

**BOARD OF REGENTS
BRIEFING PAPER**

Agenda Item Title: Lease with College Optical Express Nevada, LLC for Retail Space in the Joe

Crowley Student Union

BACKGROUND & POLICY CONTEXT OF ISSUE:

- In 2005, Brailsford & Dunlavey, market research consultants, developed a retail plan for the new Joe Crowley Student Union based on the student survey results and market research data. The report indicated that the retail areas would be focal points of activity in the building. It was recommended to select a mix of retailers.
- To solicit interest from retailers, the university released a Request for Information (RFI - Attachment -Exhibit 1-2) in 2005. Those that responded to the RFI were sent a Request for Proposal (RFP- Attachment – Exhibit I-1) by the UNR Purchasing Office. The Retail Committee for the Joe Crowley Student Union reviewed all of the proposals submitted through the RFP Process under the direction of the Purchasing Office. After all the RFP's were reviewed, some retail space remained unoccupied.
- University staff and students researched other campuses and the local community for successful retail operations. Proposals were solicited from numerous retailers including College Optical Express.
- The Retail Committee reviewed the proposal from College Optical Express and agreed that it was an appropriate concept for the campus. The members of this committee included the Director of Purchasing, Director of Real Estate, the Associate Vice President of Business and Finance, Director of the Student Union, the Associate Vice President of Student Life Services, ASUN President, undergraduate students, GSA President, graduate students and a representative from the UNR Small Business Development Center.
- The conditions of the lease with College Optical Express Nevada, LLC that were considered include:
 - College Optical Express Nevada, LLC exceeded the minimum rent requested by UNR in the RFP.
 - For the first year, College Optical Express Nevada, LLC agrees to pay rent of \$27,410 (\$32.40 PSF) for 846 rentable square feet with annual Consumer Price Index (CPI) increases with a minimum of three percent (3%) annually to the base rent. These funds will be applied to the operating expenses for the Joe Crowley Student Union.
 - The UNR lease with College Optical Express Nevada, LLC will be for 5 years with one additional 5 year option to renew.
 - College Optical Express Nevada, LLC agrees to cover all the build out costs for their 846 square feet. The vendor's cost for the build out is estimated to be approximately \$211,500. All construction must be done under the supervision of and subject to approval of the university's Facilities Services department.
- Board of Regents' approval is required for this lease under Procedures & Guidelines Manual Chapter 5, Section 3 (formerly Chancellor's Memorandum 02-04, NRS

396,430).

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

- President Milton D. Glick requests approval of the lease with College Optical Express Nevada, LLC for retail space in the Joe Crowley Student Union. (Lease, **Attachment A**).

IMPETUS (WHY NOW?):

Approval of the lease will allow the tenant to begin the build out of the space in the Joe Crowley Student Union as soon as possible to open during fall semester 2009. (College Optical Express Nevada, LLC Floor Plan, **Attachment B**)

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The lease follows the same template as the eight Student Union retail leases that Hank Stone, NSHE System Counsel, developed. The only part that changes is the Lease Schedule which contains all the business terms.
- This lease was solicited and developed after the result of a comprehensive bidding process to award non-food tenant leases through a national formal Request for Proposal Process (RFP) based on Board of Regents Policy did not result in sufficient proposals.
- The lease agreement is beneficial for UNR, the students and the Joe Crowley Student Union for the following reasons:
 - College Optical Express Nevada, LLC will provide an optical services center for students, faculty, and staff. They will sell eyeglasses, contact lenses and sunglasses as well as provide support services including eye exams and contact lens fittings. Each store has a fully licensed professional staff, consisting of an optometrist, optician and administrative support.
 - Students do not have an eyeglass store close to the University. The closest store is more than 2.5 miles away. The College Optical Express store will provide a convenient service especially for residential students.
 - College Optical Express stores' mission is to provide convenient access to low-cost, time-saving optical services directly on campus at colleges and universities nationwide.
 - This proven franchise model is currently at the University of Central Florida, Georgia Tech, The University of North Texas, and Georgia Southern University and expects to open four more full service locations in 2009 at major universities throughout the U.S.
 - Part of the consideration was their success on other campuses.
 - College Optical Express has hired many students at their franchises on other campuses. They are committed to employing students in their location on the University of Nevada, Reno campus.
 - Faculty and staff enrolled in the PPO can choose to use this location as part of their vision benefits.
- The terms, including rent payments, by College Optical Express Nevada, LLC are

based on the bid and subsequent negotiations (**Schedule of Payments, Attachment C and Lease Schedule, Attachment D.**)

- The lease submitted for approval has been reviewed by the NSHE Risk Management Officer and the BCN Risk Management staff. Their input has been incorporated into the lease.
- The lease submitted for approval includes the negotiated points of Henry Stone, Esq., System Counsel/Director of Real Estate Planning for NSHE. It has also been reviewed by Brooke Nielsen (NSHE General Counsel)
- The Vice President for Finance and Administration and his key staff members have been involved in the negotiations of the lease agreement.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

- Forego planned revenue from retail tenants and look to increase student fees to make up the operating loss.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_____ Chapter #_____ Section #_____
- Amends Current Board Policy: Title #_____ Chapter #_____ Section #_____
- Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____
- Other: **Procedures & Guidelines Manual, Chapter 5, Section 3**
- Fiscal Impact: Yes No _____
Explain: Lease will provide funds for the operation of the Joe Crowley Student Union.

LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made as of the ___ day of _____, 2009 (the “**Effective Date**”), by and between the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the University of Nevada, Reno (“**Landlord**”), and COLLEGE OPTICAL EXPRESS NEVADA, LLC, a Nevada Limited Liability Company (“**Tenant**”).

IN CONSIDERATION of the agreements and covenants hereinafter set forth and as set forth in the Lease Schedule attached hereto and the Exhibits referred to herein and attached to this Lease, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises (as defined in **Section 1.2**), upon the following terms and conditions:

1. BASIC LEASE PROVISIONS.

1.1 “**Building**.” The Joe Crowley Student Union on the University of Nevada, Reno campus, containing approximately 167,000 square feet in gross, of which, approximately 15,000 square feet are Common Areas (as defined in **Section 7.1**), and approximately 45,000 square feet are rentable square feet.

1.2 “**Premises**.” Retail Space described in the Lease Schedule at the Building, consisting of approximate rentable area described in the Lease Schedule and, as more particularly depicted on **Exhibit 1** to the Lease Schedule. Tenant agrees to accept the Premises as herein described recognizing that the square feet description is an approximation. The parties hereto recognize that the Premises for all purposes herein shall be deemed to be as set forth in this **Section 1.2**.

1.3 **Term**: As set forth in the Lease Schedule.

“**Commencement Date**.” The later of (i) the date set forth in the Lease Schedule, or execution of this Lease by both Landlord and Tenant, which ever is later, or (ii) upon Substantial Completion (as defined in **Section 2.1**) of Landlord’s Work (as defined in **Section 1.8**). Prior to occupancy Tenant must have evidence that insurance required herein has taken effect with Landlord listed as additionally insured.

“**Rent Commencement Date**” As set forth in the Lease Schedule.

“**Termination Date**.” The date which is the number of months after the Rent Commencement Date as set forth as the Lease Term in the Lease Schedule; provided, however, that if the Rent Commencement Date is a date other than the first day of a month, the Termination Date shall be the last day of the month which is the number of months in the term (as set forth in the Lease Schedule) after the month in which the Rent Commencement falls, unless extended or earlier terminated pursuant to this Lease.

“**Lease Year**” means (a) the period commencing on the Rent Commencement Date (except that if the Rent Commencement Date is a day other than the first day of a calendar month, then the first day of the calendar month next succeeding the Rent Commencement Date) and terminating at 11:59 p.m. on the day before the anniversary

thereof, and (b) each successive period of twelve (12) calendar months thereafter during the Lease Term; provided, however that the first Lease Year shall include the period from the Effective Date through the Rent Commencement Date.

“Option to Extend” Tenant shall have the number of options to extend the Lease Term as set forth on the Lease Schedule, each such option to be for the number of months per option as set forth in the Lease Schedule(the **“Option”**) such Option to extend shall be subject to the provisions contained in **Exhibit G** attached hereto.

The **“Lease Term”** shall commence on the Effective Date and end on the Termination Date unless the same shall be sooner terminated as hereinafter provided. Even though Tenant shall have no right to possession of the Premises until the Commencement Date, the Lease shall be in full force and effect as a binding obligation of the parties from and after the Effective Date.

1.4 **“Base Rent:”** Beginning on the Rent Commencement Date and on the first day of each month thereafter during the Term as the same may be extended; Tenant shall pay Landlord Base Rent. The Base Rent shall be, initially the monthly amount set forth on the Lease Schedule and an amount equal to such Base Rent shall be paid by Tenant upon Lease execution which amount shall be credited to rent accruing hereunder. Upon computation of the Gross Rentable Area by the Landlord pursuant to **Section 4.2**, the Base Rent shall be adjusted to equal the per square foot rental as reflected in the Lease Schedule multiplied times the Gross Rentable Area. If the Rent Commencement Date shall fall on a day other than the first day of a calendar month, or if upon early termination of the Lease or otherwise, less than a full month’s Base Rent shall be due and payable, the Base Rent for any such month shall be prorated based on a thirty (30) day month.

Except as otherwise provided in the Lease Schedule, commencing on each anniversary date of the Rent Commencement Date, or if the Rent Commencement Date shall be any day other than the first day of a calendar month, on each anniversary date of the first day of the calendar month next following the Rent Commencement Date (a **“Rent Adjustment Date”**), during the Term, including any renewal or extension of the Term, Base Rent shall increase by the percentage increase in the CPI (as defined herein) from the immediately preceding Lease Year. For purposes of this Lease, "CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor (San Francisco – Oakland – San Jose, CA) (1982-84=100), or any successor index thereto, appropriately adjusted, provided that if there is no successor index a substitute index shall be reasonably selected by Landlord. The new Base Rent payable as of any Rent Adjustment date shall be computed by determining the product arrived at by multiplying (A) the Base Rent due for the month immediately preceding such Rent Adjustment Date times (B) a fraction the numerator of which is the CPI for the month which is 3 months prior to the Rent Adjustment Date and the denominator of which is the lesser of (i) CPI for the month which is 3 months prior to the previous Rent Adjustment Date, or (ii) the numerator (i.e. this formula shall not be applied to result in a decrease in the Base Rent as of any Rent Adjustment Date. The product so determined shall be the Base Rent for the 12 months commencing on such Rent Commencement Date.

1.5 **Security Deposit:** Concurrent with the Base Rent to be paid upon execution hereof, Tenant shall pay to Landlord as a security deposit the sum set forth in the Lease Schedule (the "Security Deposit") and the Security Deposit shall be held by Landlord as described in **Section 5**.

1.6 **Landlord's Address:**

For Notices:

Board of Regents of the Nevada System of Higher Education
c/o University of Nevada, Reno
17th Street and West Stadium Way
Reno, NV 89503
Attn: Director of Purchasing
Fax: 775.784.1130

With a copy to:

General Counsel
University of Nevada, Reno
2601 Enterprise Road
Reno, Nevada 8951

For Payments:

Board of Regents of the Nevada System of Higher Education
c/o University of Nevada, Reno
17th Street and West Stadium Way
Reno, NV 89503
Attn: Director, Student Union
Fax: 775.784.1858

1.7 **Tenant's Address:**

For Notices:

To the Premises, and at any additional address as set forth in the Lease Schedule

1.8 **Tenant Improvements:** Landlord, at its sole cost and expense, will use commercially reasonable efforts to perform Landlord's Work in accordance with the mutually agreed upon **Exhibit C**.

Tenant at its sole cost and expense, shall use commercially reasonable efforts to perform Tenant's Work in accordance with the mutually agreed upon **Exhibit B**.

1.9 **Permitted Use:** Tenant shall use the Premises only as set forth on the Lease Schedule and for the retail sale of products and services reasonably ancillary thereto (see also **Section 6.1**).

Permitted Name: As set forth on the Lease Schedule, or such other reputable name suitable for the Building and the Premises as may be approved by Landlord.

2. **The foregoing Basic Lease Provision and definitions are an integral part of this Lease and each reference in the body of this Lease to any of the Basic Lease Provisions shall be construed to incorporate all of the terms set forth above with respect to such references. DEFINITIONS.**

2.1 As used herein, the following terms shall have the following meanings:

“**Building**” shall have the meaning given it in **Section 1.1**.

“**Building Service Equipment**” means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on the Premises and owned by Landlord.

“**Commencement Date**” shall have the meaning given it in **Section 1.3**.

“**Food Court**” shall have the meaning given it in **Section 4.6**

“**Food Court Maintenance Fee**” shall have the meaning given it in **Section 4.6.3**

“**Lease Term**” shall have the meaning given it in **Section 1.3**.

“**Lease Year**” shall have the meaning given it in **Section 1.3**.

“**Person**” means a natural person, a trustee, a corporation, a limited liability company, a partnership and/or any other form of legal entity.

“**Premises**” shall have the meaning given it in **Section 1.2**.

“**Substantial Completion**” or similar capitalized terms shall mean the stage in the progress of each portion (A) of Tenant’s Work when the last of the following have occurred with respect to the applicable portion of the Premises: (i) Work is sufficiently complete in accordance with the applicable plans so that Tenant may occupy the respective portion of the Premises and utilize the same for its permitted business, subject to the completion of any minor punchlist items that do not unreasonably interfere with Tenant’s occupancy and use of the respective portion of the Premises; and (ii) a certificate of occupancy or its equivalent (unless the same cannot be issued due to the incompleteness of Work) permitting the use and occupation of the respective portion of the Premises shall have been issued by the appropriate approving authority; or (B) of Landlord’s Work when the work is sufficiently complete in accordance with the applicable plans so that Tenant may enter into or take possession of the premises for the purpose of commencing Tenant’s Work.

“**Termination Date**” shall have the meaning given it in **Section 1.3**.

“**University**” has the same meaning as the “**Landlord**”.

2.2 **Other Terms.** Any other term to which meaning is expressly given in this Lease shall have such meaning.

3. **TERM.**

3.1 **Confirmation of Commencement and Termination.** Landlord and Tenant at Landlord’s option and request after (a) the Commencement Date, (b) the Rent Commencement Date or (c) the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner, shall confirm in writing by instrument in recordable form that, such commencement, rent commencement or such termination has occurred, or in the case of Termination Date that it will occur on the date computed as specified herein, setting forth therein, the Commencement Date, the Rent Commencement Date and/or the Termination Date.

3.2 **Surrender.** Tenant, at its expense at the expiration of the Term or any earlier termination of this Lease, shall (a) promptly surrender to Landlord possession of the Premises (including any fixtures or other improvements which are owned by Landlord) in good order and repair (ordinary wear and tear excepted) and broom clean, (b) remove therefrom all signs, goods, effects, machinery, fixtures and equipment used in conducting Tenant’s trade or business which are neither part of the Building Service Equipment nor owned by Landlord, and (c) repair any damage caused by such removal.

3.3 **Holding Over.** If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease after obtaining Landlord’s express, written consent thereto, then:

(a) such occupancy (unless the parties hereto otherwise agree in writing) shall be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, at least one month before the end of any calendar month, that the notifying party elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) anything in this section to the contrary notwithstanding, the Base Rent payable for each monthly period after the expiration of the Term or earlier termination of the Lease shall equal the sum of (a) monthly Base Rent for the month immediately preceding the month in which the expiration of the Term or earlier termination of this Lease occurs, multiplied by 150%, plus (b) the Rent payable under **Section 4.1**; and

(c) except as provided in this Section 3.3, such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease; provided, however, that if Landlord gives Tenant, at least one month before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be upon the said terms and subject to the said conditions, as so modified.

Notwithstanding the foregoing, if Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without obtaining Landlord's express, written consent thereto, then the Base Rent computed pursuant to Section 3.3(b) above using 200% in lieu of 150%.

4. RENT.

4.1 **Rent.** "**Rent**" shall mean all Base Rent, Taxes, Food Court Maintenance Fees, and any other amounts that Tenant is or becomes obligated to pay Landlord under this Lease. Tenant shall pay Landlord Rent without any deduction, recoupment, set-off or counterclaim except as otherwise set forth herein and with respect to any final judgments Tenant obtains against Landlord. Tenant shall pay Landlord an annual rent (the "**Base Rent**") pursuant to Section 1.4 as set forth in the Lease Schedule and adjusted as provided in Section 1.4.

4.2 **Rentable Area.** The measurement of the number of square feet of the Premises shall be conducted by Landlord pursuant to this **Section 4.2** above. As soon as reasonably practicable after Substantial Completion of Landlord's Work, Landlord shall actually measure the rentable area of the Premises and the Building and shall deliver to Tenant an architect's certificate confirming the rentable square footage of the Premises and the useable square footage of the Building. All measurements will be made in accordance with the most recent standards established by the Building Owners and Managers Association (commonly known as "**BOMA**") for the measurement of retail and/or civic space as appropriate. If the Premises rentable area is different than as set forth in the Premises definition above or in the Lease Schedule and/or the Common Areas are different than as set forth in the Building definition above, then Base Rent and Tenant's Pro Rata Share will be appropriately adjusted based on such actual usable area. The area as so computed is referred to herein as the Net Usable Area. The Net Usable Area shall be multiplied by a factor, as set forth in the Lease Schedule (load factor) to determine the Gross Rentable Area. The parties hereto recognize that the Premises for all purposes herein shall be deemed to be as set forth herein; provided, that if at any time hereafter any portion of the Premises becomes no longer subject to this Lease, "Premises" shall thereafter mean so much thereof as remains subject to this Lease.

4.3 Payment of Rent.

4.3.1 **Payment of Base Rent.** The Base Rent for any Lease Year shall be due and payable to Landlord in twelve (12) consecutive, equal monthly installments, in advance, without deduction, offset, prior notice or demand, on the first (1st) day of each calendar month during such Lease Year commencing on the Rent Commencement Date, at the address set forth in **Section 1.6**, or at such other place or to such other person as Landlord may from time to time designate by notice hereunder. In addition, the Base Rent for the first full calendar month of the Term shall be due and payable upon execution of the Lease. If the Lease Term commences or terminates on other than the first day of a calendar month, then the Base Rental for said partial month shall be prorated on a per diem basis (based on a 30-day month), and shall be paid in full on the first day of such partial month in which the term commences. All payments shall be made in lawful money of the United States of America.

4.3.2 **Payment of all other Rent.** Except for Base Rent which shall be paid in accordance with **Section 4.3.1**, and except as is otherwise set forth herein, Rent accruing to Landlord under this Lease, shall be due and payable when the installment of Base Rent next falling due after such Rent accrues and becomes due and payable, unless Landlord makes written demand upon Tenant for payment thereof at any earlier time under the terms of this Lease, in which event such Rent shall be due and payable at such time

4.3.3 **No Set-Off; Late Payment.** Each such Rent payment shall be made promptly when due, without any deduction or setoff whatsoever, and without demand, failing which Tenant shall pay to Landlord as additional Rent for such late payment, after the fifth (5th) day after such Rent payment remains due but unpaid, a late charge equal to five percent (5%) of such payment which remains due but unpaid which Tenant agrees is a reasonable estimate of the costs which Landlord will incur as a result of and in order to process such late payment. Such late charge is due on the day it is incurred and shall bear interest thereafter as hereinbelow provided. In addition, any payment that is not paid by the fifth (5th) day after such payment is due shall bear interest at the rate of twelve percent (12%) per annum. Any payment made by Tenant to Landlord on account of Rent may be credited by Landlord to the payment of any Rent then past due, late charge incurred and unpaid, or accrued and unpaid interest before being credited to Rent currently falling due, regardless of any attempt by Tenant to cause such partial payment to be credited otherwise. Any such payment which is less than the amount of Rent then due shall constitute a payment made on account thereof, the parties hereto hereby agreeing that Landlord's acceptance of such payment (whether or not with or accompanied by an endorsement or statement that such lesser amount or Landlord's acceptance thereof constitutes payment in full of the amount of Rent then due) shall not alter or impair Landlord's rights hereunder to be paid all of such amount then due, or in any other respect.

4.4 **Rent Taxes.** Tenant shall pay any rent tax, sales tax, gross receipts tax, excise tax, service tax, transfer tax, value added tax, personal property tax, real property tax or any other applicable tax (whether or not such tax is exists on the Effective Date or is hereinafter enacted) directly or indirectly on the Rent, Premises, utilities or services contemplated herein or otherwise respecting this Lease or any other document entered in connection herewith. Tenant shall also pay, prior to the time the same shall become delinquent or payable with penalty, all taxes imposed on its inventory, furniture, trade fixtures, apparatus, equipment, leasehold improvements installed in or around the Premises by Tenant or by Landlord on behalf of Tenant. Tenant shall pay such amounts thereof as Rent to Landlord upon demand, unless Tenant is prohibited by law from doing so, in which event Landlord at its election may terminate this Lease by giving written notice thereof to Tenant.

4.5 **Prorations.** If the Effective Date, Commencement Date and/or Termination Date is on a day other than the first date of a calendar month, the Base Rent, and monthly payments of any other amounts payable on a monthly basis shall be prorated on a per diem basis for each such partial calendar month.

4.6 **ADDITIONAL FOOD COURT EXPENSES.**

4.6.1 **Food Court Defined.** "Food Court" shall mean that portion of the Building shown on **Exhibit H**. Premises is a part of the Food Court and Tenant shall be

obligated to pay to Landlord as Rent the Food Court specific costs and expenses described in this **Section 4.6**.

4.6.2 **Food Court Contribution.** No later than the Lease Commencement Date, Tenant shall pay to Landlord Twenty Five Thousand (\$25,000) Dollars as a contribution to the cost of the furniture, fixtures, equipment, and other improvements for the Food Court.

4.6.3 **Food Court Maintenance Fee.** Additionally, throughout the Term, on a monthly basis, Tenant shall pay to Landlord Tenant's Share of the Cost of the Food Court Maintenance Fee. The Food Court Maintenance Fee shall include those costs and expenses incurred by Landlord in the day-to-day and ongoing maintenance and repair of the Food Court. Tenant shall pay to Landlord annually Seven Dollars and 50/100 (\$7.50) per rentable square foot of the Premises as Tenant's Food Court Maintenance Fee.

4.7 **Percentage Rent.** As additional rent, payable in addition to all other amounts set forth in this Lease, Tenant shall pay to Landlord as **Percentage Rent** an amount computed by multiplying the Percentage Rent Rate, as set forth in the Lease Schedule, times the **Adjusted Gross Sales** (as hereinafter defined). The Percentage Rent shall be payable monthly concurrent with the Base Rent, subject to adjustment as provided below. No Percentage Rent shall be payable for the period ending on the day prior to the Rent Commencement Date.

