Delivered to Landlord, Tenant's Contractor's insurance certificate(s) evidencing the insurance coverages as required hereunder.
  - b. Delivered plans for Tenant's Work to Landlord and obtained Landlord's written approval of such plans.
  - c. Transferred utility services for the Premises from the Landlord's account to the Tenant's account.
  - d. Deposited with Landlord and required security deposits required under the Lease.
  - e. Filed with Landlord a copy of the building permit (if applicable) for Tenant's Work.
  - f. Furnish and maintain performance and payment Bonds, (if applicable).
12. During the period of Tenant's work, Tenant shall provide and pay for connections, metering and consumption of all temporary utilities brought to such a point as determined by the Landlord.
13. Tenant shall keep the Premises and Shopping Center common areas free from accumulations of debris caused by Tenant's employees, vendors and contractors. Tenant shall arrange for services to be provided for the removal of debris during the period of Tenant's work. Tenant may place one (1) construction dumpster (max size 40 cubic yards) and one (1) portable toilet on the outside of the Premises in a location mutually agreed upon with Landlord. In Landlord's sole discretion, additional dumpsters and toilets may be placed adjacent to the Premises, subject to the prepayment of fees as set forth in Landlord's construction guidelines.
14. Tenant's contractor may not erect temporary signs or banners in or upon the Premises or the Shopping Center advertising its business without Landlord's prior consent and subject to the prepayment of a fee as set forth in Landlord's guidelines.

15. Tenant shall clean HVAC filters clogged by dust or other debris resulting from Tenant's construction in premises.
16. Tenant shall not cause or permit any Hazardous Materials (as defined in the Lease) to be released, spilled or otherwise permeated in, on or under the Premises or any portion of the Shopping Center while performing Tenant's Work.
17. Tenant shall provide to the Landlord a copy of the Certificate of Occupancy (or local equivalent) issued for the Premises within seven (7) days of opening for business in the Premises from Tenant's work.

**B. Exterior Work**

Tenant shall not perform any work, which would in any way alter or modify the appearance or structural integrity of the building without prior written approval from the Landlord.

**C. Interior Work**

Tenant shall provide all necessary work according to Tenant's business and local code requirements. This work shall include but not necessarily be limited to the following:

1. All interior partition walls, doors, etc.
2. Interior wall finishes including priming, painting, wall coverings, etc.
3. Floor coverings and wall base.
4. Plumbing
  - a. All necessary plumbing work, other than that provided by the Landlord as previously referred to.
  - b. Tenant shall apply to the local utility company for water/sewer service and shall pay all tap, connection and impact fees attributable to Tenant's design and nature of Tenant's business.
  - c. Tenant shall pay for meter set and all related fees if individual metering is required by the Developer-Landlord. Meter or remote read-out device shall be installed in a location easily accessible for reading.
5. Electrical
  - a. All electrical work, other than that provided by the Landlord as previously referred to.
  - b. At Tenant's option, Tenant may provide burglar alarm system, emergency generator, Musak system, etc. as approved by the Landlord.
  - c. Tenant shall apply to the local utility company for metering and/or service and shall pay all related fees.
6. Heating, Ventilating and Air Conditioning
  - a. Installation of additional, or relocation of Landlord provided, rooftop HVAC units, supply air diffusers and return air grilles as approved by the Landlord.
  - b. If applicable, Tenant shall apply to the local utility company for gas service and/or metering and shall pay all related fees. Meter or remote read-out device shall be installed in a location easily accessible for reading.
  - c. Restaurants, food service, pet shop, hair/nail salons, barber shops, laundromats and any other uses which, in the sole opinion of the Landlord, produce odors, shall provide an exhaust system which will prevent such odors from entering the other tenant's spaces, enclosed Common Areas or any other portions of the Shopping Center. In the event Tenant's use requires an exhaust system, Tenant shall, unless otherwise approved in writing by Landlord, provide tempered make-up outside air up to ninety percent (90%) of all such exhaust. Clothes dryers shall be vented using rigid metal duct routed to an approved container or otherwise as required by Landlord.
7. Fire Protection
  - a. Any deviation from, or modification to, the regular standard grid layout of sprinkler heads within the leased Premises due to Tenant's design or nature of Tenant's business. The location, type and number of sprinkler heads shall be based upon local codes and the Landlord's insurance underwriter requirements. Modifications to the standard grid layout must be performed by the project sprinkler contractor at Tenant's expense.

- b. Any fire alarm system and monitoring thereof as may be required by governing codes and authorities. Tenant's system and system components shall match and be compatible with Landlord's systems and requirements.
- c. Tenant shall coordinate sprinkler shut downs with Landlord. One shut off/turn on shall be provided by Landlord, additional shut downs may be subject to a fee as defined in Landlord's construction guidelines.
- d. Any special sprinkler heads, extinguisher systems, flame retardants, smoke/heat detectors, etc. as required by all applicable building codes, laws, regulations and ordinances due to Tenant's design or nature of Tenant's business.
- e. Two (2) 5 lb. ABC fire extinguishers properly maintained on a continued basis.