4.7.1 Gross Sales shall be computed annually by taking the total gross receipts of the Tenant received for sales of goods and services at the Premises, whether in cash, by check, credit card, debit card or otherwise, including accounts receivable less a reasonable allowance for bad debts, and reducing such amount by the portion thereof attributable to refunds, rebates and sales taxes actually paid over to a taxing authority. Gross Sales shall be reduced by the amount set forth on the Lease Schedule as the Gross Sales Credit to determine Adjusted Gross Sales. For the calendar year in which the Rent Commencement Date shall fall, and in the final calendar year of the Lease (as extended), the Gross Sales Credit shall be prorated for the portion of such year after the Rent Commencement Date or the expiration of the Lease, whichever shall apply.

4.7.2 Within 30 days after the end of each calendar quarter, Tenant shall provide to Landlord a written report reflecting the Tenant's Gross Sales for each month during such quarter, which report shall reflect the total gross receipts and the amount of all refunds rebates and taxes which Tenant has used in computing Gross Sales for such quarter, on a month by month basis. Within 60 days after the end of each calendar year, Tenant shall provide to Landlord a written report reflecting the Tenant's Gross Sales for each month during such calendar year, which report shall reflect the total gross receipts and the amount of all refunds rebates and taxes which Tenant has used in computing Gross Sales for such year, on a month by month basis.

4.7.3.1 Upon receipt of each quarterly report from Tenant, Landlord shall make a reasonable estimate of the Percentage Rent which will accrue for the applicable calendar year. Landlord shall give written notice to Tenant of such estimate (a "Quarterly Estimate Notice"). The Quarterly Estimate Notice shall also contain a computation of the estimated monthly Percentage Rent which shall

be payable for each month during the balance of the applicable calendar year, computed by subtracting from such estimate of Percentage Rent for the calendar year the Percentage Rent payments received to the date of such notice which are applicable to such calendar year and by dividing such difference by the number of calendar months remaining in such calendar year. Commencing on the first day of the calendar month next succeeding the date of such Quarterly Estimate Notice, Tenant shall make monthly payments of Percentage Rent equal to such estimated monthly Percentage Rents as set forth in such notice until such monthly payment amounts are further adjusted by a subsequent Quarterly or Annual Estimate Notice.

4.7.3.2 Upon receipt of the annual report for a calendar year, Landlord shall determine the actual Percentage Rent for such calendar year and the amount of any excess or shortfall of Percentage Rent paid by Tenant for such calendar year and Landlord shall reasonably estimate the Percentage which will be due for the calendar year following such calendar year. Landlord shall give written notice to Tenant of such estimate, and such excess or shortfall (a "Annual Estimate Notice"). The Annual Estimate Notice shall also contain a computation of the estimated monthly Percentage Rent which shall be payable for the balance of such succeeding calendar year, computed by subtracting from such estimate of Percent Rent for such year the Percentage Rent payments received by Landlord to the date of such notice which are applicable to such succeeding calendar year and by dividing such difference by the number of calendar months remaining in such calendar year. Commencing on the first day of the calendar month next succeeding the date of such notice, Tenant shall make monthly payments of Percentage Rent equal to such estimated monthly Percentage Rents as set forth in such notice until such monthly payment amounts are further adjusted by a subsequent notice of estimated Percentage Rent.

4.7.3.3 If, based on the annual report for a calendar year, it is determined that Tenant has overpaid the Percentage Rent for such year, Tenant shall be entitled to a credit for such overpaid amount against amounts due as Rent. If such credit shall be in an amount which exceeds 50% of the monthly Base Rent then payable, Landlord may elect, by so stating in the Annual Estimate Notice, to apply such credit over up to 12 months. If, based on the annual report for a calendar year, it is determined that Tenant has under paid the Percentage Rent for such year, Tenant shall pay such amount shortfall together with the next monthly payment of Base Rent. If such shortfall shall be more than 50% of the monthly Base rent then payable, Tenant may elect, by written notice to Landlord within 30 days receipt of the Annual Estimate Notice, to pay the shortfall in not more than 12 monthly payments. Any such credit or additional payment attributable to such prior calendar year shall not be included in determining Percentage Rent payments made for any succeeding calendar year.

4.7.4 **Accounting.** Landlord may conduct an audit of Tenants books and records to determine the accuracy of any annual report by giving Tenant 45 days' written notice

of its intent to conduct such audit, such written notice to be given not more than 180 days after receipt of such annual report. Upon receipt of such notice, Tenant shall make available to Landlord for audit all of its books and records reasonably necessary to determine the accuracy of the annual report, such audit to occur at the Premises or at Landlord's offices in the Building. Included in the books and records which Tenant shall make available shall be all ledgers, journals, tax returns and other records which bear on determining Tenant's gross receipts. If such audit shall determine that the annual report resulted in an understatement of Percentage Rents by more than 5% of the corrected Percentage Rent, Tenant shall pay the reasonable cost of such audit. If Tenant shall fail to timely provide any quarterly or annual report, Landlord may reasonably estimate gross receipts for the relevant period and provide a Quarterly or Annual Estimate Notice based on such estimate and gross receipts so estimated shall be binding on Tenant.

5. **SECURITY DEPOSIT.** Landlord shall not be required to hold Tenant's Security Deposit in a separate, segregated fund. At the expiration or termination of this Lease, the amount of the security deposit then held by Landlord shall be returned to Tenant, less the amount of any damages, including unpaid Rent, incurred by Landlord arising under this Lease or otherwise due and owing Landlord from Tenant.

6. **PERMITTED USE AND COMPLIANCE.**

6.1 **Permitted Use; Permitted Name.** Tenant shall use the Premises only for the use set forth on the Lease Schedule and for the retail sale of products and services reasonably ancillary thereto. Tenant shall not use the Premises for the sale of any products not normally associated with such use. Tenant shall operate the Premises under only the Permitted Name(s) (as defined in **Section 1.9**). Tenant acknowledges that Landlord shall be permitted to grant to other Tenants in the Building certain exclusive rights to engage in the sale of certain products which are not normally sold as a primary product by business engaged in the business which is the approved use herein. Upon the granting of any such exclusive rights to any other tenant and notice thereof to Tenant, Tenant agrees that it shall not thereafter add to the products which it sells any product which conflicts with such exclusive use.

6.2 **Compliance With Laws and Covenants.** During the Lease Term, Tenant, at its sole expense, in its use and possession of the Premises, shall:

(a) comply promptly and fully with (i) all laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, including but not limited to The Americans with Disabilities Act, 42 U.S.C. Section 12101 et. seq., and the ADA Disability Guidelines promulgated with respect thereto, and (ii) all requirements (A) of the National Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions) which are applicable to any or all of the Premises, or (B) imposed by any policy of insurance covering any or all of the Premises, and (iii) all covenants and restrictions which may encumber the title to any or all of the Premises, all if and to the extent that any of such requirements relate to any or all of the Premises or to any equipment, pipes, utilities or other parts of the Premises which exclusively serve the Premises, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

(b) keep in force at all times all licenses, consents and permits necessary for the lawful use of the Premises for the purposes herein provided.

(c) pay when due all personal property taxes, income taxes, license fees and other taxes assessed, levied or imposed upon Tenant or any other Person in connection with the operation of its business upon the Premises or its use thereof in any other manner;

(d) not obstruct, annoy or interfere with the rights of other tenants in the Building;

(e) not allow the transmission of any unreasonably loud or objectionable sounds or noises or vibration from the Premises, and

(f) be responsible for the maintenance, cleaning and security of the Premises.

With respect to The Americans with Disabilities Act and the ADA Disability Guidelines thereto, Tenant shall be responsible for the compliance of the entire Premises, including all entry doors and signage (subject to the restrictions of **Section 6.4**), and Landlord shall be responsible for compliance for the Building and the Common Areas.

6.3 Parking. Tenants will have, on a limited and shared, first-come, first-served basis, loading dock access for temporary loading and unloading, but shall to abide by University parking procedures at all times. All of Tenant's non-student employees may purchase university parking permits to park at a university parking area. Tenant will be responsible for all payments to Landlord's University Parking Services department for Tenant's and its employees' parking. Landlord may, by notice to Tenant, require Tenant to obtain from its employees and provide to Landlord a complete listing of all its employees employed at the Premises, which listing shall include, as to each employee, such employee's name, address, telephone number, and the make, model, color and model year of any vehicle which such employee utilizes to commute to the Building, and shall update such listing as often as there are changes in such listing but not more often than once each month, during the Term.

6.4 Signs. Except as otherwise provided herein, Tenant shall have no right to place or erect signs upon the Building or the Premises unless Landlord has given its express, written consent thereto, which consent may be withheld for any reason or for no reason. Tenant shall be permitted to place its business name on the front of the Premises and/or the glass portion of the entry door to the Premises, which may be illuminated, upon receiving Landlord's consent which will not be unreasonably withheld. Tenant's said sign at the entry of the Premises is subject to Landlord's approval as to location, size, shape, content and materials, which approval shall not be unreasonably withheld. If Landlord chooses, in Landlord's sole and absolute discretion, to erect a monument, pole or pylon sign on or adjacent to the Building, Tenant, for a reasonable fee and at Tenant's sole costs and expense, may choose to acquire rights to place Tenant's business name and/or logo on such monument sign, subject to Landlord's reasonable approval as to content, size and location; provided that Landlord shall have sole and absolute discretion to determine the location of any such monument, pole or pylon sign and the location and size of Tenant's sign thereupon, so long as other tenants with reasonably comparable premises are offered reasonably comparable sized signs. Landlord may elect to construct such a

sign which may not be large enough to contain signs for all tenants in the Building in which event, Landlord may select which tenants may be allowed to utilize a portion of such sign.

6.5 **Floor Load.** Tenant shall not place any load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry. Landlord reserves the right to prescribe the weight and position of all sales and other heavy equipment, and to prescribe the reinforcing necessary, if any, which in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's sole expense. Business machines and mechanical equipment shall be placed and maintained by Tenant in settings sufficient in Landlord's judgment to absorb and prevent vibration and noise, and Tenant shall, at its sole expense, take such steps as Landlord may direct to remedy any such condition.

6.6 **Area Above Standard Finish Ceiling Line.** Tenant shall have no right to use, enter into or cause to be entered into that portion of the Premises above the standard ceiling line (as established by Landlord) without the prior written consent of Landlord, which shall not be unreasonably withheld or conditioned.

6.7 **Mechanics' Liens.**

6.7.1 Tenant shall not create or permit to be created, and if created shall discharge or have released, any mechanics' or materialmen's lien arising during the Lease Term and affecting any or all of the Premises or the Building, and Tenant shall not permit any other matter or thing whereby Landlord's estate, right and interest in any or all of the Premises or the Building might be impaired. Tenant shall defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or expense (including but not limited to that of reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim.

6.7.2 If Tenant fails to discharge any such lien within fifteen (15) days after it first becomes effective against any of the Premises or the Building, then, in addition to any other right or remedy held by Landlord on account thereof, Landlord may (a) discharge it by paying the amount claimed to be due or by deposit or bonding proceedings, and/or (b) in any such event compel the prosecution of any action for the foreclosure of any such lien by the lienor and pay the amount of any judgment in favor of the lienor with interest, costs and allowances. Tenant shall reimburse the

Landlord for any amount paid by Landlord to discharge any such lien and all expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of twelve percent (12%) per annum from the respective dates of Landlord's making such payments or incurring such expenses (all of which shall constitute Rent).

6.7.3 Nothing in this Lease shall be deemed in any way (a) to constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialmen provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Premises, the Building and/or the Property, or (b) to give Tenant any right, power or authority to contact for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the

7. COMMON AREAS

7.1 **“Building Common Areas”** shall mean those areas of the Building which may be designated by Landlord, from time to time, as Common Areas. As further described in **Section 7.4**, Landlord, in its sole and absolute discretion, from time to time, may relocate and/or reconfigure the Building Common Areas in the Building. Notwithstanding the foregoing, Building Common Areas shall include all footways, sidewalks, general public lobbies, elevators, stairwells, corridors, restrooms, excluding any such feature located on rentable square footage or within any rented Building square footage. Landlord shall designate a portion of the Building Common Areas as Food Court Common Areas, which shall include those areas intended for use by customers of the tenants of the Building in connection with their consumption of products sold by such tenants and for ingress and egress through the Building Common Areas into the Food Court Common Areas and the Premises.

7.2 **Non-exclusive License.** Landlord hereby grants to Tenant a non-exclusive license to use (and to permit its officers, directors, agents, employees, subcontractors, licensees, and invitees to use), in the course of conducting business at the Premises, Food Court Common Areas, subject, however, to the Rules and Regulations, as found in **Exhibit A**. Such license shall be exercised in common with the exercise with the common use of Common Areas by Landlord, the other tenants or occupants of the Building and their respective officers, directors, agents, employees, subcontractors, licenses, and invitees and University students. No license is granted with respect to Building Common Areas other than the Food Court Common Areas.

7.3 **Building Alterations and Remodels.** Notwithstanding anything to the contrary, Landlord reserves the right at any time and from time to time to (i) to change or alter the location, layout, nature, or arrangement of the Common Areas or any portion thereof, including but not limited to the arrangement and/or location of entrances, passageways, doors, corridors, stairs, restrooms, elevators, parking areas, and other public areas of the Building; and (ii) construct additional improvements on the Building and make alterations thereof or additions thereto and build additional stories on or in any such buildings adjoining the same; provided, however, that no such change or alteration shall deprive Tenant of access to or unreasonably hinder or burden Tenant's operation in the Premises; provided, however, that all preserved, relocated or additional footways, sidewalks, general public lobbies, elevators, stairwells, corridors, restrooms, excluding any such feature located on rentable square footage or within any rented Building square footage, will become Common Areas.

7.4 **Landlord's Control and Right to Restrict Use of Common Areas.** Landlord shall at all times have full and exclusive control, management and direction of the Common Areas. Without limiting the generality of the foregoing, Landlord shall have the right to maintain and operate lighting facilities for all of the Common Areas and to police and provide other security to the Common Areas. In addition, Landlord reserves the right to temporarily close off Common Areas, University areas, civic areas and/or retail areas for special events from time to time. Advance notice will be provided to Tenant for any special events. Tenant shall be entitled to no abatement of Base Rent on account of any such close off.

8. **Liability of Landlord.** Landlord and its agents and employees shall not be liable to Tenant or any other person whatsoever (a) for any injury to person or damage to the Premises caused by any defect in or failure of equipment, pipes, wiring or broken glass, or the backing up of any drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, or (b) for any loss or damage that may be occasioned by or through the acts or omissions of any other tenant of the Premises or of any other person whatsoever, other than the gross negligence or willful misconduct of Landlord's duly authorized employees or agents acting within the course and scope of the authority of such employees or agents.

9. **Hazardous Materials.** Tenant warrants and agrees that Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises or the Building, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Building or the Premises generally, damages from any adverse impact on marketing of space in the Building, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority because of Hazardous Material present in the soil or ground water or under the Premises or the Building generally. As used herein (i) "**Environmental Laws**" means the Clean Air Act, the Resource Conservation Recovery Act of 1976, the Hazardous Material Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Clean Water Act, the Federal Water Pollution Control Act, the National Environmental Policy Act, as each of the foregoing shall be amended from time to time, and any similar or successor laws, federal, state or local, or any rules or regulations promulgated thereunder, and (ii) "**Hazardous Materials**" means and includes asbestos; "oil, petroleum products and their by-products" "hazardous substances;" "hazardous wastes" or "toxic substances," as those terms are used in Environmental Laws; or any substances or materials listed as hazardous or toxic in the United State Department of Transportation, or by the Environmental Protection Agency or any successor agency under any Environmental Laws.

10. **INSURANCE.**

10.1 **Tenant's Insurance.** Tenant shall, at Tenant's sole expense, procure, maintain, and keep in force for the duration of the Lease the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by Landlord, the required insurance shall be in effect at and as a condition to the effectiveness of the commencement of the Lease and shall continue in force as appropriate until the Lease expires or terminates and Tenant vacates the Premises.

10.1.1 **Workers' Compensation and Employer's Liability Insurance.** Tenant shall carry and provide proof of workers' compensation insurance if such insurance is required of

Tenant by NRS 616B.627 or shall provide proof that compliance with the provisions of NRS, Chapter 616A-D and all other related chapters is not required.

10.1.2 **Commercial General Liability Insurance.** Coverage shall be on an occurrence basis and shall be at least as broad as ISO form CG 00 01 10 01 and shall cover liability arising from Premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract. The following minimum limits are required:

\$2,000,000 General Aggregate
\$2,000,000 Products & Completed Operations Aggregate
\$2,000,000 Personal and Advertising Injury
\$2,000,000 Each Occurrence

10.1.3 **Business Automobile Liability Insurance.** The minimum limit required is \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage shall include Tenant owned, non-owned, and hired vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute providing equal or broader liability coverage.

10.1.4 **Property Insurance.** Tenant shall carry property insurance on an all-risk basis for loss to any tenant improvements or betterments and the personal property of others in Tenant's possession in, upon or about the Premises. To the extent applicable, Tenant shall obtain Plate Glass coverage in an amount sufficient to cover the replacement cost of any plate glass within the Premises. This coverage shall be written on a replacement cost basis and Landlord shall be named as a loss payee on the policy. Tenant further agrees to waive its right of subrogation against Landlord and to require that its property insurer do the same.

10.1.5 **Rent Continuation Insurance.** Tenant shall carry Rent Continuation insurance in an amount sufficient to cover its Rent obligations hereunder.

10.2 General Requirements.

10.2.1 **Additional Insured.** Landlord shall be named as an additional insured by endorsement to Tenant's Commercial General Liability policy using ISO form CG 20 26 07 04) or an endorsement providing equally broad coverage. Tenant's Umbrella Liability or excess liability policy shall also name Landlord as additional insureds using language as broad as that used on the Commercial General Liability policy.

10.2.2 **Waiver of Subrogation.** The Commercial General Liability Policy shall provide for a waiver of subrogation in favor of Landlord using ISO form CG 24 04. Tenant's Umbrella Liability policy shall also provide for a waiver of subrogation in favor of Landlord using language as broad as that used on the Commercial General Liability policy. Each Workers

Compensation policy shall provide for a waiver of subrogation in favor of Landlord using National Counsel of Compensation Insurance endorsement WC 00 03 13.

10.2.3 **Cross-Liability.** All required liability policies shall provide cross-liability coverage.

10.2.4 **Policy Cancellation Endorsement.** Except for ten (10) days written notice to Landlord for non-payment of premium, each insurance policy shall be endorsed to specify that without sixty (60) days prior written notice to Landlord, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified herein.

10.2.5 **Deductibles and Self-Insured Retentions.** Insurance maintained by Tenant shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by Landlord. Such approval shall not relieve Tenant from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence.

10.3 **Approved Insurer and Notice of Insurance.** All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurance companies rated not lower than "A" and in the Class IX Financial Size category in Best's Insurance Reports (current edition) and authorized to do business in the State of Nevada. Such policies shall be endorsed to indicate that Tenant's coverage shall not be invalid due to any act or omission by Landlord. The policies shall further be endorsed to indicate that such policies shall cover Tenant's obligations up to the limits of such policies. The insurance companies issuing such insurance shall agree to notify Landlord in writing of any cancellation, reduction in coverage, changing types of coverage, or non-renewal of said insurance at least thirty (30) days prior thereto. Tenant shall deliver to Landlord, within 30 days after execution of this Lease, or prior to entering the Premises for any purpose, whichever is first to occur, certificates (in the form of Acord 25 Certification of Insurance or a form substantially similar) evidencing the insurance coverage required herein and confirming that the premiums therefor have been paid in full. Said certificates shall also include a footnote referring to this Lease and certifying that the policy or policies issued to Tenant comply with all of the provisions of this Section 10. If Tenant fails to obtain the insurance required herein and deliver said certificates to Landlord as provided above, Landlord shall be entitled, but without obligation, to obtain said policies at Tenant's expense. All coverages for Tenant's assignees and subtenants shall be subject to the requirements stated herein.

10.4 **Policy Requirements.** Landlord and Tenant agree that on January 1 of the second (2nd) full calendar year during the Term and on January 1 of every second (2nd) calendar year thereafter, Landlord will have the right to request commercially reasonable changes in the character and/or amounts of insurance required to be carried by Tenant pursuant to the provisions of this **Section 10**, and Tenant shall comply with any requested change in character and/or amount within thirty (30) days after Landlord's request therefore.

10.5 Landlord not Responsible for Acts of Others. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying or using space adjoining the Premises or any part of the premises adjacent to or connecting with the Premises or any other part of the Building, or for any loss or damage resulting to Tenant (or those claiming by, through or under Tenant) or its or their property, from (a) the breaking, bursting, stoppage or leaking of electrical cable and/or wires, or water, gas, sewer or steam pipes, (b) falling plaster, or (c) dampness, water, rain or snow in any part of the Building. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises, and to use such other portions of the Building as Tenant is herein given the right to use, at Tenant's own risk.

10.6 Increase in Insurance Premiums. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises or the Building which will contravene Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies from companies acceptable to Landlord. If anything done, omitted to be done, or suffered by Tenant to be kept in, upon or about the Premises or the Building shall cause the rate of fire or other insurance on the Premises or the Building to be increased beyond the minimum rate from time to time applicable to the Premises or to any such other property for the use or uses made thereof, Tenant shall pay to Landlord, as Rent, the amount of any such increase upon Landlord's demand therefore.

11. UTILITIES.

11.1 Utilities Provided by Tenant. Tenant shall: (i) make application in Tenant's own name for all utilities not provided by Landlord, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities directly from, and pay for the same when due directly to the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, gas, water, sewer, steam, fire protection, telephone, Ethernet and other communication and alarm services, and all taxes or other charges thereon. Tenant shall install and connect all equipment and lines required to supply such utilities to the extent not already available at or serving the Premises, or at Landlord's option shall repair, alter or replace any such existing items. Tenant shall maintain, repair and replace all such items, operate the same, and keep the same in good working order and condition. Tenant shall not install any equipment or fixtures, or use the same, so as to exceed the safe and lawful capacity of any utility equipment or lines serving the same. The installation, alteration, replacement and connection of any utility equipment and lines shall be subject to the requirements for alterations of the Premises set forth in **Section 13**.

11.2 Utilities Provided by Landlord. Landlord reserves the right from time to time to provide any or all utilities to the Premises. In such case, Tenant shall pay such charges as Landlord may reasonably establish from time to time, which Landlord may determine on a per-square-foot basis applicable to the square footage of the Premises as a monthly charge, or which Landlord may determine based on the quantity of utilities used or consumed at the Premises on a monthly or other regular basis. Such charges shall not exceed the rates, if any, that Landlord is permitted to charge pursuant to applicable law. In addition, if Landlord establishes charges based on consumption or use: (i) such charges shall not be in excess of the rate that Tenant

would be charged directly by the utility company serving the general area in which the Premises is located, (ii) if the Premises are separately metered for such utilities, Tenant shall pay for amounts of such utilities based on such meters, and (iii) if the Premises are not separately metered for such utilities, Tenant shall pay for amounts of such utilities based on the reasonable estimates of Landlord's engineer or consultant, or, at Landlord's election, shall pay Landlord's cost for installing separate meters, and shall thereafter pay based on such meters. Except to the extent prohibited by applicable law, Landlord may also impose a reasonable administrative charge to cover meter-reading and other overhead expenses. All such charges shall be payable as Rent ten (10) days after billed by Landlord. Landlord may discontinue providing any utilities then being provided by Landlord upon fifteen (15) days' advance written notice to Tenant (in which case Tenant shall obtain such utilities directly from the applicable utility company). If Landlord supplies ventilated air or chilled or heated air or water for air-conditioning or heating of the Premises, Landlord may nevertheless require that Tenant, at Tenant's expense, maintain, repair and replace any portion of the systems and equipment therefore exclusively serving the Premises, including without limitation any air handling equipment, ductwork and lines.

11.3 Interruptions in Utilities. Landlord does not warrant that any utilities provided by any utility company or Landlord will be free from shortages, failures, variations or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, governmental requirements or requests, or other causes beyond Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of such shortage, failure or variation, including without limitation loss of profits, business interruption or other incidental or consequential damages.

12. REPAIRS AND MAINTENANCE.

12.1 Landlord's Duty to Maintain Structure. Landlord shall maintain or cause to be maintained in good operating condition the Building, including the Common Areas, University/civic areas, and the structure of the Building, and shall be responsible for maintenance of such and structural repairs to the exterior walls, load bearing elements, foundations, roofs, structural columns and structural floors with respect thereto, and Landlord shall make all required repairs thereto, provided, however, that if the necessity for such repairs shall have arisen, in whole or in part, from the negligence or willful acts or omissions of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors, or by any unusual use of the Premises by Tenant, then Landlord may collect the cost of such repairs, as Rent, upon demand, accompanied by a reasonably detailed explanation of the same.

12.2 Tenant's Duty to Maintain Premises.

12.2.1 Unless otherwise provided in **Exhibit B**, Tenant shall keep and maintain the Premises and all fixtures, equipment, light fixtures and bulbs, doors (including, but not limited to, entrance doors, patio doors and balcony doors), door hardware, carpeting, floor and wall tiles, window and door glass, security systems, ventilation fans, window and door

treatments (including, but not limited to, blinds, shades, screens and curtains), plumbing fixtures and drains, ceiling tiles and grids, counters, shelving, light switches, base cove and moldings, locks, bathroom and kitchen equipment and appliances (including, but not limited to, tissue dispensers, handrails, mirrors, cabinets, disposals, dishwashers, sinks, faucets, drinking fountains and water purifiers) located therein in a good, safe, clean and sanitary condition consistent with the operation of a first-class operation at a University building, and in compliance with all legal requirements with respect thereto. Except as provided in **Exhibit B**, all injury, breakage and damage to the Premises (and to any other part of the Building, if caused by any act or omission of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors) shall be repaired or replaced by Tenant at its expense. Tenant shall keep and maintain all pipes and conduits and all mechanical, electrical and plumbing systems contained within the Premises in good, safe, clean and sanitary condition and shall make all required repairs thereto. In the event Landlord agrees, upon request by Tenant, to repair or maintain any of the items listed in this **Section 12.2.1**, Tenant shall pay all costs and expenses in connection with Landlord's repair or maintenance services, including, but not limited to, wages, materials and mileage reimbursement.

12.2.2 Tenant shall keep the service areas adjacent to the Premises swept and free from trash, rubbish, garbage and other refuse. Tenant shall maintain in a neat and clean condition that area designated by Landlord as the refuse collection area, and shall not place or maintain anywhere within the Building or elsewhere, other than within the area which may be designated by Landlord from time to time as such refuse collection area, any trash, garbage or other items, except as may otherwise be expressly permitted by this Lease; provided, however, that in the event there is no room in the refuse collection area for Tenant's trash, Landlord shall notify Tenant thereof and Tenant shall be required to make its own arrangements for the removal of its trash from the Premises.

13. IMPROVEMENTS.

13.1 **Landlord Approval.** Tenant shall not make any alteration, improvement or addition (collectively "**Alterations**") to the Premises without first (a) presenting to Landlord plans, drawn and sealed by a licensed architect or space planner of a reasonable scale and amount of detail to clarify the work to be done, and specifications, therefore and obtaining Landlord's written consent thereto (which shall not, in the case of (i) non-structural interior Alterations, or (ii) Alterations which would not affect any electrical, mechanical, plumbing or other Building systems, be unreasonably withheld so long as such Alterations will not violate applicable law or the provisions of this Lease, or impair the value of the Premises or the Building or be visible from the exterior of the Building) and (b) obtaining any and all governmental permits or approvals for such Alterations, which are required by applicable law; provided, that (i) any and all contractors or workmen performing such Alterations must first be approved by Landlord, (ii) all work is performed in a good and workmanlike manner in compliance with all applicable codes, rules, regulations and ordinances, and (iii) all persons, contractors, tradesman or workman performing such improvements or alteration work shall be a licensed tradesman for the type of work they are doing on the property, evidence of which shall be submitted to Landlord prior to the commencement of the work and (iv) Tenant shall restore the Premises to its condition immediately before such Alterations were made, free of Tenant's fixtures and furniture by not later than the date on which Tenant vacates the Premises or the Termination Date,

whichever is earlier, with the exception of all Landlord approved partitions or other specified Alterations. Tenant, at its own expense, shall repair promptly any damage to the Building caused by bringing therein any property for its use, or by the installation or removal of such property, regardless of fault or by whom such damage is caused. As a further condition for approving any such Alterations, Landlord shall have the right to require Tenant and/or its contractor(s) to execute a copy of Landlord's "Design Construction Standards and /or Appendices Design/ Construction Standards."

13.2 Acceptance of Possession. In addition to the following, upon taking possession of the Premises, Tenant shall for all purposes of this Lease be deemed to have accepted the Premises and the Building and to have acknowledged them to be in the condition called for hereunder.

13.2.1 Condition of Premises. Tenant acknowledges, represents and agrees to the following: (i) Tenant shall be responsible for making its own inspection and investigation of the Premises and the Building, (ii) Tenant shall be responsible for investigating and establishing the suitability of the Premises for Tenant's intended use thereof, and all zoning and regulatory matters pertinent thereto, (iii) Tenant is leasing the Premises "AS IS" based on its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Landlord or its agents, employees or representatives, except as expressly set forth in this Lease, (iv) each portion of the Premises, upon the earliest of Tenant's possession or Tenant's entry therein to construct or install improvements, was in good order and satisfactory condition, and (v) the Premises and Tenant's rights thereto under this Lease include only the interior space within the Premises. Tenant's rights do not include and Tenant has no rights to or expectations of any improvements below floor level, above ceiling level, or rights to any particular view or view corridor, any particular angle or degree of sun or light exposure, or any particular air rights or corridor above or around the Premises.

13.2.2 Construction. Subject to **Section 24.6**, Landlord shall, in the exercise of reasonable diligence, perform the construction and/or installation work provided for on **Exhibit C** attached hereto, if any. In no event will Landlord be responsible for performing any other work or installing any other improvements except for the work described in **Exhibit C**.

13.3 Fixtures. Any and all improvements, repairs, alterations and all other property attached to, used in connection with or otherwise installed within the Premises by Landlord or Tenant shall become Landlord's property, without payment therefore by Landlord, immediately on the completion of their installation; provided that any machinery, equipment or fixtures installed by Tenant and used in the conduct of Tenant's trade or business (rather than to service the Premises or the Building) and not part of the Building Service Equipment shall remain Tenant's property; but further provided that if any leasehold improvements made by Tenant replaced any part of the Premises, such leasehold improvements that replaced any part of the Premises shall be and remain Landlord's property.

14. LANDLORD'S RIGHT OF ENTRY. Landlord and its authorized representatives shall be entitled to enter the Premises at any reasonable time during Tenant's usual business hours, after giving Tenant at least twenty-four (24) hours' oral or written notice thereof, (a) to inspect the Premises, (b) to exhibit the Premises (i) to any existing or prospective purchaser or

mortgagee thereof, or (ii) to any prospective tenant thereof, provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require, and (c) to make any repair thereto and/or to take any other action therein which Landlord is permitted to take by this Lease or applicable law (provided, that in any situation in which, due to an emergency or otherwise, Landlord reasonably believes the physical condition of the Premises or the Building would be unreasonably jeopardized unless Landlord were to take such action immediately, Landlord shall not be required to give such notice to Tenant and may enter the same at any time). Nothing in this **Section 14** shall be deemed to impose any duty on Landlord to make any such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. Landlord shall not in any event be liable to Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by Tenant by reason of the making of such repairs, the taking of such action or the bringing of materials, supplies and equipment upon the Premises during the course thereof, and Tenant's obligations under this Lease shall not be affected thereby.

15. DAMAGE OR DESTRUCTION

15.1 **Option to Terminate.** If during the Term either the Premises or any portion of the Building, the Common Areas, the total leased area, or the Property are Substantially Damaged or Destroyed by fire or other casualty, Landlord shall have the option (which it may exercise by giving written notice thereof to Tenant within sixty (60) days after the date on which such Substantial Damage or Destruction occurs) to terminate this Lease as of the date specified in such notice (which date shall not be earlier than the thirtieth (30th) day after such notice is given). "**Substantial Damage and Destruction**" and "**Substantially Damaged or Destroyed**" shall mean serious damage or destruction rendering unusable 33% or more of the rentable square feet of the Premises, the Food Court Common Area and/or the total square footage of the Building. On such termination, Tenant shall pay to Landlord all Base Rent, Rent and other sums and charges payable by Tenant hereunder and accrued through such date (as justly apportioned to the date of such termination). If Landlord does not terminate this Lease pursuant to this **Section 15.1**, Landlord shall restore the Building and/or Premises as soon thereafter as is reasonably possible, but not longer than 90 days, to their condition on the date of completion of Landlord's Work, taking into account any delay experienced by Landlord in recovering the proceeds of any insurance policy payable on account of such damage or destruction and in obtaining any necessary permits and, failing such, Tenant may terminate this Lease. Until the Premises are so repaired, the Base Rent (and each installment thereof) and the Rent shall abate in proportion to the floor area or essential operating area of so much, if any, of the Premises as is rendered substantially unusable by Tenant by such damage or destruction.

15.2 **No Termination of Lease.** Except as is otherwise expressly permitted by **Section 15.1**, no total or partial damage to or destruction of any or all of the Premises shall entitle either party hereto to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the Base Rent, any Rent and all other sums and charges which are otherwise payable by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all

of the Premises, or to have any suspension, diminution, abatement or reduction of the Base Rent or any Rent or other sum payable by Tenant hereunder.

16. CONDEMNATION.

16.1 **Termination.** If the Premises, the Building, the Food Court Common Area or any portion thereof are taken under power of eminent domain or conveyed by Landlord under the threat thereof (a “**Condemnation**”), this Lease shall automatically terminate as to the part so taken as of the date of Condemnation. If a portion of the floor area of the Premises, or all or a substantial portion of the Building, is taken by Condemnation, and Landlord determines that it would not be economically feasible for Landlord or for the Tenant to utilize the Premises for the purposes for which the same were being used at the time of said taking, then Landlord may terminate this Lease as of the date of condemnation by giving written notice thereof to Tenant on or before twenty (20) days after said date. If more than twenty-five percent (25%) of the floor area of the Building (regardless of whether or not any portion of the Premises is taken), then Landlord shall be entitled to terminate this Lease as of the date of Condemnation by written notice to Tenant on or before twenty (20) days after said date.

16.2 **Rent Adjustment.** In the event of Condemnation of only a portion of the Premises, Base Rental and Tenant’s Operating Costs obligation shall also be reduced in proportion to the amount of rentable square footage taken.

16.3 **Award.** Landlord shall be entitled to the entire Condemnation award for any partial or entire taking of the Premises and/or the Building, including any award for the leasehold estate created hereby, and Tenant hereby waives any claim with respect thereto; provided that Tenant may seek a separate award from the taking authority (and not from Landlord), in Tenant’s own name, for any damages to Tenant’s business (excluding the loss of its leasehold estate) and any costs incurred by Tenant in removing Tenant’s Property.

16.4 **Restoration.** If only a part of the Premises is condemned and this Lease is not terminated pursuant hereto, then Landlord shall, in the exercise of reasonable diligence and its own cost, restore the Premises to its previous condition as nearly as is reasonable under the circumstances. In no event, however, shall Landlord be obligated to commence such restoration until it has received the entire Condemnation award and in no event shall Landlord be obligated to incur restoration expenses in an amount greater than such award, less costs, expenses and fees (including attorneys’ fees and costs) incurred by Landlord in collecting such award.

16.5 **Date of Condemnation.** The date of Condemnation, for the purposes hereof, is the earlier of the date (i) possession of the property subject to Condemnation is delivered to the taking authority, or (ii) title is vested in the taking authority.

17. ASSIGNMENT AND SUBLETTING.

17.1 **Landlord’s Consent Required.** Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease portions therein, nor otherwise permit any other person to occupy or use any portion of the Premises (collectively, a “**Transfer**”), without in each instance first obtaining the written consent of Landlord. The consent will not be unreasonably withheld or delayed, provided that, among other

things as reasonably required by Landlord, the net worth and financial condition of the proposed assignee or transferee is provided to Landlord, in writing, with Tenant's request for Landlord's consent. This prohibition includes any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure (including, without limitation, the transfer of partnership interests, the creation of additional partnership interests or the transfer of corporate shares or beneficial interests), or an assignment or subletting to or by a receiver or trustee in any federal or state bankruptcy, insolvency or other similar proceedings. Consent by Landlord to any assignment, subletting, licensing or other transfer shall not (i) constitute a waiver of the requirement for such consent to any subsequent assignment, subletting, licensing or other Transfer, (ii) relieve Tenant from its duties, responsibilities and obligations under the Lease, or (iii) relieve any guarantor of this Lease from such guarantor's obligations under its guaranty agreement, if any, except that any of the above may be waived upon agreement by Landlord. Any proposed assignment, subletting or transfer of Tenant's status arising under this Lease shall be subject to the prior approval of the Chancellor of the Nevada System of Higher Education which approval may be granted or withheld by said Chancellor in his/her sole and absolute discretion. Notwithstanding the foregoing, Tenant, without further Landlord consent, shall be allowed to Transfer this Lease to a Tenant affiliated entity upon showing to Landlord evidence of such transferee affiliate's ownership structure, financial condition and assumption of Tenant's obligations hereunder.

17.2 Acceptance of Rent from Transferee. The acceptance by Landlord of the payment of Rent from any person following any act, assignment or other Transfer prohibited by this **Section 17** shall not constitute a consent to such act, assignment or other Transfer, nor shall the same be deemed to be a waiver of any right or remedy of Landlord's hereunder.

17.3 Conditions of Consent.

17.3.1 If Tenant receives consent to a Transfer under **Section 17.1** above, then, in addition to any other terms and conditions imposed by Landlord in the giving of such consent, Tenant and the transferee shall execute and deliver, on demand, an agreement prepared by Landlord providing that the transferee shall be directly bound to Landlord to perform all obligations of Tenant hereunder including, without limitation, the obligation to pay all Rent and other amounts provided for herein; acknowledging and agreeing that there shall be no subsequent Transfer of this Lease or of the Premises or of any interest therein without the prior consent of Landlord pursuant to **Section 17.1** above; acknowledging that, unless otherwise agreed by Landlord and Tenant, Tenant as originally named herein shall remain fully liable for all obligations of the tenant hereunder, including the obligation to pay all Rent provided herein and including any and all obligations arising out of any subsequent amendments to this Lease made between Landlord and the transferee (whether or not consented to by Tenant), jointly and severally with the transferee; and such other provisions as Landlord shall require.

17.3.2 All costs incurred by Landlord in connection with any request for consent to a Transfer, including costs of investigation and the reasonable fees of Landlord's counsel, shall be paid by Tenant on demand as a further condition of any consent which may be given.

17.4 **Profits from Use or Transfer.** Tenant agrees that in the event of a Transfer, Tenant shall pay Landlord, within ten (10) days after receipt thereof, one hundred percent (100%) of the excess of (i) any and all consideration, money or thing of value, however characterized, received by Tenant or payable to Tenant in connection with or arising out of such Transfer, over (ii) all amounts otherwise payable by Tenant to Landlord pursuant to this Lease.

18. **RULES AND REGULATIONS.** Landlord shall have the right to prescribe, at its sole discretion, reasonable rules and regulations (the “**Rules and Regulations**”) having uniform applicability to all tenants of the Building (subject to their respective leases) and governing their use and enjoyment of the Property; provided, that the Rules and Regulations shall not materially interfere with Tenant’s use and enjoyment of the Premises in accordance with this Lease for the purposes listed in **Section 6**. The Rules and Regulations may govern, without limitation, the use of sound apparatus, noise or vibrations emanating from machinery or equipment, obnoxious fumes and/or odors, the parking of vehicles, lighting and storage and disposal of trash and garbage. Tenant shall adhere to the Rules and Regulations and shall cause its agents, employees, invitees, visitors and guests to do so. A copy of the Rules and Regulations in effect on the date hereof is attached hereto as **Exhibit A**. Landlord shall have the right to amend the Rules and Regulations from time to time. The Rules and Regulations attached hereto as **Exhibit A** and as amended from time to time, are incorporated here by reference as though fully set forth.

19. **SUBORDINATION AND ATTORNMENT.**

19.1 **Subordination.** Unless a Mortgagee otherwise shall elect as provided in **Section 19.2**, and subject to the covenant of quiet enjoyment under **Section 22** hereof, Tenant’s rights under this Lease are and shall remain subject and subordinate to the operation and effect of any mortgage, deed of trust or other security instrument constituting a lien upon the Premises, and/or the Building, whether the same shall be in existence on the date hereof or created hereafter (any such lease, mortgage, deed of trust or other security instrument being referred to herein as a “**Mortgage**,” and the party or parties having the benefit of the same, whether as beneficiary, trustee or noteholder, being referred to hereinafter collectively as “**Mortgagee**”). Tenant’s acknowledgment and agreement of subordination as provided for in this **Section 19** is self-operative and no further instrument of subordination shall be required; however, Tenant shall execute, within ten (10) days after request therefore, a document providing for such further assurance thereof and for such other matters as shall be requisite or as may be requested from time to time by Landlord or any Mortgagee.

19.2 **Mortgagee’s Unilateral Subordination.** If a Mortgagee shall so elect by notice to Tenant or by the recording of a unilateral declaration of subordination, this Lease and Tenant’s rights hereunder shall be superior and prior in right to the Mortgage of which such Mortgagee has the benefit, with the same force and effect as if this Lease had been executed, delivered and recorded prior to the execution, delivery and recording of such Mortgage, subject, nevertheless, to such conditions as may be set forth in any such notice or declaration.

19.3 **Attornment.** If any Person shall succeed to all or any part of Landlord’s interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise and if such successor-in-interest requests or requires, Tenant shall attorn to such successor-in-interest and shall execute within ten (10) days after

receipt thereof an agreement in confirmation of such attornment in a form as may be reasonably requested by such successor-in-interest. Failure to respond within such (10) day period shall be deemed to be a confirmation by Tenant of the facts and matters set forth therein.

20. **DEFAULTS AND REMEDIES.**

20.1 **Tenant's "Event of Default" Defined.** Any one or more of the following events shall constitute a default under the terms of this Lease ("**Event of Default**"):

20.1.1 the failure of Tenant to pay any Rent or other sum of money due hereunder to Landlord or any other person, within ten (10) days after the same is due;

20.1.2 the sale of Tenant's interest in the Premises under attachment, execution or similar legal process without Landlord's prior written approval;

20.1.3 the filing of a petition proposing the adjudication of Tenant as a bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, whether pursuant to the Federal Bankruptcy Act or any similar federal or state proceeding, unless such petition is filed by a party other than Tenant and is withdrawn or dismissed within sixty (60) days after the date of its filing;

20.1.4 the admission in writing by Tenant of its inability to pay its debts when due;

20.1.5 the appointment of a receiver or trustee for the business or Premises of Tenant, unless such appointment is vacated within sixty (60) days of its entry;

20.1.6 the making by Tenant of an assignment for the benefit of its creditors;

20.1.7 a default by Tenant in the performance or observance of any covenant or agreement of this Lease to be performed or observed by Tenant (other than as set forth in clauses (a) through (f) above), which default is not cured within thirty (30) days after the giving of written notice thereof by Landlord, unless such default is of such nature that it cannot be cured within such 30-day period, in which event such Event of Default shall be deemed to have been cured if Tenant institutes a cure within the 30-day period and thereafter diligently and continuously prosecutes the curing of the same until completion, but in no event shall such cure period exceed ninety (90) days; provided, however, that if Tenant defaults in the performance of any such covenant or agreement more than two (2) times during the Term, then notwithstanding that such defaults have each been cured by Tenant, any further defaults shall be deemed an Event of Default without the ability to cure; or (h) the vacating or abandonment of the Premises by Tenant at any time during the Term.

20.2 **Landlord's Remedies.** Upon the occurrence of any Tenant Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

20.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails so to do, Landlord may, without prejudice to any

other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises, or any part thereof, by force if necessary, without being liable to prosecution or for any claim for damages; and Landlord may recover from Tenant:

20.2.1.1 The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

20.2.1.2 The worth at the time of award of any amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

20.2.1.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

20.2.1.4 Any other reasonable amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease; and

20.2.1.5 At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

All such amounts shall be computed on the basis of the monthly amount thereof payable on the date of Tenant's default. As used in paragraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest in the per annum amount equal to the Default Rate. As used in paragraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%) per annum.

20.2.2 Enter upon and take possession of the Premises and expel or remove Tenant and other persons who may be occupying the Premises, or any part thereof, by force if necessary, without being liable to prosecution or for any claim for damages, and relet the Premises, as Tenant's agent, and receive the rent therefor; and Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of such reletting; or

20.2.3 Enter upon the Premises, without being liable to prosecution or for any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any reasonable and necessary expenses which Landlord may incur in thus effecting compliance with Tenant's obligations hereunder.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damage accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies

herein provided upon the occurrence of a Tenant Event of Default shall not be deemed or construed to constitute a waiver of such default.