**8. Miscellaneous**

- a. All trade fixtures, shelving, furnishings, signage, merchandise, etc.
- b. Toilet room accessories such as paper holders, soap dispenser, mirrors, shelves, etc.
- c. All curbs, lintels, flashings, pipes, ducts, vents, exhaust hoods, louvers, etc. necessary for Tenant's equipment requiring openings through roof and/or exterior walls. All cutting, patching and flashing of the roof system must be performed by the Landlord's roofing contractor at Tenant's expense.
- d. All required safety, emergency and handicap aid equipment within the leased Premises as required by Local, State and Federal authorities.
- e. Tenant shall insulate, to the extent required by the nature of Tenant's business, the demising walls and ceiling so as not to permit sound, odors, etc., to emanate outside the leased Premises.
- f. Wet areas within Premises must be waterproofed by Tenant to prevent moisture from migrating under or through demising walls and exterior perimeter walls. Wet areas include, but are not limited to: rooms or areas with fixtures or appliances having a water supply line and/or drain line; rooms or areas with floor drains, mop sinks, hose spigots, water tanks, etc.; kitchens, bar areas, service areas, toilet rooms and rooms or areas that will undergo wet cleaning with mops, hoses, pressure washers, etc. Waterproofing at wet areas shall consist at a minimum of the installation of: a.) cement board or moisture-resistant gypsum board (in lieu of regular gypsum board); b.) sheet membrane waterproofing material extending at least 6" up the wall and 18" along the floor; with a hard surface finish material over it; c.) a hard surface wall covering extending a minimum of 4'-0" up the wall.

**- END -**

## **EXHIBIT "C"**

### **LANDLORD'S SIGN**

#### **CRITERIA**

#### **AMERICAN WAY MEMPHIS, TN**

The following sign criteria has been established to assist tenants in complying with their lease. These basic standards have been made to govern the design, fabrication, and installation of tenant signs and is intended to afford all tenants with good visual identification, both day and night, and to protect against poorly designed and badly proportioned signage.

The sign standards have been selected to harmonize and compliment the building materials and will assist in creating the proper atmosphere of the center, which we feel is located in the most prestigious area of Memphis.

Please inform your sign fabricator that he must submit three (3) copies of his sign drawings to the office of the center's Tenant Coordinator:

Rosemary Alford  
Sr. Tenant Coordinator - SE Region  
Developers Diversified Realty  
111 East Washington Street, 2nd Floor  
Houston, MS 38851  
ralford@ddr.com  
(662) 448-6161 direct office  
(662) 448-6168 direct fax  
(216) 272-5576 cell

For approval prior to fabrication and installation of your sign. Three (3) copies of the sign drawings must be submitted on or before two (2) weeks after execution of the lease agreement and the sign must be installed on or before forty-five (45) days after execution of the lease agreement.

Your sign company shall be liable and shall bear all costs for removal and/or correction of signs, sign installation, and damage to the building by sign installations that do not conform with the following specifications.

#### **I. Type Signs Permitted**

Only individually mounted, illuminated, all metal letters on raceway with plastic faces and bronze jewelrite retainers are permitted on the front of the building. No logos will be permitted.

#### **II. Utter Style**

Letter Style shall be Helvetica Medium (upper and lower case).

#### **III. Colors**

The exterior portion of the metal letters shall be #313 Duranodic Bronze, retainers shall be bronze truncap jewelrite. The interior portion of the letter shall be whitewashed for more efficient lumen output. The plastic face color shall be 3/16" Rohm & Haas #7323 White. Raceway shall be painted PMS 168 Brown to match brick at center.

#### **IV. Sizes of Letters**

A. Depth is to be 5".

B. Sign to consist of individual letters, not exceeding 36" in height or multiple rows of letters not exceeding 36" in height, including space between rows.

C. Length is seventy-five percent (75%) of store front. (Example: A tenant having a store front of 40 linear feet can have a sign up to 30' total length.)

D. All signs shall be centered on store front.

#### **V. Letter Construction**

A. No armor ply or wooden back letters are allowed.

B. No channel-lume letters are allowed

C. Paint grip steel fabrication letters (minimum 22 gauge) or all aluminum fabricated letters (0.062 minimum) are to be used.

VI. Unistrut Construction

Permanently installed into building fascia by Landlord. -

VII. Illumination

All neon shall be 6500 White in color using 15MM size tubing and using 30 MA transformers. Neon shall not be noticeable as a source of light when sign is illuminated. Only illuminated sign will be permitted on sign fascia.