20.3 Default by Landlord. Landlord shall not be considered in default or breach of this Lease for the non-performance of any obligation imposed herein unless Tenant provides Landlord with written notice of said non-performance and:

20.3.1 If the same relates solely to the non-payment of money, Landlord fails to perform within fifteen (15) business days after receipt of said written notice, or

20.3.2 If the same does not relate solely to the non-payment of money, Landlord fails to commence performance within said 15 business-day period and to diligently continue such performance until the obligation is fulfilled.

In the event of a default by Landlord as defined in this **Section 20.3**, Tenant, at its option, without further notice or demand, and as its sole remedy shall have the right to any one or more of the following remedies: (a) to pursue the remedy of specific performance; and/or (b) to pursue injunctive relief.

20.4 Landlord's Liability. Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed by and between the parties hereto that: (i) the recourse of Tenant, or its successors or assigns, against Landlord with respect to any alleged breach by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in this Lease or otherwise arising out of Tenant's use of the Premises or the Project (collectively "**Landlord's Lease Obligations**") shall extend only to Landlord's interest in the Building of which the Premises are a part ("**Landlord's Real Estate**") and the rents derived therefrom, and not to any other real property, personal property or other assets of Landlord or its former or current members, or any of the current or former directors, officers, employees, agents, members, or partners thereof; and (ii) except to the extent of Landlord's interest in Landlord's Real Estate, no personal liability or personal responsibility of any sort with respect to any of Landlord's Lease Obligations or any alleged breach thereof is assumed by, or shall be asserted or enforceable against, Landlord or any current or former members thereof, or any of Landlord's or such member's current or former directors, officers, employees, agents, members, or partners.

20.5 Waiver of Jury Trial. Each party hereto hereby waives any right which it may otherwise have at law or in equity to a trial by jury in connection with any suit or proceeding at law or in equity brought by the other against the waiving party or which otherwise relates to this Lease, as a result of an Event of Default or otherwise. Tenant further agrees that in the event Landlord commences any summary proceeding for nonpayment of rent or possession of the Premises, Tenant will not, and hereby waives, all right to interpose any counterclaim of whatever nature in any such proceeding.

20.6 Landlord's Security Interest. In addition to any lien for Rent available to Landlord, Landlord shall have, and Tenant hereby grants to Landlord, a continuing security interest for all Rent and other sums of money becoming due hereunder from Tenant, upon all Tenant's accounts receivable, inventory, equipment and all other personal property located on

the Premises. If an Event of Default occurs, Landlord shall have, in addition to any other remedies provided herein or by law, all of the rights and remedies afforded to secured parties under the Uniform Commercial Code, as codified in applicable state law (“the U.C.C.”), including but not limited to (a) the right to sell Tenant’s said property at public or private sale upon ten (10) days’ notice to Tenant, and (b) the right to take possession of such property without resort to judicial process in accordance with applicable provisions of the U.C.C. Tenant, on its receipt of a written request therefore from Landlord, shall execute such financing statements and other instruments as are necessary or desirable, in Landlord’s judgment, to perfect such security interest.

21. **ESTOPPEL CERTIFICATE.** Tenant shall, without charge, at any time and from time to time, within ten (10) days after receipt of request therefore from Landlord, execute, acknowledge and deliver to Landlord, and to such Mortgagee or other party as may be designated by Landlord, a written estoppel certificate in form and substance as may be requested from time to time by Landlord, the other party or any Mortgagee, certifying to the other party, any Mortgagee, any purchaser of Landlord’s interest in all or any part of the Property, or any other person or entity designated by the other party, as of the date of such estoppel certificate, the following: (a) whether Tenant is in possession of the Property; (b) whether this Lease is in full force and effect; (c) whether there are any amendments to this Lease, and if so, specifying such amendments; (d) whether there are any then-existing setoffs or defenses against the enforcement of any rights hereunder, and if so, specifying such matters in detail; (e) the dates, if any, to which any rent or other sums due hereunder have been paid in advance and the amount of any security deposit held by Landlord; (f) that Tenant has no knowledge of any then-existing defaults of Landlord under this Lease, or if there are such defaults, specifying them in detail; (g) that Tenant has no knowledge of any event having occurred that authorized the termination of this Lease by Tenant, or if such event has occurred, specifying it in detail; (h) the address to which notices to Tenant should be sent; and (i) any and all other matters reasonably requested by Landlord, any Mortgagee and/or any other person or entity designed by Landlord. Any such estoppel certificate may be relied upon by the person or entity to whom it is directed or by any other person or entity who could reasonably be expected to rely on it in the normal course of business. The failure of Tenant to execute, acknowledge and deliver such a certificate in accordance with this **Section 21** within ten (10) days after a request therefor by Landlord shall constitute an acknowledgment by Tenant, which may be relied on by any person or entity who would be entitled to rely upon any such certificate, that such certificate as submitted by the requesting party to the other party is true and correct, and the requesting party is hereby authorized to so certify.

22. **QUIET ENJOYMENT.** Landlord hereby warrants that, so long as all of Tenant’s obligations hereunder are timely performed, Tenant will have during the Term quiet and peaceful possession of the Premises and enjoyment of such rights as Tenant may hold hereunder to use the Common Areas, except if and to the extent that such possession and use are terminated pursuant to this Lease. Tenant hereby acknowledges that it has examined the Premises, the title thereto, the zoning thereof, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state of title, without restriction, representation, covenant or warranty, express or implied, in fact or at law, by Landlord or any other person, and without recourse to Landlord, as to the title thereto, any encumbrances thereon,

any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Premises may be put.

23. **NOTICES.** Except as may be otherwise provided in this Lease, any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided (i) two (2) days following the date sent as certified mail in the United States mails, postage prepaid, return receipt requested, (ii) on the day following the date it is deposited prior to the close of business with FedEx or another national courier service, (iii) on the date of hand delivery (if such party's receipt thereof is acknowledged in writing), or (iv) via facsimile, with receipt of transmission, in each case to the address of such party set forth in **Sections 1.6 and 1.7** or to such other address as such party may designate from time to time by notice to each other party hereto.

24. **GENERAL**

24.1 **Effectiveness.** This Lease shall become effective on and only on its execution and delivery by each party hereto.

24.2 **Complete Understanding.** The original RFP (# 7529) issued on April 14, 2006, and attached hereto as **Exhibit I**, is incorporated into this Lease in so far as it is not superseded by specific language in the Lease. If there is a conflict, the language in the Lease prevails. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements and agreements, either written or oral, between the parties hereto as to the same.

24.3 **Amendment.** This Lease may be amended by and only by an instrument executed and delivered by each party hereto, provided, however, that Landlord shall have the right at any time, and from time to time, during the Term unilaterally to amend the provisions of this Lease if Landlord (or any of its partners) is advised by its counsel that all or any portion of the monies paid, directly or indirectly, by Tenant to Landlord (and/or its partners) hereunder are, or may be deemed to be, unrelated business income within the meaning of the United States Internal Revenue Code or regulations issued thereunder, and Tenant agrees that it will execute all documents or instruments necessary to effect such amendment or amendments, provided that no such amendment shall result in Tenant having to pay in the aggregate a larger sum of money on account of its occupancy of the Premises under the terms of this Lease as so amended, and provided further that no such amendment or amendments shall result in Tenant receiving under the provisions of this Lease fewer services than it is entitled to receive, nor services of a lesser quality. Furthermore, Tenant agrees not to take any steps or actions knowingly which may jeopardize Landlord's (and/or its partners') tax-exempt status.

24.4 **Waiver.** No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right. Without limiting the generality of the foregoing provisions of

this **Section 24.4**, Landlord's receipt or acceptance of any Base Rent, Rent of other sum from Tenant or any other person shall not be deemed a waiver of Landlord's right to enforce any of its rights hereunder on account of any default by Tenant in performing its obligations hereunder.

24.5 Applicable Law. This Lease shall be given effect and construed by application of the laws of the state in which the Premises are located, and any action or proceeding arising hereunder shall be brought in the courts of the state in which the Premises are located; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it may be brought only in the United States District Court for the state in which the Premises are located or any successor federal court having original jurisdiction.

24.6 Force Majeure. If Landlord or Tenant is delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, terrorism, acts of war, severe weather, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the reasonable control of Landlord or Tenant (financial inability excepted), performance of such act shall be excused for the period of delay.

24.7 Commissions. The parties hereto hereby acknowledge and agree that, in connection with the leasing of the Premises hereunder, neither party has used the services of any real estate broker. Each party hereto hereby represents and warrants to the other that, in connection with such leasing, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof.

24.8 Landlord's Liability. No Person holding Landlord's interest hereunder (whether or not such Person is named as the "Landlord" herein) shall have any liability hereunder after such Person ceases to hold such interest, except for any such liability accruing while such Person holds such interest. No Mortgagee not in possession of the Premises shall have any liability hereunder. Neither Landlord nor any principal of Landlord, whether disclosed or undisclosed, shall have any personal liability under this Lease. If Landlord defaults in performing any of its obligations hereunder or otherwise, Tenant shall look solely to Landlord's equity, interest and rights in the Premises to satisfy Tenant's remedies on account thereof.

24.9 No Partnership; No Joint Venture. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

24.10 Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by

Tenant under this Lease or of any breach by any other tenant under any other lease of any portion of the Building shall affect or alter this Lease in any way whatsoever.

24.11 **Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

24.12 **Authority.** If Tenant is a corporation, partnership, limited liability company or similar entity, the person executing this Lease on behalf of Tenant represents and warrants that (a) Tenant is duly organized and validly existing and (b) this Lease (i) has been authorized by all necessary parties, (ii) is validly executed by an authorized officer or agent of Tenant and (iii) is binding upon and enforceable against Tenant in accordance with its terms.

24.13 **Joint and Several Liability.** If Tenant shall be one or more individuals, corporations or other entities, whether or not operating as a partnership or joint venture, then each such individual, corporation, entity, joint venturer or partner shall be deemed to be both jointly and severally liable for the payment of the entire Rent and other payments specified herein.

24.14 **Recordation.** Neither this Lease, any amendment to this Lease, nor any memorandum, affidavit or other item with respect thereto shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall (i) be deemed an Event of Default and (ii) at Landlord's election, make this Lease null and void.

24.15 **Time of Essence.** Time shall be of the essence with respect to the performance of the parties' obligations under this Lease.

24.16 **Interpretation.** Landlord and Tenant hereby agree that both parties were equally influential in preparing and negotiating this Lease, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Lease. Therefore, Landlord and Tenant agree that no presumption should arise construing this Lease more unfavorably against any one party.

24.17 **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

24.18 **Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Lease.

24.19 **Exhibits.** Each writing or drawing referred to herein as being attached hereto as a schedule, an exhibit or otherwise designated herein as a schedule or an exhibit hereto is hereby made a part hereof.

24.20 **Guaranty of Lease.** Tenant's obligations under this Lease shall be guaranteed by _____ ("**Guarantor**") and Guarantor shall execute the Guaranty Agreement attached hereto as **Exhibit D** as a condition precedent to the effectiveness of this Lease.

IN WITNESS WHEREOF, each party hereto has executed this Lease, or caused it to be executed on its behalf by its duly authorized representatives, on the date first written above.

RECOMMENDED BY:

Milton D. Glick, President

Date _____

LANDLORD:

FOR THE BOARD OF REGENTS OF THE
NEVADA SYSTEM OF HIGHER
EDUCATION ON BEHALF OF THE
UNIVERSITY OF NEVADA, RENO

James E. Rogers, Chancellor

Date _____

TENANT:

COLLEGE OPTICAL EXPRESS NEVADA,
LLC, a Nevada Limited Liability Company

By: _____
Bradley McAllister, Manager

EXHIBIT A

RULES AND REGULATIONS

1. The sidewalks, passages and stairways shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress from and to Tenant's Premises. Landlord shall in all cases retain the right to control or prevent access thereto by any person whose presence, in Landlord's judgment, would be prejudicial to the safety, peace, character or reputation of the Premises or of any tenant of the Building.

2. The toilet rooms, water closets, sinks, faucets, plumbing and other services apparatus of any kind shall not be used by Tenant for any purpose other than those for which they were installed, and no sweepings, rubbish, rags, ashes, chemicals or other refuse or injurious substances shall be placed therein or used in connection therewith by Tenant, or left by Tenant in the lobbies, passages, elevators or stairways of the Building. The expense of any breakage, stoppage or damage to such sinks, toilets and the like shall be borne by the tenant who, or whose employees, contractors or invitees, caused it.

3. No skylight, window, door or transom of the Building shall be covered or obstructed by Tenant, and no window shade, blind, curtain; screen, storm window, awning or other material shall be installed or placed on any window or in any window space, except as approved in writing by Landlord. If Landlord has installed or hereafter installs any shade, blind or curtain in the Premises, Tenant shall not remove it without first obtaining Landlord's written consent thereto which shall not be unreasonably withheld.

4. No sign, lettering, insignia, advertisement, notice or other thing shall be inscribed, painted, installed, erected or placed in any portion of the Premises which may be seen from outside the Building, or on any window, window space or other part of the exterior or interior of the Building, unless first approved in writing by Landlord. Names on suite entrances may be provided by and only by Landlord and at Tenant's expense, using in each instance lettering of a design and in a form consistent with the other lettering in the Building, and first approved in writing by Landlord. Tenant shall not erect any stand, booth or showcase or other article or matter in or upon the Premises or the Building without first obtaining Landlord's written consent thereto which shall not be unreasonably withheld.

5. Tenant shall not place any other or additional lock upon any door within the Premises and Tenant shall surrender all keys for all such locks at the end of the Term. Landlord shall provide Tenant with one set of keys to the Premises when Tenant assumes possession thereof.

6. Tenant shall not do or permit to be done anything which obstructs or interferes with the rights of any other tenant of the Building. No bird, fish or animal shall be brought into or kept in or about the Premises or the Building. Service animals are allowed

7. If Tenant desires to install signaling, telegraphic, telephonic, protective alarm or other wires, apparatus or devices within the Premises, Landlord shall direct where and how they are to be installed and, except as so directed, no installation, boring or cutting shall be permitted. Landlord shall have the right (a) to prevent or interrupt the transmission of excessive, dangerous

or annoying current of electricity or otherwise into or through the Premises or the Building, (b) to require the changing of wiring connections or layout at Tenant's expense, to the extent that Landlord may deem necessary, (c) to require compliance with such reasonable rules as Landlord may establish relating thereto, and (d) in the event of noncompliance with such requirements or rules, immediately to cut wiring or do whatever else it considers necessary to remove the danger, annoyance or electrical interference with apparatus in any part of the Building or the Premises.

8. Landlord shall in no event be responsible for admitting or excluding any person from the Premises. In cases of invasion, hostile attack, insurrection, mob violence, riot, public excitement or other commotion, explosion, fire or any casualty, Landlord shall have the right to bar or limit access to the Building to protect the safety of occupants of the Premises, or any property within the Premises.

9. The use of any area within the Premises as sleeping quarters is strictly prohibited at all times.

10. Tenant shall keep the windows and doors of the Premises (including those opening on corridors and all doors between rooms entitled to receive heating or air conditioning service and rooms not entitled to receive such service) closed while the heating or air-conditioning system is operating, in order to minimize the energy used by, and to conserve the effectiveness of, such systems. Tenant shall comply with all reasonable rules and regulations from time to time promulgated by Landlord with respect to such systems or their use.

11. Landlord shall have the right to prescribe the weight and position of inventory and of other heavy equipment or fixtures, which shall, if considered necessary by Landlord, stand on plank strips to distribute their weight. Any and all damage or injury to the Premises arising out of Tenant's equipment being on the Premises shall be repaired by Tenant at his expense. Tenant shall not install or operate any machinery whose installation or operation may affect the structure of the Building without first obtaining Landlord's written consent thereto, and Tenant shall not install any other equipment of any kind or nature whatsoever which may necessitate any change, replacement or addition to, or in the use of, the water system, the heating system, the plumbing system, the air-conditioning system or the electrical system of the Premises or the Building without first obtaining Landlord's written consent thereto. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, any other buildings on the Property, or any space therein to such a degree as to be objectionable to Landlord or to any tenant, shall be installed and maintained by Tenant, at its expense, on vibration eliminators or other devices sufficient to eliminate such noise and vibration. Tenant shall remove promptly from any sidewalks and other areas on the Premises any of Tenant's furniture, equipment, inventory or other material delivered or deposited there.

12. Tenant shall not place or permit its agents, employees or invitees to place any thing or material on the roof or in the gutters and downspouts of the Building or cut, drive nails into or otherwise penetrate the roof, without first obtaining Landlord's written consent thereto. Tenant shall be responsible for any damage to the roof caused by its employees or contractors. Tenant shall indemnify Landlord and hold Landlord harmless against expenses incurred to correct any damage to the roof resulting from Tenant's violation of this rule, as well as any

consequential damages to Landlord or any other tenant of the Property. Landlord shall repair damage to the roof caused by Tenant's acts, omissions or negligence and Tenant shall reimburse Landlord for all expenses incurred in making such repairs. Landlord or its agents may enter the Premises at all reasonable hours to make such roof repairs. If Landlord makes any expenditure or incurs any obligation for the payment of money in connection therewith, including but not limited to attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of twelve percent (12%) per annum, and costs, shall be deemed to be Rent and shall be paid by Tenant to Landlord within five (5) days after rendition of any bill or statement to Tenant therefore. Tenant shall not place mechanical or other equipment on the roof without Landlord's prior written consent, which shall be conditioned in part upon Landlord's approval of Tenant's plans and specifications for such installations. The costs of any roof improvements made pursuant hereto shall be borne by Tenant.

13. Landlord reserves the right to institute energy management procedures when necessary.

14. Tenant shall assure that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant and its employees leave the Premises each day.

15. Tenant shall permit service animals to the Premises when such animals are providing assistance as required by law.

16. Landlord shall have the right to rescind, suspend or modify these Rules and Regulations and to promulgate such other rules or regulations as, in Landlord's reasonable judgment, are from time to time needed for the safety, care, maintenance, operation and cleanliness of the Building or the Property, or for the preservation of good order therein. Upon Tenant's having been given notice of the taking of any such action, the Rules and Regulations as so rescinded, suspended, modified or promulgated shall have the same force and effect as if in effect at the time at which Tenant's lease was entered into (except that nothing in the Rules and Regulations shall be deemed in any way to alter or impair any provision of such lease).

16. Nothing in these Rules and Regulations shall give any Tenant any right or claim against Landlord or any other person if Landlord does not enforce any of them against any other tenant or person (whether or not Landlord has the right to enforce them against such tenant or person), and no such nonenforcement with respect to any tenant shall constitute a waiver of the right to enforce them as to Tenant or any other tenant or person.

EXHIBIT B

TENANT'S WORK

Tenant's Work. Tenant shall be solely responsible for the following:

SPACE/ FACILITY AREAS

Storage: All storage will be contained within Tenant's space.

Restrooms: Requests for restrooms within individual retail areas will be at Tenant's expense and part of the rental area.

Build Out:

All construction must be done under the supervision of and subject to approval of Landlord's Facilities Services.

Tenant is required to notify Landlord at least ten (10) business days prior to commencing any work, including alterations, so that Landlord can record a notice of non-responsibility prior to the commencement of any work or alterations by Tenant.

Contractors and architects must have all appropriate licenses as required by the State of Nevada and shall be subject to the prior approval of the University. Tenant shall ensure that there is labor harmony with other trades during the construction process.

Tenant will submit with the proposal a schedule, detailing the time frame of site preparation and a proposed design (elevations, color selections, signage, utility requirements, etc.).

The proposed design will be subject to the University's approval and must meet University Facilities Services Standards. These Facilities Services Standards may be found on the University's web site.

Any modifications or renovation of the Premises must be at the approval of the University and at an agreed-upon time.

All electrical and plumbing connections per code and manufacturer's specifications.

UTILITIES:

Landlord to install gas meter (at Tenant's expense) for the Premises.

All utilities, including power, water; gas, sewer, and phone shall be brought to the Premises by Tenant from their respective "mains".

Tenant will be expected to make every effort to conserve utilities and to operate his/her equipment in an efficient manner.

The University will not be liable for any loss that may result from the quality, quantity, interruption, or failure of any such utilities or services under any circumstances.

Tenant will be responsible for all telephone, Ethernet and fax services, including but not limited to installation, monthly equipment charges, local and long distance charges or similar services. These services must be arranged with the University Telecommunications Office.

For the Grease Interceptor Trap, Tenant will be responsible for its proportionate share of all maintenance, cleaning and operating costs of the trap.

SPRINKLERS: Tenant is responsible to “drop” and “distribute” the sprinkler heads within their respective space as required.

BUILDING DOCUMENTATION: Prior to Lease acceptance, Tenant shall submit to Landlord complete drawings in the form of construction documentation and “as-built” specification of shell Premises to include but not be limited to the following:

Architectural

Structural

Electrical

Mechanical

Plumbing

Fire Sprinklers (if applicable)

All work is to be permitted and approved by the applicable local code inspectors.

Any Title 24 Calculations or other utility approvals shall be completed by Tenant, verified by University, and then submitted to appropriate agencies by Tenant. Tenant to send approved copies of all to University prior to acceptance of the Premises.

Tenant to have the right to make interior non-structural alterations to Premises. All alterations must be approved by Landlord prior to the commencement of any work.

Inspections and Final Inspection: Throughout the build-out there will be on going inspections by local agencies and Landlord’s inspectors. At the conclusion of Tenant’s retail build-out, local agencies, Landlord, its representatives and /or the contractor will conduct a final sign-off inspection of the store. The inspection allows for all parties to review the build-out, the equipment and the readiness of your store to open. As Built drawings and related documents to be provided in both reproducible Velum and electronic formats using the most current version of AutoCad to Landlord by Tenant no later than _thirty (30) calendar days after completion of improvements.

CHANGES DURING BUILDING CONSTRUCTION: Changes to the building plans to accommodate retail units will be considered with adequate advance notice. Tenant is responsible for all related costs including change order costs. Any and all changes to approved construction plans to be fully indicated in “as-built” documents that are to be turned over to Landlord

MAINTENANCE:

Maintenance and repair of Tenant’s food facility fixtures, equipment, interior facilities and premises are the responsibility of Tenant.

If there is evidence of Tenant abuse or neglect causing utility maintenance, Landlord will charge Tenant for the direct cost of repairs.

If there is evidence of Tenant abuse or neglect causing needed maintenance in common areas or with common equipment (e.g., garbage disposal, receiving area, rest rooms, public areas), Landlord will charge Tenant for the direct and indirect cost of repairs.

FIRE AND SAFETY CODES:

Tenant will maintain its food facility according to all appropriate state, city and Landlord’s fire codes. Tenant’s food facility will be subject to periodic inspection by Landlord’s personnel plus state and local inspectors.

EQUIPMENT AND FURNISHINGS:

Tenant is responsible, at his/her expense, for providing and maintaining any and all equipment and furnishings needed to operate the food facility. All equipment and furnishings will be removed at the end of the contract period and the Premises returned to Landlord in its original state, reasonable wear and tear excepted.

Tenant will submit with the proposal a list of all equipment and furnishings that are proposed to be used, along with their specifications, including utilities, voltage, plumbing, amperage, water/drains, etc.

Landlord requests that all Tenant electrical equipment be Energy Star rated equipment.

Landlord will provide a common seating area / program space on the second floor with appropriate finishes and furnishings. Cost to be shared by second floor retail food tenants.

HANDICAP ACCESSIBILITY: All means of ingress/egress shall be at street/walkway level acceptable to ADA inspectors. It will be Tenant’s responsibility to ensure full public and employee access and ADA accessibility compliance within their developed spaces and tenant improvements.

SIGNAGE:

Tenant will be allowed up to two (2) electrical hook-ups for sign(s) at storefront locations exterior of premises agreed to by Tenant and Landlord. Landlord’s guidelines prohibit exterior

Building signage. There may be signage options provided by Landlord for stand alone exterior signage (at Tenant's expense).

SECURITY and POLICE:

Tenant is responsible for all security of the individual retail areas including locks and alarms. Tenant is responsible for security of all deliveries from the loading dock to the Premises.

Tenant will cooperate with Landlord's Police Department concerning enforcement of Landlord's regulations and internal security and theft control in the food facility. Tenant will not, except in physically dangerous or other emergency situations, summon public emergency services other than through Landlord's Police Department. Tenant will not have employees of the food facility who were convicted of theft, robberies, and/or larcenies, including embezzlements, by public authorities without prior consultation with Landlord's Police Department.

SANITATION:

Tenant will maintain its food facility and ensure that all employees perform according to all appropriate state, county, city and Landlord health codes. Tenant's retail area will be subject to periodic inspection by Landlord, local and state officials. Tenant will take all appropriate precautions to ensure that sanitation is maintained to the highest possible degree.

Tenant will be responsible for the cleaning of the entire Premises including service, preparation and storage areas, equipment, floors, ceiling and walls. All areas will be kept orderly, sanitary and in good condition and be kept free of insects, rodents, vermin and other pests.

Landlord will be released from any and all liability concerning a case of food borne illness that is traced to Tenant's food facility.

All food storage racks in walk-in coolers must be on casters. (per Nevada Health Division)

Provide barriers between hand sinks and food contact surfaces. (per Nevada Health Division)

Indicate an area for storage of employees' personal possessions, or an area for lockers. (per Nevada Health Division)

Tenant to provide the Nevada Health Division with a copy of Tenant's sanitation plan. Plan should include such items as: employees' illness policy, hand wash policy, training program, proposed menus, and cleaning schedules. (per Nevada Health Division)

TRASH REMOVAL:

Tenant is responsible for the placing of all refuse in the appropriate compactor and for providing trash receptacles and plastic liners for Tenant's food facility on the interior (and exterior (if applicable)) of the building.

Costs for removal of trash in common areas will be shared proportionally.

ENVIRONMENTAL CONSERVATION:

Tenant will initiate and/or cooperate with Landlord in providing environmental conservation programs such as recycling cardboard, glass and plastic and exercising control of the use of utilities to conserve natural resources.

Landlord encourages Tenant to utilize green or sustainable equipment and policies as much as possible.

EXHIBIT C

LANDLORD'S WORK

Landlord shall be solely responsible for the following:

SPACE/ FACILITY AREAS

Restrooms: All food areas share a common restroom/ changing room. Requests for restrooms within individual retail areas will be at tenants expense and part of the rental area. Landlord would construct all required restroom facilities. All food areas share a common restroom/ changing room.

Build Out:

Landlord shall deliver the Premises to Tenant in accordance with the terms and conditions of the Lease and the following conditions:

STOREFRONT: Tenant's storefront within the building shall be per Tenant's approved development improvements as applicable.

WALLS:

All demised walls framed ready for final finish by tenant.

HVAC: Appropriate load capacity for applicable system available within the Building:

ELECTRICAL:

Landlord will provide conduit for the extension of Tenant's electrical service to the main electric room.

PLUMBING: Landlord will provide the following:

4" sanitary waste line brought within the Premises at suitable depth to drain per local code from any location within the Premises.

1 1/2" cold water supply line with a minimum one inch service to Tenant's meter

Water supply must maintain at least 60-PSI minimum.

4" vent located above proposed ceiling brought within the Premises from properly flashed vent through roof, or connected with other available, appropriate venting available in the Building.

3/4" water line feed to Building face (not Tenant's space).

GAS: Supplied gas, separately metered at Tenant's expense, 2" line.

A “Grease Interceptor” will be installed for Food Tenants by Landlord.

SPRINKLERS: Landlord will provide a main sprinkler line system for the building to Tenant’s space. Tenant is responsible to “drop” and “distribute” the sprinkler heads within their respective space as required.

UTILITIES:

Landlord will provide all reasonable utility services, including domestic hot and cold water, heating, air conditioning and electricity.

Landlord will not be liable for any loss that may result from the quality, quantity, interruption, or failure of any such utilities or services under any circumstances.

FLOORS: Floors will be concrete slab with limited access after Building construction.

MAINTENANCE:

Landlord will provide any general maintenance associated with utilities services that it supplies.

Landlord will provide grounds maintenance.

EQUIPMENT AND FURNISHINGS:

Landlord will provide a common seating area / program space on the second floor with appropriate finishes and furnishings. Cost to be shared by second floor retail food tenants.

SANITATION:

In the unfortunate case of any report of food borne illness, Landlord will determine who conducts the investigation. Any release of information concerning a report of food borne illness will be handled by Landlord’s Marketing and Communications Department.

Landlord will coordinate with Tenant for appropriate pest control services and cost sharing for these services.

EXHIBIT D
GUARANTY

EXHIBIT E
FLOOR PLAN OF PREMISES

EXHIBIT F

COMMON AREAS MAP

Dated as of _____

(Subject to change pursuant to Section 7 of the Lease)

EXHIBIT G

OPTION

[If there is no option, mark this Exhibit INTENTIONALLY DELETED]

An Option to extend the Lease, if granted in this Lease, shall be exercised, if at all, pursuant to the following provisions:

1. Written notice of exercise duly executed on behalf of Tenant shall be given to Landlord by Tenant at least 180 days prior to the expiration of the Lease Term (determined without regard to such Option to extend). Such written notice shall be effective only if it includes statements as follows:
 - a. Tenant hereby exercises its option to extend that certain Lease between BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the University of Nevada, Reno (“**Landlord**”), and _____ a(n) _____ corporation (“**Tenant**”) dated as of [insert date of Lease].
 - b. By giving this notice of exercise and upon acceptance by Landlord, Tenant agrees that the Lease is extended for the period of time set forth in the Lease Schedule as the “Length of Option” and the terms and conditions of the Lease shall continue to have full force and effect through the Lease Term as extended hereby, without any further action on the part of Tenant.
2. Tenant agrees that no Option to extend may be exercised while there exists an uncured Event of Default. An uncured Event of Default shall be deemed to exist during any period of time after Landlord has sent any notice of such Event of Default to Tenant and until the Event of Default specified therein has been fully cured. Any attempt to exercise an Option to extend or any notice of exercise sent while any uncured Event of Default exists shall be deemed a nullity and notice as herein provided must be given upon fully curing any such noticed Event of Default after full cure thereof.
3. If there shall have occurred 3 or more Events of Default during the Lease Term (as extended), even though Tenant shall fully cure each such Event of Default, there shall be no further right or option to extend the Lease Term and any Option to extend theretofore exercised which extension has not yet commenced shall be void and the Lease Term shall expire without regard to the exercise of such Option.

EXHIBIT H

FOOD COURT FLOOR PLAN

Dated as of _____

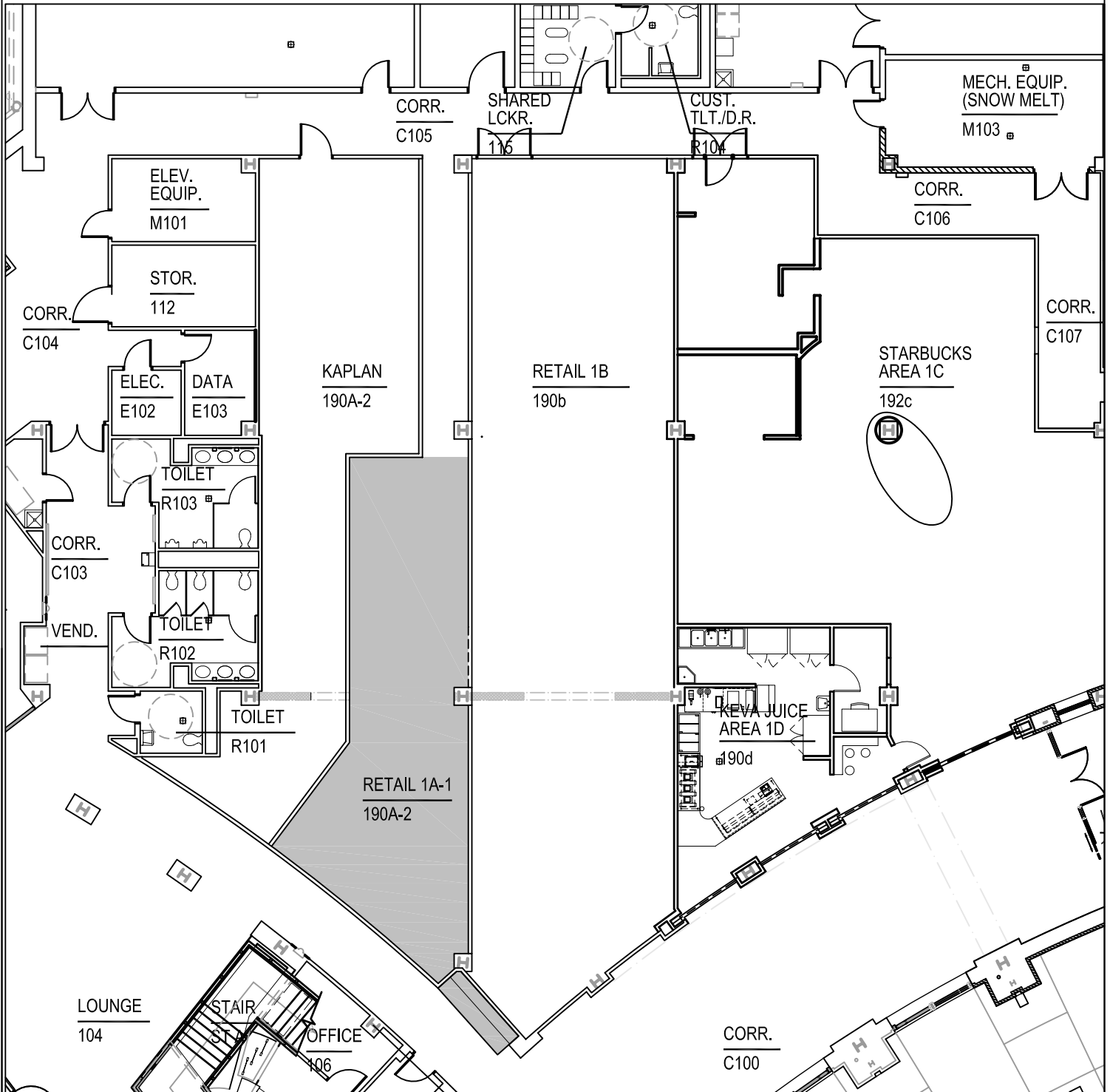
(Subject to change pursuant to Section 7 of the Lease)

INTENTIONALLY DELETED

EXHIBIT I

RFP # 7529, dated April 14, 2006

NSHE Agenda Attachment B EXHIBIT E TO THE LEASE EXHIBIT 1 TO LEASE SCHEDULE



RETAIL 1A-1

846 SF.

1/16" = 1'-0"



TIMBER COURT
127 ANDERSON STREET
PITTSBURGH, PA 15212-5801
TEL. (412) 321-0550
FAX (412) 321-2431

COLLABORATIVE

**DESIGN
STUDIO**

architecture of experience and place

9444 DOUBLE R BLVD | SUITE 9 | RENO NV 89521 | T 775.348.7777 | F 775.348.0904

**University of Nevada, Reno
Student Union**

University of Nevada, Reno
North Virginia Street
Reno, Nevada 89557

**RETAIL
1A-1**

SCALE 1/16" : 1'-0"

4-24-09

Not For Construction

Drawing - Z:\0420\0420 STUDENT UNION\Construction\Admin\Tenant\IMPROVEMENT\Case_Plan_2011\06\DWG\1_04_846_1A-1.dwg, Tab - A1.1 (B), User: C:\Users\j... Date - 4/24/2009 - 1:07pm

NSHE AGENDA ATTACHMENT C	
COLLEGE OPTICAL EXPRESS FRANCHISE CO., LLC	
Projected Rental Income Forecast	
Schedule of Payments	
Basic Assumptions:	
Estimated Square Feet Store Premises	846
Base Rent \$ 32.40 Annually per SF:	\$ 32.40
Initial Base Annual Rent Estimated @ \$ 32.40 per SF:	\$ 27,410
Base Rent \$ 2.70 Monthly per SF:	\$ 2.70
Initial Base Monthly amount @ \$ 2.70 per SF:	\$ 2,284.20
Annual percentage increase: CPI with a minimum of 3%	
	Rent
Year One:	\$ 27,410
Year Two:	\$ 28,233
Year Three	\$ 29,080
Year Four	\$ 29,952
Year Five	\$ 30,851
Lease Term Total Projected Rental Income Forecast:	
	\$ 145,526

LEASE SCHEDULE

This Lease Schedule is a part of that certain Lease entered into as of the ___ day of _____, 2009 (the “**Effective Date**”), by and between the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the University of Nevada, Reno (“**Landlord**”), and COLLEGE OPTICAL EXPRESS NEVADA, LLC, a Nevada Limited Liability Company (“**Tenant**”).

1.2 Premises. The Premises referred to in the Lease is the Retail space identified as Suite 1A-1 as more particularly described on Exhibit 1 to this Lease Schedule (Exhibit E to the Lease). The Premises consist of approximately 846 Gross Rentable Square Feet.

1.3 Term.

Lease Term: Sixty (60) months

Commencement Date: The date referred to in Section 1.3 of the lease is date of full execution of the Lease, or if later, the date on which Tenant is given possession of the Premises.

Rent Commencement Date: September 1, 2009.

Options to Extend: Number of Options: One (1).

Length of Option: Sixty (60) months.

1.4 Base Rent. The initial Base Rent shall be equal to Thirty-two 40/100 Dollars (\$32.40) per square foot in the rentable area of the Premises. Notwithstanding the CPI adjustment provisions of Section 1.4, the minimum annual adjustment to Base Rent shall be an increase of Three Percent (3%) over the prior year’s Base Rent.

1.4 Security Deposit. Six Thousand Eight Hundred Fifty-two 69/100 Dollars (\$6,852.69).

1.7 Address for Notices:

College Optical Express Franchise Co., Inc.
10 Knightsbridge Road
Middletown, DE 19709
Fax No. () _____

1.9 Permitted Use: Provision of optometric services, including dispensing corrective optical instruments and sale of related eye care products.

4.2 Rentable Area. Load Factor: One (1)

4.6.2 Food Court Contribution. Landlord waives Tenant contribution.

4.6.3 Food Court Maintenance Fee. No Food Court Maintenance fee is payable.

4.7 Percentage Rent.

Percentage Rent Rate: Zero

Gross Sales Credit: Not Applicable

6.1 Permitted Use. Tenant acknowledges that Landlord has entered into an agreement which prohibits Landlord and all tenants in the Building to market soft drinks which compete directly with products marketed by Pepsi. Tenant agrees to be bound by the terms of such agreement and agrees, and upon expiration of such agreement, to be bound by any successor agreement, on terms and conditions which are reasonably acceptable to Landlord to refrain from marketing, selling or using any product which is restricted by such Agreement with Pepsi or any other party with whom Landlord contracts (“Successor Contracting Party”). Tenant agrees that, to the extent it breaches any such agreement, the measure of damages for which it is liable shall be all those damages incurred by Landlord under its agreement with Pepsi or any Successor Contracting Party, including but not limited to (i) applicable liquidated damages, (ii) lost price breaks, rebates, or other pricing benefits; (iii) promotional fees which become refundable or are charged back to Landlord; and (iv) any other amounts payable by Landlord to any party as a result of such breach whether under the agreement with Pepsi or a Successor Contracting Party, or otherwise.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Lease Schedule and adopted the Lease referred to above as of the date set forth above.

RECOMMENDED BY:

Milton D. Glick, President

Date _____

LANDLORD:

FOR THE BOARD OF REGENTS OF THE
NEVADA SYSTEM OF HIGHER
EDUCATION ON BEHALF OF THE
UNIVERSITY OF NEVADA, RENO

James E. Rogers, Chancellor

Date _____

TENANT:

COLLEGE OPTICAL EXPRESS
NEVADA, LLC, a Nevada Limited Liability
Company

By:

Bradley McAllister, Manager

BM JER

GUARANTY

For valuable consideration, the undersigned individual(s) and/or entity(ies) (jointly and severally if more than one Guarantor), having an address as set forth below each such individual's and or entity's signature ("Guarantor"), absolutely and unconditionally guarantees and promises to pay to THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF NEVADA, RENO ("Creditor"), or its successors and assigns, on demand, in lawful money of the United States, any and all indebtedness of _____, a _____ ("Tenant") owed to Creditor arising under that certain Lease from Guarantor to Tenant dated as of _____, the Lease Schedule between Guarantor and Tenant and any other obligations of Tenant arising under or related to Tenant's occupancy of the premises described therein (all of such agreements and obligations of Tenant to Guarantor being referred to herein as the "Lease" and the premises to which the Lease applies being referred to herein as the "Premises").

Creditor has agreed to enter into the Lease and to give possession of the Premises to Tenant upon the representation that Guarantor would guarantee Tenant's obligations to Creditor under the Lease. Guarantor acknowledges that the Lease shall result in substantial benefit to Guarantor.

The word "indebtedness" is used herein in its most comprehensive sense and includes any and all advances from Creditor or debts, monetary obligations and liabilities of Tenant in favor of Creditor, now or hereafter made, incurred or created, whether voluntary or involuntary, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, and whether Tenant may be liable individually or jointly with others.

The indebtedness of Tenant (the "Obligations") guaranteed by Guarantor and the liability of Guarantor hereunder shall include, without limitation:

- (a) All rent due or which will become due under the Lease; plus
- (b) All additional sums which may arise or become due to Creditor pursuant to the terms of the Lease whether classified as rent or otherwise; plus
- (c) All advances, costs, attorney's fees and expenses incurred by Creditor by reason of Tenant's default in the payment of such indebtedness; plus
- (d) Any and all other amounts due Creditor pursuant to the Lease or other obligations of Tenant arising out of or based on Tenant's execution of the lease and/or its possession of the Premises.

This Guaranty shall bind and obligate the Guarantor and its[their] successors and assigns with said Tenant, jointly and severally, for the payment of the Obligations as if the same had been contracted with Creditor and was due and owing by the Guarantor in person. The obligations of Guarantor hereunder are separate and independent of the Obligations of Tenant and separate action or actions may be brought and prosecuted against the Guarantor, whether the action is brought against Tenant or whether Tenant be joined in

any such action or actions and irrespective of any invalidity, illegality, irregularity or unenforceability of the obligations of Tenant.

Guarantor authorizes Creditor, without notice or demand and without affecting its liability hereunder, to, from time to time, with the knowledge of the Tenant:

- (a) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Obligations or any part thereof, including increasing or decreasing the rate of interest on any portion of the Obligations;
- (b) Take and hold additional security for the payment of the Obligations or the indebtedness guaranteed, and exchange, enforce, waive and release any such security;
- (c) Apply such security and direct the order or manner of sale thereof as Creditor, in its discretion, may determine; and
- (d) Release or substitute any one or more of the Guarantors or add additional Guarantors.

Guarantor acknowledges and agrees that the Creditor has the right to notify any person and entity, including but not limited to any and all credit reporting agencies that Guarantor is in default under this Guaranty at any time subsequent to any default under the terms and conditions of the Lease or any of the Obligations. The Creditor hereby reserves the right to report a default under this Guaranty to a credit reporting agency prior to the initiation of any legal action whatsoever against the Guarantor or Tenant. Guarantor acknowledges that a default reported on a credit report could jeopardize Guarantor's eligibility for credit-based loans and may have a negative impact on the Guarantor's credit. Furthermore, Guarantor holds the Creditor harmless for any such negative impact reporting Guarantor's default may have on Guarantor's credit.

The obligation of the Guarantor under this Guaranty shall remain in full force and effect until the entire indebtedness shall have been paid, and shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation, any of the following, with or without notice to or the consent of the Guarantor:

- (a) To the extent permitted by applicable law, the failure to give notice, whether or not required by any agreement, to the Guarantor of the occurrence of any event of default in the payment or performance of the indebtedness evidenced by the Lease or included in the Obligations;
- (b) The waiver by Creditor of the payment, performance or observance by the Tenant of any of its obligations, covenants or agreements related in any way to the indebtedness evidenced by the Lease or included in the Obligations;
- (c) The modification, release or amendment (whether material or otherwise) of any obligation, covenant or term of any agreement related to the indebtedness evidenced by the Lease or included in the Obligations;

(d) The taking or the omission of any action referred to in any agreement related to the indebtedness evidenced by the Lease or included in the Obligations;

(e) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets or any insolvency, bankruptcy, reorganization or other similar proceedings affecting Tenant; or

(f) Any event or action that would, in the absence of this clause, result as a matter of law in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained herein to pay the indebtedness in full.

Creditor may, without notice and consent, assign its interest in this Guaranty in whole or in part to any third party.

Guarantor waives any right to require Creditor to:

(a) Proceed against Tenant, the Guarantor, or other guarantors, if any;

(b) Proceed against or exhaust any security held from Tenant; or

(c) Pursue any other remedy in Creditor's power whatsoever.

Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation, for any cause whatsoever, of the liability of Tenant. Until all indebtedness of Tenant to Creditor shall have been paid in full, Guarantor shall have no right of subordination unless Creditor, at its option, so elects, and Guarantor hereby waives any right to enforce any remedy which Guarantor now has, or may hereafter have, against Tenant, and hereby waives any benefit of, and any right to participate in, any security now or hereafter held by Creditor. Guarantor agrees that any payments received by Creditor, other than from Guarantor under this Guaranty, whether from the Tenant or from the proceeds of any collateral or otherwise, may be applied by Creditor upon any amounts owed to Creditor in such order and manner as Creditor may determine in its sole discretion.

Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notice of protest, notice of dishonor and notice of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness. Guarantor waives, to the fullest extent permitted by applicable law, the benefits of Nevada Revised Statutes Section 40.430. Guarantor waives any defense based upon an election of remedies by Creditor, including without limitation the marshaling of assets or any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal. To the fullest extent permitted by applicable law, Guarantor further waives any right to the benefits of any statutory provision limiting the right of Creditor to recover deficiency judgment, or to otherwise proceed against any person or entity obligated for payment for the indebtedness, after any public sale, private sale, foreclosure or trustee's sale of any security for the indebtedness. Guarantor waives any right to assert any statute of limitations with respect to recovery of the indebtedness.

Guarantor represents and warrants to Creditor that (a) no representation or agreement of any kind has been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (b) this Guaranty is executed at Tenants' request and not at the request of Creditor; (c) Guarantor has the full power, right and authority to enter into this Guaranty; (d) Guarantor has not and will not, without the prior written consent of Creditor, sell, transfer, assign or otherwise dispose of all or substantially all of the Guarantor's assets or Guarantor's interest in Tenant; and (e) Creditor has made no representation to Guarantor as to the credit worthiness of Tenant.

Guarantor agrees to pay all attorney's fees and other costs and expenses which may be incurred by Creditor in the enforcement of this Guaranty, including in connection with any proceeding in bankruptcy.

Guarantor agrees that any suit or proceeding against it in connection with, arising out of, or relating to this Guaranty, shall be instituted in the Second Judicial District Court in Washoe County, State of Nevada, and Guarantor, for the purpose of any such suit or proceeding, irrevocably submits to the jurisdiction of such court in any such suit or proceeding.

CONSENT TO JURISDICTION, ETC.: GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF NEVADA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE LEASE, THIS GUARANTY OR ANY OF THE DOCUMENTS GIVEN IN CONNECTION WITH THE OBLIGATIONS, AND (B) WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE TO OBJECT TO JURISDICTION WITHIN THE STATE OF NEVADA OR VENUE OF ANY PARTICULAR FORUM WITHIN THE STATE OF NEVADA.

GUARANTOR AGREES THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GUARANTOR AT THE ADDRESS SET FORTH BELOW, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL BE SO MAILED. NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT CREDITOR FROM BRINGING ANY SUIT, ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST ANY SECURITY AND AGAINST TENANT OR GUARANTOR OR ADDITIONAL GUARANTOR OF THE OBLIGATIONS, AND AGAINST ANY PROPERTY OF TENANT OR GUARANTOR, IN ANY OTHER STATE. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY STATE SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF THE STATE OF NEVADA SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF GUARANTOR AND CREDITOR HEREUNDER OR THE SUBMISSION HEREIN MADE BY GUARANTOR TO PERSONAL JURISDICTION WITHIN THE STATE OF NEVADA.

Waiver of Jury Trial: In any controversy or claim adjudicated before a court of law, the parties mutually agree to waive the right of trial by jury as to such controversy or claim.

Superpriority Bankruptcy Loans Prohibited: Guarantor acknowledges and agrees that Tenant has agreed to never in the course of a Bankruptcy Chapter proceeding seek or consult to obtain credit or incur debt pursuant to 11 United States Code Section 364(d), nor will Tenant otherwise seek a "Superpriority Loan" secured by a senior or equal lien to the Creditor's rights relating to the Premises.

This Guaranty is exclusive and cumulative as to amount and shall not serve to revoke or alter any continuing guaranty previously delivered to Creditor or (unless otherwise specifically provided in writing at the date of execution thereof) be revoked by any guaranty subsequently delivered to Creditor.

Guarantor shall be discharged and released of any obligation under this Guaranty only upon full payment and satisfaction by Tenant of the indebtedness evidenced by the Lease and other documents evidencing the Obligations, and any renewals, extensions or substitutions thereof.

Guarantor expressly acknowledges that Creditor, concurrent with the execution of this Guaranty, may assign all of its right, title and interest in and to this Guaranty to one or more of its assigns.

If any part or parts of this Guaranty shall at any time be held to be invalid or unenforceable by binding arbitration or by a court of competent jurisdiction, the remaining part or parts of this Guaranty shall be and remain in full force and effect.

This Guaranty shall be construed in accordance with laws of the State of Nevada.

[SIGNATURE PAGE TO FOLLOW]

GUARANTOR:

Print Name_____

DATED: _____.

Address:

GUARANTOR:

Print Name_____

DATED: _____.

Address:

GUARANTOR:

Print Name_____

DATED: _____.

Address:

GUARANTOR:

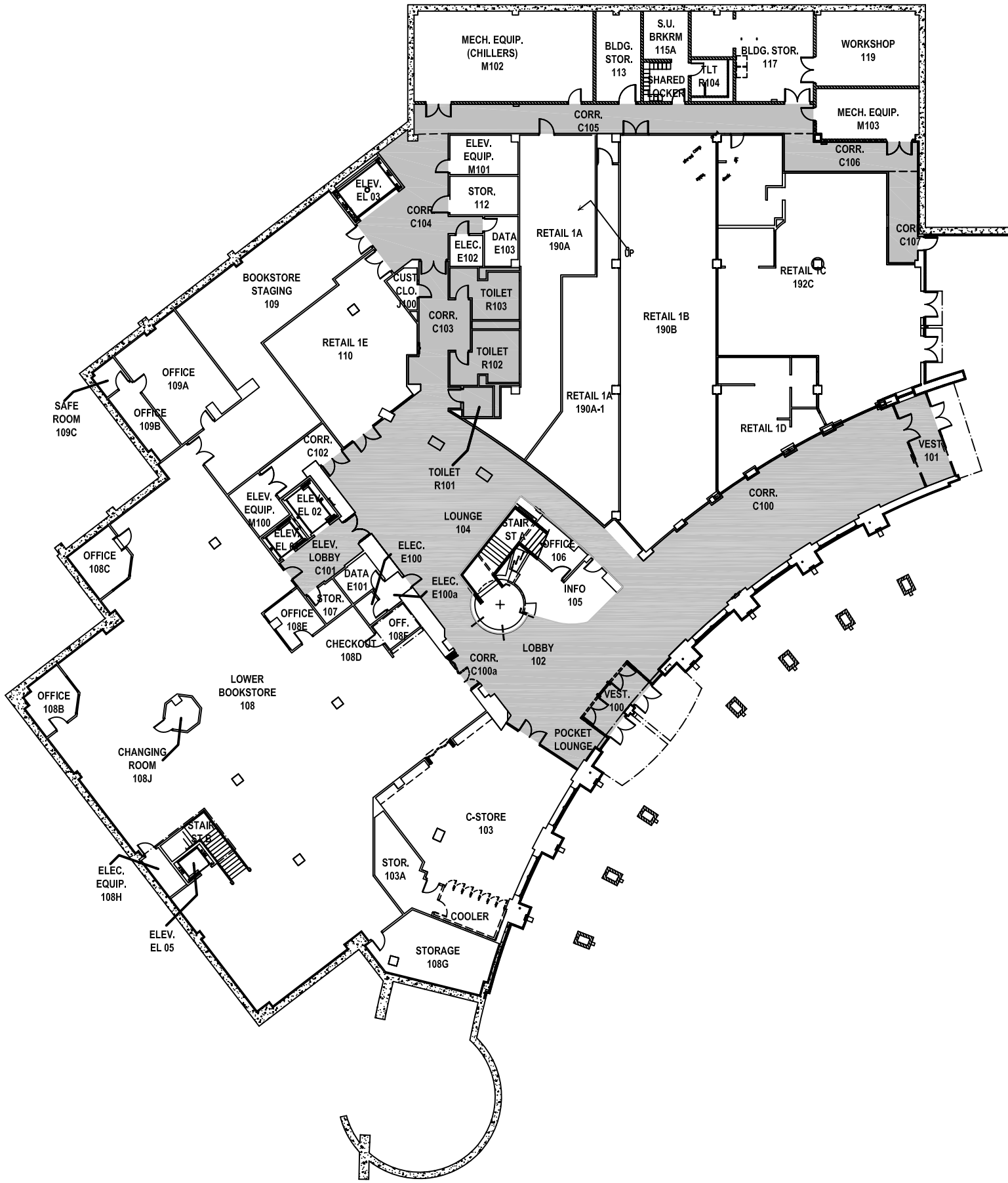
DATED: _____.

Print Name _____

Address:

EXHIBIT F COMMON AREAS MAP

Dated as of 4-24-09
(Subject to change pursuant to Section 7 of the Lease)



CSU Building Common Areas

7,994 S.F.

1" = 30'-0"

Drawing = Z:\0420-UNIVERSITY STUDENT UNION\CONSTRUCTION\ADMIN\TENANT IMPROVEMENT\NET SQ. FOOTAGE - TIDINGS\4062_001_1_COMMON AREAS.dwg User: shahpa Date: Apr 24, 2009 2:07 pm



TIMBER COURT
127 ANDERSON STREET
PITTSBURGH, PA 15212-5801
TEL. (412) 321-0550
FAX (412) 321-2431

**COLLABORATIVE
DESIGN
STUDIO** architecture of experience and place
9444 DOUBLE R BLVD | SUITE B | RENO NV 89521 | T 775.348.7777 | F 775.348.0904

**University of Nevada,
Reno Student Union**

University of Nevada, Reno
North Virginia Street
Reno, Nevada 89557

**FIRST
FLOOR**
SCALE 1" : 30'-0"

4-24-09
Not For Construction

AMENDMENT TO REQUEST FOR PROPOSAL (RFP) #7529 NEVADA SYSTEM OF HIGHER EDUCATION

Business Center North
Mail Stop 242 Attn: Fred Harvey
Reno, Nevada 89557-0064

775-784-6618

Attach to Original RFP;
If RFP has already been
returned, complete the
Amendment and return
for attachment to RFP prior
to time and date of opening.

Amendment No. 1 RFP No. 7529
Date of Amendment: May 5, 2006
Date original RFP released: April 14, 2006
Original time and date of opening 2 PM, May 18, 2006
Revised time and date of opening: No Change

This amendment is issued to provide the following information:

Questions Regarding Retail Food RFP(attached).

**Joe Crowley Student Union (JCSU)
University of Nevada, Reno
Questions Regarding Retail Food RFP
May 5, 2006**

FINANCIAL and CONTRACT QUESTIONS

- 1. How will the metered utility costs be charged? Will the tenant pay the utility company directly? If not, then what will be the rate charged by the university?**
 - Some utilities may be charged directly by the utility company. Other utilities may be sub-metered or estimated.

- 2. What will the annual Food Court Maintenance Fee cost be?**
 - This budget has not yet been established. However, we anticipate that the costs shall be competitive with similar new, mixed-use retail facilities.

- 3. What will the Common Area Costs of 30 to 45 cents per square foot be? Will it be monthly or annual?**
 - This amount for Food Court CAM is a Monthly estimate. We anticipate that the costs shall be competitive with similar new, mixed-use retail facilities.

- 4. What will the Common Area Maintenance Fee be?**
 - The budget has not yet been established for the full building CAM amount. However, we anticipate that the costs shall be competitive with similar new, mixed-use retail facilities.

- 5. What will the Common Area Marketing Fee be?**
 - The University anticipates aggressively marketing and advertising the existence of retail establishment in the Joe Crowley Student Union throughout the Truckee Meadows. The marketing fee shall help defray part of the cost of this marketing effort.

- 6. Regarding Common Area Marketing Fee - In that we currently contribute 4 1/2% to a franchise marketing fee, we would be interested in knowing what the University's estimate of this fee might be?**
 - At this point an amount has not been set, but it is expected to be reasonable. A portion of the fee could be offset by a portion of the company's national fee if the funds are dedicated specifically to this retail outlet by your national account manager.

- 7. What will be the cost of property and any other taxes?**
 - This must await appraisal of the property by the Washoe County Assessor. The University can make no representation in this regard at this time.

- 8. Does the University expect the tenant to measure their return on investment over 5 years or 10 years?**
- This is a decision for individual tenants to resolve for themselves.
- 9. If the minimum guaranteed rent is proposed in tiered increases over the term of the lease (as required), is it also required that the percentage paid in overage rent (for example: from 4% to 5%) also be increased?**
- We would expect the percentage to remain constant over the term of the lease.
- 10. Please identify annual sales volumes for the last three years for each of the current food service locations on campus.**
- We do not have this information at this time.
- 11. In reference to "*The minimum*" income level needed to submit a proposal is \$19.00 per square foot." on page 5 of the RFP:**
- **Does "income level" refer to proposed base rent? To proposed total rent?**
 - "Income level" refers to initial base rent.
 - **Is a tenant's square footage, in this case, to be calculated as the amount of space requested by each tenant for food preparation, storage and serving (excluding customer seating)?**
 - The square footage for each tenant shall be the space, as measured by the landlord's architect, to the exterior of the demising walls
- 12. Concerning "*The initial months will be free. Base Rent is to commence on May 1, 2008*", on page 6 of the RFP:**
- **How many months are anticipated to be included in this "initial" period?**
 - We anticipate opening during the fall semester of 2007. The initial period will last until May 1, 2008.
 - **Is this also the commencement date of the initial (5-year) lease term (May 1, 2008 to April 30, 2009)?**
 - The lease shall commence when the building is substantially ready for occupancy presently estimated as approximately October 15, 2007. This may change.
 - **Although no base rent is due during this initial period, what are JCSU's expectations for collecting other types of rents and fees?**
 - There will be CAM Marketing and CAM Maintenance fees at this time, but they will be reasonable.
- 13. Will the rent start on the contract date, or when the construction is complete and the certificate of occupancy is delivered?**

- The RFP states that rent will start in May, 2008.

14. Is a tenant's "proportionate share" of CAM and Food Court fees based solely on the percentage of square footage being occupied by that tenant, or are these fees also influenced by other factors like sales volumes, how a space is utilized, and location within the building?

- The charges will be reasonably shared. There is no intent to mark up the costs; the university would like to be made whole for the expenses incurred. The CAM Maintenance will be based on % of SF.

15. Regarding square footage - Because the restaurants will share restroom, dining, and perhaps even beverage dispensing, the minimum square footage of 1150 exceeds our needs. We would require about 800 square feet. Will the University accommodate that change?

- Possibly. The University may consider a change in the minimum square footage. This will depend on the requests from the mix of vendors in the food court as well as the location.

PROPOSAL AND EVALUATION

16. Financial Statements for last three years for the Franchisor. Corporation is a National Public Company. Can this requirement be waived or would last three years Annual Reports suffice?

- The last three years' Annual Reports would suffice if certified by an external auditor.

17. Can you please provide more details on how proposals will be evaluated in terms of how each item required for submittal will be evaluated, scored and weighted (against each other item)?

- No, we are not providing how proposals will be evaluated other than what is identified in the RFP. Proposals will primarily be evaluated based on the applicant's responses to the questions/requests for information in the RFP.

18. Concerning financial proposals, is there a particular form or format to be used?

- There is not a set format, but be sure to include the basics including, but limited to: scope of operation, menu, initial pricing, concept of operation, hours, base rent and financial proforma.

19. Should financial proposals be submitted only for the initial 5 -year term, or should they also include each of the 5 "option" years?

- Either.

20. Are we to include rent per sq. foot calculations, projected annual sales levels (to identify total return to NSU), and annual breakpoint amounts in each financial proposal?

- Yes.

21. Page 7 References. This would be the proposed franchisee first university operation. Would you accept references from Corporation's other franchisees? We would provide name of University and contact information. Corporation has two Universities operating as franchisees. Would that information be acceptable?

- Yes

22. Please clarify the number of copies and their format (CD vs. hardbound) required in submitting (1) proposals and 2) financial proposals. Is it one original (bound) and 5 CD copies of each (page 2), or is it three bound copies (page 13)?

- Three bound copies and three CD copies of each.

23. Will you accept a proposal for the entire food court space and potentially the coffee/juice space from a partnership made up of individual “branded food” companies but specifically formed to fulfill the needs identified by the campus?

- Yes.

24. Who has final say of which vendors are going in?

- A committee will make the decision. Student leaders will be included throughout the process and decision making.

25. One of main questions would be regarding the actual bid structure you require. Is there an attachment to view a structure of a bid or any clarification to the desired content of the bid?

- There is no attachment. All the information is within the RFP and sample lease.

FACILITY RELATED QUESTIONS

26. On page 10 of the RFP under plumbing please explain the fifth bullet ¾” water line feed to building face. Does this mean not to the tenants space?

- See next response

27. Utility requirements and questions. Water: 1 ½” cold water supply w/1” service @ 60 PSI in our space should be adequate. The RFP states the University will provide hot water. We will need 140 degree F potable hot water.

- Each space receives valved connection with cap for:
 - i. 2” Cold water
 - ii. 1 ¼” Hot water at 140 degrees
 - iii. ¾” Hot water (recirculating) at 140 degrees
 - iv. 2” Hot water at 120 degrees
 - v. ¾” Hot water (recirculating) at 120 degrees

- The water pressure available should exceed 60 psi; tenant may need to adjust for their own needs.
- The 3/4" line for hose bibs are located at the building exterior wall face, not the tenant exterior wall.

28. Space. Is there a plan available providing notation as Space A, B, C, D and do you have dimensions of the spaces. We have downloaded floor plan but require additional information. Will assist as two of the spaces have columns and we need to determine if interferes with equipment layout.

- This would require drawing A1.12a. There is a braced frame in one of the spaces as well. This would be described on S1.2 and S3.2. We will attempt to have PDF drawings posted to the retail website.

29. Page 9. Build-Out States storefront to consist of double glass doors. We typically use roll down security screen. Would this be acceptable?

- This depends on the location. It might be negotiable.

30. Sewer/Grease Interceptor. The RFP mentions a 4" sanitary line and a "Grease Interceptor" will be provided. Does this assume that all our water goes out thru this 4" line and passes through a large Grease Interceptor? Normally, not all of our water would be allowed by code to pass through a grease interceptor. Handwashing, some floor drains, floor sinks and condensates would normally drain out and connect after the grease interceptor. Are there plans in place to isolate grease laden water and run just it through the interceptor? If not, we must assume this drainage scenario is acceptable to the local health department and the grease interceptor is sized to accept all this water. For sizing purposes, we would require 1000 gallons in an interceptor over and above the amount the other tenants require.

- There is a separate sanitary system that does not pass through the grease interceptor.
- Grease laden water will need to be isolated.

31. Gas: We weren't sure whether the 2" line was to our space or to the entire food court. 2" to our space should be fine. We would like to know the delivered gas pressure.

- Each space will receive its own 2" line.
- Pressure: Standard 7 inch water column

32. Electric: Our connected demand would be about 300 amps, 120/208v 3 phase 4 wire. This does NOT include any HVAC or EXHAUST fan loads or hot water generation.

- The university will provide 480/277v 3 phase 4 wire in the main electric room. The tenant will convert to their own needs from there.
- A 2" empty conduit from each space is provided back to the main electric room.

33. Is there a hood ventilation system in the plans?

- The space for the ventilation system is incorporated into the current plans but does not include the actual ventilation system which is the responsibility of the tenant.

34. Heating & Cooling & Exhaust: We will exhaust approximately 4000 CFM of inside air through U.L. 710 labeled hoods.

Is UNR supplying a central exhaust system? Please describe. If so, we would like two separate exhaust streams for the two hoods. If not, we will need convenient access to the roof of the building. Also, are there any exhaust quality restrictions that would require us to pre-clean the exhaust air prior to it leaving the building?

How does their supplied HVAC system deal with this make-up air volume? What kind of system provides conditioned air to our space? Constant volume supply or Chilled water/VAV boxes?

- Hood systems are not included but the university will provide a rated grease enclosure to the outside of the building.
- The university will provide enough exhaust space for an average of 4000 CFM per tenant (assuming 4 tenants) in the food court.
- The university will provide enough make-up air for the average 4000 CFM of hood exhaust per space
- Pre-cleaning for exhaust air is not required.
- The university will provide a VAV system.

35. Regarding build out HVAC - Will the university provide zoned HVAC to accommodate the significant difference in temperature within restaurant areas?

- No, however there will be air balancing to adjust the volume of air and make up air to the food production spaces. At this time it is not planned to be zoned separately. If a retailer requires separate zoning, it can be done at the tenant's expense.

36. Will appropriate sewer drains be pre - built into the floor plans so that they can be accessed by the contractors eliminating the need to jackhammer the slab?

- If tenant requests for sewer drain locations are received in advance, plans can be adjusted to include the drains. If the requests are late or excessive, there may be expenses to be paid by the tenant.

37. Is it anticipated the customer queue line is within the lease area or is customer stack allowable in the common front aisle way.

- The customer line should be within the lease area

38. Is there access to a loading dock for deliveries with a service elevator?

- Yes, the loading dock and service elevator will be shared.

39. How much time will tenants have for build out?

- This is negotiable. We would like to provide a reasonable amount of time for you to prepare your spaces before the JCSU opens. In your responses, please indicate how much time you will need.

40. Are successful proposers required to enter into a collective bargaining agreement or other contract or understanding with a labor union to build-out its location(s) or in order to hire local employees?

- Union labor is not required. However, tenants must pay prevailing wage to laborers if the project exceeds \$100,000 and /or if funding is from a federal funding source. The University reserves the right to review all contracts to ensure compliance with federal, State and local laws.

41. Regarding build out - Does tenant assurance that there is "labor harmony" translate into all trades must be union?

- No, however prevailing wage requirements must be followed if the project exceeds \$100,000 and /or if funding is from a federal funding source.

42. Will an elevator be designated for removal of trash and/or the receiving of food products?

- Tenants in the food court will not need elevator access. The loading dock and food service dumpsters will be located on the 2nd level, east side of the building with convenient back of house access. Tenants on other floors will share a non-passenger elevator with other tenants, building operations and student programmers.