VIII. Installation

All letters will be individually mounted on unistruts to meet U. L. standards. No exposed wiring is permitted.

IX. Secondary

wiring

No secondary

wiring

X. TVansformers

Transformer shall be all copper wound "GE/France" or equal transformers with no more than fifty feet (SO') of neon loaded per transformer. All transformers to be installed through unistrut and grounded for fire protection.

XI. Quantity of Signs

One sign per tenant (A second sign may be allowed if a leased space affronts more than one elevation.)

XII. Secondary Signs

A. No exterior signs are to be placed on building wall elevations.

B. No sandwich or easel/portable signs are permitted without the express permission of the Landlord.

C. No window signs are permitted without the expressed approval of the Landlord.

D. Standard address numerals for postal identification will be furnished by the Landlord at no cost to the Tenant.

XIII. SIGN COMPANY SUBMITTALS

Prior to fabrication, three complete sets of 11 "x 17" min. 1 drawings must be submitted to the Landlord for approval showing:

A. Building Elevations

1. Drawn to accurate scale of 3/8" = 1'-0".
2. Elevation of building side/storefront requiring signage.
3. Leased store width dimensions.
4. All signage heights, lengths, and thicknesses.
5. Dimensioned location of signage in relation to plane of fascia, reveals, and other building projections.
6. Signage intended for mounting on glass, brick, exterior, insulation and finish system, parking signs, walls and/or doors.
7. Interior signs intended to be viewed from outside.

B. Building Cross Section

1. Drawn to accurate scale of 3/4" = 1'-0".
2. Fixed location (vertical and horizontal dimensions) of sign in relation to facade reveals and projections, and projections of the letter or signage from the building facade.

C. Sign Sections

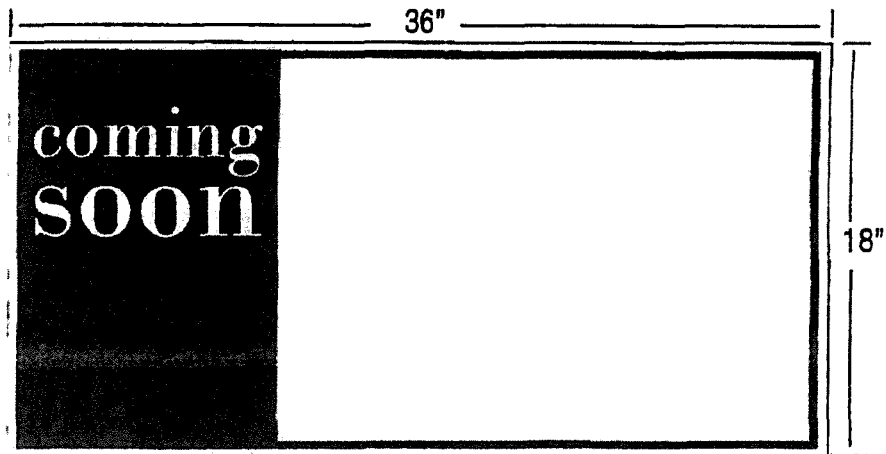
1. Drawn to accurate scale of 1-1/2" = 1'-0".

2. Sign materials.
3. Signage/letter heights, thicknesses, and colors.
4. Raceway size, color and paint formula/pms number used.  
Provide color sample on 3"x 3" (min.)  
aluminum material.
5. Sign mounting method.
6. Electrical services and connections.

***If Tenant or Sign Company has any questions regarding submittals, please contact  
Rosemary Alford at (662) 448-6161.***

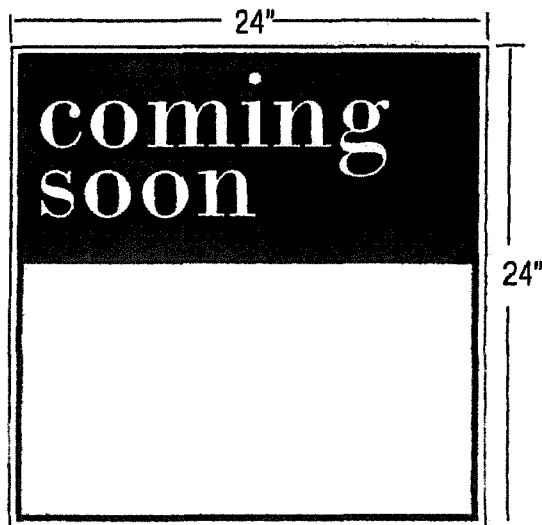
# Coming Soon Signs

Option A



Window Static Sticker

Option B



Window Static Sticker

## Colors

Blue: Pantone #7468  
c93 m9 y0 k36

## Price

\$50.00 per sign