FOOD QUESTIONS

43. Can alcohol be provided in the Sports Grille?

- The university is very concerned about alcohol abuse by college students especially binge drinking and underage drinking. We prefer not to serve alcohol in the Sports Grille. If you feel your company can only be successful by serving alcohol, we recommend that you submit two responses, one with alcohol and one without. If you submit a response with alcohol, you should be very clear how you would address underage drinking and binge drinking. You should also indicate how you will educate your customers about the dangers of alcohol.

44. What about gambling and smoking?

- All buildings on campus are smoke free environments. There is no gambling on campus.

45. Is the New Student Union affiliated with the campus food service provider?

- Chartwells is the contracted food service provider for most of the campus. They are not able to meet our financial goals and have given us permission to solicit other companies for the NSU.

46. Are you doing this just to force the food service provider to pay more?

- No, and due to our positive relationship with Chartwells we have worked out an arrangement where Chartwells has given us permission to solicit other companies for the NSU. We are very serious about identifying and contracting with companies that can provide services that students want and that can meet our financial goals.

47. Is the kitchen that is on the end of the available spaces a community commissary/production kitchen for the food court tenants or does that serve as another purpose?

- The rear kitchen is a catering production kitchen to be used by the campus caterer. There may be opportunities to negotiate some occasional use of this space by retailers.

48. Regarding Pouring Rights - Would the University consider a common beverage dispensing area to be maintained and paid for with the Food Court Maintenance Fee? There are a multitude of benefits for this type of arrangement in a food court area.

- Consideration would definitely be given for a common beverage dispensing area. All food court retailers would need to be in agreement as to any specific arrangements made to accommodate this request.

49. Regarding proposed menu - We currently sell franchised clothing, apparel and gift certificates. Will these be pre-approved by the University?

- We highly encourage retailers to be entrepreneurial and provide the best selection and service for the University of Nevada community. At the same time, such sales could be in conflict with the university's student owned ASUN Bookstore. Selling franchised clothing and apparel would be needed to be approved on a case-by-case basis.

WOLFCARD/ ONE CARD PARTICIPATION

50. Will the Wolfcard program be reimbursed on a monthly or weekly basis?

- This has yet to be determined.

51. Page 8 One Card Participation. Would you provide anticipated costs associated with participation in the One Card Wolfcard program?

- Equipment expenses will be at cost from third party providers. The campus currently uses Blackboard. (<http://www.blackboard.com/products/cs/transactionsys/>) Other expenses for wiring, etc. shall also be charged.

52. Will there be a percentage of the Wolfcard sales reimbursed to University?

- Yes, this rate is yet to be determined, but it will be reasonable.

53. Regarding One Card Participation. Will "One Card" participants be required to pay a percentage back to the University based on the use of the "One Card." If so, what is that fee/percentage?

- Yes, that percentage has not yet been determined.

PARKING

54. What is the current cost of a permit to park in University parking areas?

- For Parking Information including rates, go to:
<http://www.howler.unr.edu/facilitiesmgt/parking/permits.htm>

55. How many parking spaces will be available?

- The current Whalen Parking Garage has about one thousand parking spots and the new West Stadium Parking Complex has almost two thousand parking spots. Both lots are relatively close to the NSU. Currently, there is also surface parking lot to the west of the NSU.

56. Regard Parking Access - We currently deliver at all franchise locations around the country. Will there be any restrictions on delivery and/or vehicle access for the delivery drivers?

- All University personnel are subject to state, local, and university regulations regarding access to parking and driving through campus. There will be some reasonable restrictions to delivery times.

GENERAL QUESTIONS

57. What is going to happen to the current JTSU and food court?

- There is a university process for evaluating requests for space on campus. With the strong growth that the university has seen in recent years and will probably see in the coming years, there is a need for more faculty office space and classrooms. Student services in other buildings could be moved to the Jot Travis building to provide more classroom and office space. The Overlook food area in the JTSU will remain to serve students and staff on the south end of campus, but our goal in the NSU is to offer attractive options to the entire university community.

58. How do you tie into sporting events to capture that audience?

- The intent is to work with the retail areas and the Athletics Department to promote the facility. The new student union is ideally located next to Lawlor Events Center and the football stadium where men's basketball and football games take place.

59. How many days of the year will the new student union be open?

- The University of Nevada, Reno currently closes one week in the winter, usually the last week of December. Individual retail hours of operation will be negotiable.

60. What are you planning for the buildings hours of operation?

- The current hours of the Jot Travis Student Union are posted at: <http://www.unr.edu/studentunion/services/hours.htm>
We expect the new student union to be open longer than this. There may be a component of the new building that will be open twenty-four hours a day. During the summer and winter breaks we are open less than during the academic semester, but this could change as summer school population and summer camps/conferences continue to increase.

61. How big is the campus?

- Please refer to the retail website: <http://www.unr.edu/newstudentunion/retail/index.htm>

62. Will there be signage?

- There will be signage but it is not clear where it will be at this time. The University of Nevada, Reno has a policy that currently does not allow commercial signage on the exterior of buildings except for the building name. Our goal is to have signage outside the building to promote the retail space. This could include signage on Virginia Street.

63. Will there be residence hall signage?

- Residence hall students are very important to the campus and student union. We will work with the residence hall administration and retailers to promote the facility. At this point, there is no formal signage in the residence halls for the Joe Crowley Student Union.

64. Regarding staffing - In regards to the clause "requiring tenants staff to participate in training," is it correct to assume that would only apply to full time staff?

- In an effort to enhance communication and create a sense of continuity for the University community, a training program will be developed in which tenants' staff will be expected to participate. It will be most beneficial for part-time staff to attend, but this will be negotiable. Advance notice of scheduled trainings will be provided. It is not expected to be a large amount of time.

Nevada System of Higher Education
Business Center North
PURCHASING DEPARTMENT
Mail Stop 242 / Reno, NV 89557
(775) 784-6552 / Fax: (775) 784-6017

NOTICE TO BIDDERS
Request for Proposal (RFP)
Bid No. 7529

April 14, 2006

The Director of Purchasing, Nevada System of Higher Education (NSHE), Business Center North (BCN), on behalf of the University of Nevada, Reno, hereinafter referred to as "NSHE" or "University" invites you to submit a response for:

**Retail Food in the
New UNR Joe Crowley Student Union**

Responses should be mailed or hand carried so as to arrive at:

Mailing Address
NSHE - BCN Purchasing
Director of Purchasing
Mail Stop 242
Reno, NV 89557

Physical Location
NSHE - BCN Purchasing
BCN Purchasing Building
17th Street & West Stadium Way
Reno, Nevada 89503

No later than: 2:00 p.m. PST, Thursday, May 18, 2006

Responses shall be prepared in accordance with instructions. Responses shall be sealed in an envelope or package and contain this RFP number on the outside. Responses received after the date and time set for receipt will not be considered. NSHE assumes no liability for any costs incurred in the preparation or delivery of responses.

Responses shall be signed by an individual authorized to commit the company or corporate entity and to conduct discussions, if required, prior to issuance of a contractual document resulting from this RFP. NSHE reserves the right to reject any or all responses, or to make an award in the best interests of NSHE without further discussion or negotiations.

Questions regarding this RFP, content of your response, or clarifications will be accepted in writing (e-mail is preferable) up until 5:00 PM, Thursday, April 27, 2006. Answers to all such submitted questions will be sent in writing to all Bidders of record by Wednesday, May 3, 2006. Questions should be directed to:

Fred Harvey
Phone: (775) 784-6552 / Fax: (775) 784-6017
E-Mail: FHarvey@unr.edu

Any communication directly with other NSHE staff regarding this RFP without prior approval of the above individual may result in the rejection of your proposal.

Sincerely,

R J Moran

Ray Moran, C.P.M.
Director of Purchasing

Goal: To attract and retain the most qualified, cost effective retail food vendors for the Joe Crowley Student Union who can provide exceptional service to students and the entire campus community at the University of Nevada, Reno.

INSTRUCTIONS TO BIDDERS

A. PREPARATION OF BIDS:

1. Bids shall be prepared in the form and format required. Failure to do so may result in your Bid being declared non-responsive.
2. Erasures or other changes must be initialed by the person signing the Bid.
3. Alternate proposals will be considered if in conformance with this Bid.
4. Each Bid must be signed by an individual authorized to commit the Bidder and conduct negotiations or discussions if requested or required.
5. Clearly address all Bid questions and requests for information in the order presented in the Bid. Repeat the question or point of information you are responding to. Failure to follow this format may result in disqualification of a proposal from further consideration.
6. A clearly identified, signed original plus five (5) CD copies in either PDF or MS Word format, of the Bidder's response should be submitted. In order to allow for evaluation of quality factors separate from financial considerations, an original and five (5) CD copies of the financial proposals should be submitted in a separate sealed envelope. Discrepancies between the original paper documents and the CD copies will always be resolved by reference to the original paper documents. Extraneous promotional material is not necessary and should be avoided; however necessary any/all descriptive literature should be included with each proposal.

B. RIGHT TO SUBMITTED MATERIALS: All responses, inquiries, or correspondence relating to or in reference to this Bid, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by Bidders will become the property of the NSHE when received.

C. EXPENSES OF BIDDER: Expenses incurred by Bidders in preparation, submission and presentation (if required) are the responsibility of the Bidder and may not be charged to NSHE as a separate charge or as part of the services which may be provided.

D. SUBMISSION OF PROPOSALS: Bids shall be packaged and mailed or hand carried so as to arrive at the location designated herein no later than the time and date set for receipt of Bids. The Bid number and the name of the Bidder shall appear on the outside of the package.

E. COMPETITIVE OFFER: Under penalty of perjury, the signer of any submittal in response to this Bid thereby certifies that its Bid has not been arrived at collusively nor otherwise in violation of Federal or state antitrust laws. In submitting the Bid, the Bidder agrees not to discuss or otherwise reveal its technical or cost information to any other sources, government or private, until after the award of the contract. Proposers not in compliance with this provision may be disqualified.

F. MODIFICATION OF BIDS: Bids may be modified by the Bidder at any time if mailed or hand carried so as to arrive on or before the date and time set for receipt of Bids.

G. WITHDRAWAL OF BIDS: Bids may be withdrawn by written or telegraphic notice received by the BCN Purchasing Department prior to the date and time set for receipt of Bids.

H. LATE BIDS: Bids, modifications, or withdrawals received after the date and time set for receipt of the Bid will not be considered.

I. BID OPENING PROCEDURE: Bids will be opened by the BCN Purchasing Department, in a manner that corresponds with the nature of the Bid. Bids that will be evaluated primarily on prices received from responsive and responsible Bidders will have the names of Bidders and the total price read aloud at the Bid opening. Bids that are subject to evaluation will have only the names of Bidders read aloud, thereby avoiding disclosure of contents to competing Bidders.

J. AWARD OF: RIGHT TO LEASE:

1. A Lease in the form appended hereto will be awarded to that responsible and responsive Bidder who's Bid will be most advantageous to the NSHE with price, service, conformance to Scope of Work and Specifications, delivery and all other factors considered.
2. All Bids are subject to "evaluation" by the NSHE. The Bidder is solely responsible for the content of its proposal. Previously published data in support of experience, financial or performance capability will be evaluated if such data reflects a current position and such data is submitted as a part of the response to the Bid. Bidders that meet and exceed the selection criteria may be invited to give an oral presentation to an evaluation committee. Scheduling of such oral presentations shall normally be arranged by the BCN

Purchasing Department.

3. NSHE may make such investigation as deemed necessary to determine the ability of a Bidder to perform the work. NSHE reserves the right to reject any Bid response if the evidence submitted by, or investigation of the Bidder fails to satisfy NSHE that the Bidder is properly qualified to carry out the obligation of the proposal and any resultant contract and to complete the performance contemplated herein.
 4. NSHE shall not be obligated to accept any proposal to Lease or Bid, but will make an award in the best interest of the Institution after careful evaluation of all Bids received.
 5. NSHE reserves the right to reject any or all Bids and to waive minor irregularities not considered by the NSHE to be essential to the evaluation process. NSHE may, at its option, award parts of tasks if the Scope of Work lends itself to division and it is in the best interest of the NSHE.
 6. NSHE reserves the right to issue a Lease document without further discussion or negotiations with the award Bidder, provided the award is made within the time specified for acceptance of the Bid. Therefore, every Bid shall be submitted initially on the most favorable terms from both price and technical standpoints that the Bidder can furnish to the NSHE.
 7. NSHE reserves the right to enter discussions with any one or all Bidders after Bids have been initially reviewed. Such discussions will normally be limited to clarifications of Bid content contained in a responsive Bid and/or may, at the option of the Director of Purchasing, result in a request for a "Best and Final" offer from Bidder(s). Any response to a "Best and Final" request shall be limited to the item(s) discussed, in direct response to specific questions, or may be a modification of price and/or delivery at the discretion of the NSHE. Such responses shall be subject to all provisions, and terms and conditions as set forth in the Bid, unless otherwise modified.
- K. VALIDITY OF BIDS: All submittals in response to this Bid shall be valid for a minimum period of ninety (90) days from the date required for receipt of the Bid, unless a longer acceptance time is stipulated in the Bid.
- L. DISCLOSURE RESTRICTIONS:
1. NSHE hereby notifies all Bidders that the contents of all Bids, and/or other information submitted to NSHE are subject to public release, upon request, after contract award.
 2. Bidders are hereby notified that, depending on the nature of the review process and current legal opinions, some or all of the contents of Bids may be subjected to review and disclosure by NSHE staff outside the control of the Purchasing Department or the general public. Bidders are cautioned to structure their Bid responses accordingly.
 3. Bidders shall mark as "proprietary" those parts of proposals that are deemed confidential and proprietary. However, the Bidder is alerted that this marking is advisory only and not binding on NSHE. Unless a Bidder, at the time of submittal, provides justification in support of the "proprietary" marking, and NSHE determines that the material is not releasable, all material in the Bid will be considered open to public review.
 4. Bidders are advised that any conflict in terms between this Notice To Bidders (Request for Proposal) and the attached Sample Form Lease shall be resolved in favor of the said Lease. Bidders are further instructed to submit with their Proposal any and all comments, questions or objections to the form of the said Lease. In the absence of any such comment, question or objection, a bidder shall be deemed to have agreed to each and every term of the said Lease.

TERMS AND CONDITIONS

THIS BID will be the basis for a Lease between the Board of Regents of the Nevada System of Higher Education (NSHE) on behalf of the Institution and Department named in the Bid, and the Vendor, Contractor or Supplier who is awarded the contract. This Bid is issued by the Business Center North Purchasing Department (BCN Purchasing) as authorized by the Board of Regents under the following terms and conditions:

THE TERMS AND CONDITIONS OF THE ANNEXED FORM OF LEASE SHALL REPRESENT THE MATERIAL TERMS AND CONDITIONS OF THE LEASE TO BE ENTERED INTO BETWEEN NSHE AND THE SUCCESSFUL BIDDER. SUBJECT TO THE SUBMITTAL OF A TIMELY OBJECTION, EACH BIDDER AGREES TO BE BOUND BY EACH AND EVERY TERM AND CONDITION CONTAINED IN THE ANNEXED FORMS OF LEASE. NSHE RESERVES THE RIGHT TO CHANGE, MODIFY, ALTER OR NEGOTIATE ANY CHANGE IN THE TERMS AND CONDITIONS OF THE ANNEXED FORM OF LEASE AS CIRCUMSTANCES MAY PROVIDE.

A. AFFIRMATIVE ACTION – The Bidder shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Bidder agrees to adhere to the principles set forth in Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973, and USC 2012 (Disabled Veterans and Veterans

of the Vietnam Era), and to undertake specifically: to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy in both English and Spanish to all persons concerned within his company, and to discuss with BCN Purchasing his policies and practices relating to his Affirmative Action program.

B. CERTIFICATION OF NON-SEGREGATED FACILITIES - The Bidder certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The Bidder understands that the phrase "segregated facilities" includes facilities which are in fact segregated on a basis of race, color, creed or national origin because of habit, local custom, or otherwise. The Bidder understands and agrees that maintaining or providing segregated facilities for his employees or permitting his employees to perform their services at any location under his control, where segregated facilities are maintained is a violation of the equal opportunity clause required by Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973, and U.S.C. 2012 (Disabled Veterans and Veterans of the Vietnam Era). The Bidder understands and agrees that a breach of the assurance herein contained subjects him to the provisions of Order 32 Federal Regulation 7439, of the Secretary of Labor dated May 19, 1967. Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD (EXECUTIVE ORDER 12549) - The Bidder certifies, to the best of its knowledge and belief, that the Bidder and/or its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

D. CERTIFICATION OF NON-DISCRIMINATION IN EMPLOYMENT - During the performance of this contract, the Bidder agrees as follows:

1. The Bidder will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
2. The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
3. The Bidder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Bidder's commitments under Section 202 of Executive Bid 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Bidder will comply with all provisions of Executive Bids 11246 and 11375, Section 503 of the Rehabilitation Act of 1973, U.S.C. 2012 (Disabled Veterans and Veterans of the Vietnam Era) and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Bidder will furnish all information and reports required by Executive Orders 11246 and 11375, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Bidder's noncompliance with the non-discrimination clauses of this contract or with any other such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Orders 11246 and 11375, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Orders or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Bidder will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

BACKGROUND

The University of Nevada, Reno ("UNR"), Nevada's land grant university and one of the preeminent research institutions in the western United States, is beginning construction of a new student union building on its main campus in Reno. The Joe Crowley Student Union, a facility with more than 165,000 square feet, will be constructed at a cost exceeding \$59 Million, and shall become the center for student and faculty activity on campus. A full description of this development can be found at:

www.unr.edu/studentunion/newstudentunion/retail/spaces.htm

The new union is scheduled to open in the fall of 2007.

Key components of the student union will be food service and shopping areas. The schematic rendering of the portion of the union to be utilized for food service and retail space can be found at the web site referenced above. The New Student Union design includes space for the following concepts:

- Retail food:
 - First floor:* 1958 SF* for a Coffee and potential juice concept
 - The Retail 1D space could provide an additional 986 SF if the two concepts need to be separated.
 - Second floor*: Food court housing four concepts (Food Retail 2A – 2D) ranging from 1150 SF -1500 sf.
 - Third floor*: Sports grille (or other) concept with 1987 sf for seating, 395 for Servery, 829 for kitchen plus 1257 in a contiguous recreation (billiards, table tennis, arcade) space and an exterior courtyard seating space. The recreation space is an option for the Tenant
- Non-food retail:*
 - First Floor: Four spaces ranging from 700 to 2200 sf* (size currently negotiable).

The University will provide leased space with utilities stubbed to the demising wall. An opening for the storefront will be provided, with a bulkhead above. Premises will be delivered as core and shell. All storage will be self-contained in tenant's space.

* All SF numbers are approximate estimates. Final SF to be confirmed by student union architect.

PURPOSE

This Request For Proposals is being conducted in order to ascertain who viable potential tenants are and what financial and other arrangements provide the most benefits to the University, its students and staff, and the public.

DETAILS

TO THE EXTENT THAT ANY OF THE FOLLOWING INFORMATION IS IN CONFLICT WITH THE TERMS AND CONDITIONS OF THE ATTACHED FORM OF LEASE, THE TERMS AND CONDITION OF SAID LEASE SHALL PREVAIL. BIDDERS ARE CAUTIONED TO CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THE FORM OF LEASE.

Rent/ Commission options:

- The minimum income level needed to submit a proposal is \$ 19.00, per square foot annually. In addition to this will be CAM (Common Area Maintenance) plus CAM (Common Area Marketing charges, and utility charges. This low initial sf is in recognition of some slower time periods (i.e. winter break, spring break, summer)
- Proposals are encouraged to list any additional proposed rent after x dollars in income

- The lease will be triple net lease (utilities/insurance/ taxes) for the company. The company is responsible for all taxes.
- The initial months will be “free”. Base rent will commence on May 1, 2008.
- The University may consider negotiating operating hours and mandatory days that the food concepts are to be open.
- The University may consider incentives to tenants that agree to operate during non-profitable times to help increase usage of the union.
- The University may consider the tenant paying a fixed basic rent plus a percentage gross sales.
- Both minimum guaranteed rent and percentage rent will have tiered increases over the term of the lease.

Length of contract:

- The initial contract will be a five year lease with five optional one year terms.

Common Area Marketing Fee

- To be negotiated
- Shared marketing plan for the building.

Common Areas Maintenance Fee

- Tenant shall pay its proportionate share of Building operating expenses.
- Common Area Cost Assumptions: Computation of total floor area and the proportionate share of a particular tenant shall be conclusively determined by the Building's architect. See the attached form lease for items to be included in common area costs.
- The UNIVERSITY will maintain the outside of the building, restrooms and public areas, including common seating areas. The charge to the Tenant for maintenance of the common areas will be based on its proportionate share of operating expenses as set forth in the attached form of lease (raised or lowered annually based on labor and supply costs).

Food Court Maintenance fee:

- For tenants in the food court, there will be a Food Court maintenance fee.
- This is in addition to the standard and normal Common Area Costs, (which today average anywhere from 30 to 45 cents per square foot, there may be additional Food Court related charges for Maintenance. That can run between 20 and 40 cents PSF depending upon services/costs that are shared.)

Experience:

- List the years of experience for both the Franchisor and the Franchisee In operating quality food services in general and on similar style college campuses or other public buildings.

Operating Hours:

- Submit your proposed initial operating hours. This should include standard weekly hours during fall, spring and summer sessions. Also include hours proposed for any school breaks (e.g. winter, spring) and summer hours Refer to: <http://www.unr.edu/newstudentunion/retail/index.htm> and <http://www.ss.unr.edu/records/cal.asp> for information about the university calendar.
- The Tenant's hours of operation may not extend beyond the hours of operation of the Student Union unless approved in advance.
- Tenant's hours may be different from the hours of operation of other food service outlets in the Student Union.
- The University will provide reasonable notification to the Tenant for changes to the building schedule. All of the Tenant's operating hours are subject to approval by the UNIVERSITY. There may be times when the UNIVERSITY requires the TENANT to be open or to be closed.

Staffing:

- Submit a staffing proposal for the retail area, detailing the minimum number of employees and the maximum number of employees at peak times and at slow times.
- The Tenant will ensure that his/her/its employees are properly identified and in the customary or standard neat and clean uniforms and following proper sanitation practices and food handling procedures.
- The Tenant will be solely responsible for all employee compensation and ensure that all employees comply with all governmental rules. The contractor will comply with all current and future Federal, state and local laws and regulations pertaining to wages and hours of employment.
- The UNIVERSITY reserves the right to interview and approve the selection of the food facility managers.

- The Tenant will maintain an adequate staff of employees to provide efficient, prompt and courteous service.
- The University reserves the right to approve and/or make recommendations as to the staffing levels. The Tenant will submit with the proposal a staffing proposal for the food facility, detailing the minimum number of employees and the maximum number of employees at peak times.
- **The UNIVERSITY reserves the right to require tenant's staff to participate in Building Wide training and team building programs.**
- The Tenant must be willing to reassign any employee from direct contact with customers when requested to do so by the UNIVERSITY, provided that such request will be made only on the grounds that continued employment resulting in contact with customers would be detrimental to the UNIVERSITY's public relations. The UNIVERSITY may also ask the Tenant to remove any food facility employee from the site for cause, if due notice is given to the Tenant by the UNIVERSITY.
- The UNIVERSITY requests that whenever possible the Tenant hire UNIVERSITY students as part-time help.

TENANT RECORDS AND INFORMATION:

- The Tenant will submit with the proposal the following information:
- A CPA-certified financial statement, if the same is available. In the absence thereof, a financial statement verified by the principal financial officer of the Bidder.
- Tenant's Dun and Bradstreet or similar rating, if available.
- Summary of Tenant's management experience.
- Listing of current clients, in particular, institutions of higher education or similar public settings for which the Tenant operates a food facility, including the name and telephone number of the Contract Administrator.
- Listing of former clients, in particular, institutions of higher education or similar public settings for which the Tenant operated a food facility, including the name and telephone number of the Contract Administrator.

FINANCIAL RECORDS AND TAXES:

- The Tenant will generate, using generally accepted accounting standards and principles, weekly financial statements for the food facility. A copy of such statements will be furnished to the UNIVERSITY within three (3) days after the close of each week for which the food facility is contracted.
- The Tenant will keep records pertaining to the Tenant's food facility for a period of at least five (5) years from the date the records are made.
- The Tenant will pay all federal, state and local taxes which may be assessed against the Tenant's equipment or inventory while in or upon the premises of the UNIVERSITY, as well as all federal, state and local taxes assessed in connection with the operation of its business on the premises of the UNIVERSITY.

AUDIT PRIVILEGES:

- The Tenant will give the UNIVERSITY and its agents the right and privilege of inspecting, examining, and auditing Tenant papers, bills, vouchers, invoices, records, books of account and sales slips for the Tenant food facility operated on UNIVERSITY premises. The Tenant will freely lend its assistance in making such inspections, examinations, and audits.
- Any information provided by the Tenant for any inspection, examination, or audit will be held in confidence by the University and its agents.

References:

- List the names, contact information and relevance of five references from similar style settings

Financial Statement: Attach the financial statement for the last three financial years for the company or both the Franchisor and Franchisee (if applicable)

Lease Guarantee: Identify any proposed lease guarantors and provide financial information for each such guarantor similar to that information required of the Bidders.

Pouring Rights (Pepsi exclusive)

- The University has a long term relationship with Pepsi. For Pepsi type drinks (soda), only Pepsi products can be poured. (Not relevant to coffee products or smoothie products)

One Card Participation:

- All retail units will be expected to participate in the University of Nevada's Wolfcard program. All related costs (cash registers, readers, maintenance fees, transaction costs) will be borne by the tenant.

Retail Food Court: Common Area Seating and shared expenses:

- All food court tenants will participate in the proportionate cost of the seating area build-out of FF&E and all finishes.

Proposed menu

- Provide a list of ALL initial menu items with quantity and price points for each item.
- The UNIVERSITY reserves the right to approve any additional menu items to provide balance with other food providers in the student union. Any changes to the initially submitted menu or proposed services and/or methods must be approved by the UNIVERSITY through the life of the contract.
- The UNIVERSITY reserves the right to recommend menu items within the Tenant's trademark policy to be sold in the food facility and also reserves the right to request removal of menu items for sale in the food facility which the UNIVERSITY considers inappropriate or in direct conflict within the Student Union.
- The sale of non-food items must be pre-approved by the UNIVERSITY.
- The Tenant will maintain retail selling prices that are comparable to other similar-branded outlets in the local campus area and Northern Nevada area.
- The Tenant can in no way limit the UNIVERSITY as to what products can be sold in the Student Union or campus.
- The Tenant will maintain a menu board that is plainly readable, stating the offerings and the applicable resale prices
- The University requests that TENANTS be able to provide for fair trade certified coffee and labeled with the Transfair USA certification mark or similar mark.
- The University has a long term relationship with Pepsi. For Pepsi type drinks (soda), only Pepsi products can be poured. (Not relevant to coffee products or smoothie products)

Parking access:

- Parking on any college campus is challenging at peak times. For customers, there are two garages totaling about 2900 spots within 120 yards of the building. Currently, there is also a surface parking lot across from the main entrance to the building. Tenants will have loading dock access for loading and unloading, but will need to abide by university parking procedures at other times.
- The University will provide access to the food unit only when a University employee is on site (during regular business hours). All of the tenant's non-student employees may purchase university parking permits to park at a university parking area. The tenant will be responsible for all payments to University Parking Services.

PROMOTION/ADVERTISING/MARKETING POLICIES

- The Tenant will submit a statement of national, regional or local advertising dollars spent in the past three fiscal years.

Common Area Marketing Fee

- Tenant will pay negotiated commons area marketing fee for shared marketing of the building.
- The Tenant will dedicate and expend a yearly portion of the gross sales for local promotion of the Student Union, which may include joint advertising ventures with the UNIVERSITY. The Tenant will submit a quarterly report to the UNIVERSITY, verifying such expenditures.
- The Tenant will submit with the proposal information regarding its National/Regional/ Local advertising program, which would include local media, such as newspapers, and publications
- All marketing and promotional/advertising programs that use the Tenant's trademark, service mark, or other proprietary mark used by the UNIVERSITY are subject to approval by the Tenant prior to implementation.
- The Tenant also needs to obtain the University's approval for any use of any University name or logo. There may be a charge for use of University logos.
- The Tenant will submit with the proposal a detailed marketing plan covering the Retail unit during the opening and first 3 months of service.
- With the Tenant's approval, the University reserves the right to use the Tenant's logo in selected University publications.

- The Tenant must obtain approval from the UNIVERSITY for the placement of any signs, trade fixtures, decorations, lettering or advertising matter on or about the premises and will maintain such signage in good condition. Any such fixtures will be removed from the premises at the completion of the contract at the tenant's expense.

PUBLIC RELATIONS:

- The Tenant must recognize that satisfactory public relations with students, faculty, staff, and visitors to the University campus are an important part of the food facility service.
- The Tenant will provide with the proposal its customer service philosophy, including information on training programs which address customer service. Also included will be the Tenant's method of measuring the level of customer satisfaction and responding to customer suggestions and complaints.

COMMITMENT TO EDUCATION:

- The Tenant will submit with the proposal any programs and/or actions which demonstrate its commitment to education. The Tenant will include a listing of any institutions, including the name and telephone number of the contract administrator, where such programs are in effect or where such action was taken. With the Tenant's approval, the UNIVERSITY may conduct class tours of the operation, interviews, etc.

SPACE/ FACILITY AREAS

Size of space.

- Provide the ideal size space requested along with the minimum and maximum size your company can utilize.

Storage: All storage will be contained within the tenant's space.

Restrooms: All food areas share a common restroom/ changing room. Requests for restrooms within individual retail areas will be at tenants expense and part of the rental area. The Landlord would construct all required restroom facilities. All food areas share a common restroom/ changing room. Requests for restrooms within individual retail areas will be at tenants expense and part of the rental area.

Build Out:

- List how much time is needed for tenant build-out.
- All construction must be done under the supervision of and subject to approval of Facilities Services.
- List proposed construction contractors and architects. (Contractors and architects must have all appropriate licenses as required by the State of Nevada and shall be subject to the prior approval of the University. Tenant shall ensure that there is labor harmony with other trades during the construction process).
- The Tenant will submit with the proposal a schedule, detailing the time frame of site preparation and a proposed design (elevations, color selections, signage, utility requirements, etc.).
- The proposed design will be subject to the University's approval and must meet UNIVERSITY Facilities Services Standards. These Facilities Services Standards may be found on the University's web site and are incorporated by reference herein.
- At the end of the term of the Lease, the demised premises shall be delivered in a broom clean condition, reasonable wear and tear excepted.
- Any modifications or renovation of the tenant space must be at the approval of the UNIVERSITY and at an agreed-upon time.
- Landlord shall deliver the Premises to Tenant in accordance with the terms and conditions of the Lease and the following conditions:
 - STOREFRONT: To consist of double glass doors; location and design to be approved by Tenant.
 - WALLS: All demised walls framed ready for final finish by tenant.
 - HVAC: Appropriate load capacity for applicable system available within the building;
 - All electrical and plumbing connections per code and manufacturer's specifications.

ELECTRICAL:

- University will provide conduit for the extension of the tenant's electrical service to the main electric room.
- Tenant's electricity to be separately metered.
- Electrical outlets 12' on center around perimeter of space, two wall outlets above the store front for window signage and electrical to building façades per approved plans. Title 24 calculations with appropriate permit.

PLUMBING: The University will provide the following:

- 4" sanitary waste line brought within demised space at suitable depth to drain per local code from any location within demised premises.
- 1 1/2" cold water supply line with a minimum one inch service to meter located per Tenant's plan, pressure reducing valve set at a maximum 80 PSI; in line water meter at gate valve.
- Water supply must maintain at least 60-PSI minimum.
- 4" vent located above proposed ceiling brought within the demised space from properly flashed vent through roof, or connected with other available, appropriate venting available in building.
- 3/4" water line feed to building face (not tenant's space).
- GAS: Supplied gas, separately metered, 2" line, stubbed to rear of Premises.
- A "Grease Interceptor" will be installed for Food Tenants by the university. Tenant will be responsible for their proportional share of all maintenance, cleaning and operating costs of the trap.
- SPRINKLERS: The University will provide a main sprinkler system for the building to the Tenant's space. Tenant is responsible to "drop" and "distribute" the sprinkler heads within their respective space as required.

UTILITIES:

- Tenant pays for all utilities.
- Tenant to install gas meter for individual space.
- All utilities, including power, water; gas, sewer, and phone shall be brought to the premises by Tenant from their respective "mains".
- The UNIVERSITY will provide all reasonable utility services, including domestic hot and cold water, heating, air conditioning and electricity.
- The Tenant will be expected to make every effort to conserve utilities and to operate his/her equipment in an efficient manner.
- The UNIVERSITY will not be liable for any loss that may result from the quality, quantity, interruption, or failure of any such utilities or services under any circumstances.
- The Tenant will be responsible for all telephone, Ethernet and fax services, including but not limited to installation, monthly equipment charges, local and long distance charges or similar services. These services must be arranged with the UNIVERSITY Telecommunications Office.

FLOORS: Floors will be concrete slab with limited access after building construction.

BUILDING DOCUMENTATION: Prior to Lease acceptance, Landlord shall submit to Tenant complete drawings in the form of construction documentation and "as-built" specification of shell Premises to include but not be limited to the following:

- Architectural
- Structural
- Electrical
- Mechanical
- Plumbing
- Fire Sprinklers (if applicable)
- All work is to be permitted and approved by the applicable local code inspectors.
- Any Title 24 Calculations or other utility approvals shall be completed by Tenant, verified by University, and then submitted to appropriate agencies by Tenant. Tenant to send approved copies of all to University prior to acceptance of the Premises.
- Tenant to have the right to make Interior non-structural alterations to premises. All alterations must be approved by the university prior to the commencement of any work.
- CHANGES DURING BUILDING CONSTRUCTION: Changes to the building plans to accommodate retail units will be considered with adequate advance notice. Tenant is responsible for all related costs including change order costs.

Inspections and Final Inspection: Throughout the build out there will be on going inspections by local agencies and University inspectors. At the conclusion of the tenant's retail build-out, local agencies, the University, its representatives and /or the contractor will conduct a final sign-off inspection of the store. The inspection allows for all parties to review the build-out, the equipment and the readiness of your store to open. As Built drawings and related documents to be provided to University by Tenant.

MAINTENANCE:

- Maintenance and repair of the Tenant's food facility fixtures, equipment, interior facilities and premises are the responsibility of the Tenant.
- The UNIVERSITY will provide any general maintenance associated with utilities services that it supplies. If there is evidence of Tenant abuse or neglect causing utility maintenance, the UNIVERSITY will charge the Tenant for the direct cost of repairs.
- If there is evidence of Tenant abuse or neglect causing needed maintenance in common areas or with common equipment (e.g., garbage disposal, receiving area, rest rooms, public areas), the UNIVERSITY will charge the Tenant for the direct and indirect cost of repairs.
- The UNIVERSITY will provide grounds maintenance.

FIRE AND SAFETY CODES:

- The Tenant will maintain its food facility according to all appropriate state, city and UNIVERSITY fire codes. The Tenant's food facility will be subject to periodic inspection by the UNIVERSITY'S personnel plus state and local inspectors.

EQUIPMENT AND FURNISHINGS:

- The Tenant is responsible, at his/her expense, for providing and maintaining any and all equipment and furnishings needed to operate the food facility. All equipment and furnishings will be removed at the end of the contract period and the tenant space returned to the UNIVERSITY in its original state, wear and tear expected.
- The Tenant will submit with the proposal a list of all equipment and furnishings that are proposed to be used, along with their specifications, including utilities, voltage, plumbing, amperage, water/drains, etc.
- The University requests that all Tenant electrical equipment be Energy Star rated equipment.
- University will provide a common seating area / program space on the second floor with appropriate finishes and furnishings. Cost to be shared by second floor retail food tenants.

HANDICAP ACCESSIBILITY: All means of ingress/egress shall be at street/walkway level acceptable to ADA inspectors. It will be the tenant's responsibility to ensure full public and employee access and ADA accessibility compliance within their developed spaces and tenant improvements.

SIGNAGE:

- Two (2) electrical hook-ups for exterior sign(s) at storefront locations agreed to by Tenant and University. University guidelines prohibit exterior building signage. There may be Signage options provided by University for stand alone exterior signage (at tenant's expense).

SECURITY and POLICE:

- Tenant is responsible for all security of the individual retail areas including locks and alarms. Tenant is responsible for security of all deliveries from the loading dock to the retail unit.
- The Tenant will cooperate with the UNIVERSITY Police Department concerning enforcement of UNIVERSITY regulations and internal security and theft control in the food facility. The Tenant will not, except in physically dangerous or other emergency situations, summon public emergency services other than through the UNIVERSITY Police Department. The Tenant will not have employees of the food facility who were convicted of theft, robberies, and/or larcenies, including embezzlements, by public authorities without prior consultation with the UNIVERSITY Police Department.

SANITATION:

- The Tenant will maintain its food facility and ensure that all employees perform according to all appropriate state, county, city and UNIVERSITY health codes. The Tenant's retail area will be subject to periodic inspection by the UNIVERSITY, local and state officials. The Tenant will take all appropriate precautions to ensure that sanitation is maintained to the highest possible degree.
- The Tenant will be responsible for the cleaning of the entire tenant space including service, preparation and storage areas, equipment, floors, ceiling and walls. All areas will be kept orderly, sanitary and in good condition and be kept free of insects, rodents, vermin and other pests.
- In the unfortunate case of any report of food borne illness, the UNIVERSITY will determine who conducts the investigation. Any release of information concerning a report of food borne illness will be handled by the UNIVERSITY Marketing and Communications Department.
- The UNIVERSITY will be released from any and all liability concerning a case of food borne illness that is traced to the Tenant's food facility.

- The UNIVERSITY will coordinate with the Tenant for appropriate pest control services and cost sharing for these services.
- All food storage racks in walk-in coolers must be on casters. (per Nevada Health Division)
- Provide barriers between hand sinks and food contact surfaces. (per Nevada Health Division)
- Indicate an area for storage of employees' personal possessions, or an area for lockers. (per Nevada Health Division)
- Tenant to provide the Nevada Health Division with a copy of the Tenant's sanitation plan. Plan should include such items as: employees' illness policy, handwash policy, training program, proposed menus, and cleaning schedules. (per Nevada Health Division)

TRASH REMOVAL:

- The UNIVERSITY will coordinate with all parties for the removal and disposal of all refuse and grease placed in the compactor and grease bin. All related costs will be shared proportionally.
- The Tenant is responsible for the placing of all refuse in the appropriate compactor and for providing trash receptacles and plastic liners for the Tenant's food facility on the interior (and exterior (if applicable) of the building.
- Costs for removal of trash in common areas will be shared proportionally.

ENVIRONMENTAL CONSERVATION:

- The Tenant will initiate and/or cooperate with the UNIVERSITY in providing environmental conservation programs such as recycling cardboard, glass and plastic and exercising control of the use of utilities to conserve natural resources.
- The University encourages the Tenant to utilize green or sustainable equipment and policies as much as possible.
- The University requests that TENANTS be able to provide for fair trade certified coffee and labeled with the Transfair USA certification mark or similar mark.

STANDARDS OF OPERATION

- In keeping with the UNIVERSITY's culture, philosophy and mission, the TENANT 's programs and procedures will need to adhere to the following University's standards of operation:
- operate the site and the unit in a clean, safe and orderly manner, providing courteous, first-class service to the public;
- make every reasonable effort to increase the sales and business and maximize the gross receipts of the unit;
- advertise, market, promote and merchandise the business of the unit by the use of the proprietary marks
- prevent the operation of the site of the unit and refrain from using the proprietary marks in advertising or promotion in such a way as to impair the value or reputation of the proprietary marks of the TENANT;
- prevent the use of the site or the unit for any illegal purpose;
- stay familiar with and comply with all requirements in the TENANT 's Operations Manual which includes standards and specifications of operation, training and quality assurance programs, staffing guidelines, financial support, marketing and merchandising, and communications systems;
- not operate the unit or otherwise sell the products from or to any location as otherwise outlined in the RFP Response without prior approval of the UNIVERSITY.
- maintain at all times a sufficient inventory of products, ingredients and supplies to meet customers' demand for the products sold by the unit;
- pay on a timely basis (i) for all products, ingredients, supplies and other goods and services purchased by TENANT for use in connection with the operation of the site or the unit, (ii) all national, federal, state and local income, sales, withholding, value added and other taxes for which TENANT is liable under a federal, state or local government under any law, statute, ordinance or regulation, and (iii) any debt service on any debt incurred to finance the operation of the site or the unit;
- comply with all supra-nation, national, federal, state and local laws, statutes, ordinances and regulations affecting the operation of the site and the unit, including without limitation health, sanitation, fire, safety and environmental laws, statutes, ordinances and regulations;
- timely obtain, maintain, pay for and avoid revocation or suspension of any and all licenses, permits, consents, certificates and registrations necessary or appropriate for TENANT to prepare or operate the site and the unit in compliance with all laws, statutes, ordinances and regulations and the provisions of the contract;

- not operate the site or the unit in a manner that presents a health or safety hazard to its customers or creates environmental hazard;
- refrain from performing any act which could be reasonably likely to damage or cause harm to the reputation, goodwill or credit of the unit, the proprietary marks, the TENANT's system, TENANT or University culture; and
- sell all products in a manner which is not detrimental to UNIVERSITY's or Tenant's reputation or the positioning of the products in the market.

PROMOTION OF PROPRIETARY MARKS

- The University will at all times during the term of the contract at its own cost, use diligent efforts to advance the reputation of the TENANT and the products and to develop consumer awareness of the products and the proprietary marks.

STANDARDS FOR PRODUCTS AND SUPPLIES

- The TENANT will sell in the unit only products approved in advance by the UNIVERSITY. The TENANT will not under any circumstances sell any other products or conduct any other business in the unit or sell the products from any location other than the unit, unless approved in advance in writing by the UNIVERSITY.
- In preparing products for sale in the unit, the TENANT agrees to use only the ingredients, techniques and procedures designated or approved in advance. The TENANT will offer such products only in the proportions, appearance and packaging as may periodically be specified.
- The TENANT will utilize in the unit only those bags, boxes, wrappers, cartons, customer goodwill items and other food containers and customer convenience items that display one or more of the proprietary marks.

EVALUATION OF PROPOSALS

- It is the responsibility of the prospective TENANT to inspect the site of the UNR Student Union and to review the plans in order to determine all requirements associated with any forthcoming contract prior to submitting a proposal. To make arrangements for a tour contact (Person) at (Phone Number). Failure to do so shall not relieve the successful TENANT from carrying out the intent of the resulting contract at no additional cost to the University.
- Proposals will be as thorough and detailed as possible so that the University may properly evaluate the TENANT's capability to provide the required services. TENANT must accept all responsibilities indicated throughout the proposal

The following is a summary of all items that are to be submitted with the TENANT's proposal, including the TENANT's Franchise Program (if applicable) on Form of Proposal, Pages (Number) through (Number). Three (3) copies will be submitted and will be bound in a folder and presented in the same order as listed below.

- The TENANT will submit with the proposal a staffing proposal for the food facility detailing the minimum number of employees and the maximum number of employees at peak times and at the slowest times. Page (Number).
- The TENANT will submit with the proposal a list of company principals and resumes of key administrative/support and on-site management personnel. Page (Number).
- The TENANT will submit with the proposal the proposed menu, including a detailed list of the menu items, portion sizes, raw food costs, types of services and methods of product delivery to customers, nutritional information on the items and the proposed resale prices, along with the Product Profile information on the TENANT's Franchise Program sheets. A customer taste panel may be conducted to evaluate product acceptability. Page (Number).
- The TENANT will submit with the proposal his/her intended hours and days of operation for the periods listed in this proposal (see "DAYS/HOURS OF OPERATION", Page (Number)).
- The TENANT will submit with the proposal evidence as to the fact that they are a National or (State) branded company. Include a statement of National advertising dollars spent in 2004 and 2005 as well as dollars spent in the state of Nevada (if applicable). Page (Number).
- The TENANT will submit with the proposal information and associated costs regarding its National/Regional/ Local advertising program including examples of newspaper ads and/or publications, along with the Marketing/Advertising Program information on the TENANT's Franchise Program (if applicable) sheets. Page (Number).

- The TENANT will submit with the proposal a detailed marketing proposal covering the Student Union opening, the first 3 months of service, and any associated costs, along with the Marketing/Advertising Program information on the TENANT 's Franchise Program sheets (if applicable). Page (Number).
- The TENANT will submit with the proposal its customer service philosophy, including information and associated costs on training programs which address customer service. Also included will be the TENANT's methods of measuring the level of customer satisfaction and responding to customer suggestions and complaints, along with the Training Costs information on the TENANT s Franchise Program Sheets. Page (Number).
- The TENANT will submit with the proposal any programs and/or actions which demonstrate its commitment to education. The TENANT will include a listing of any institutions, including the name and telephone number of the Contract Administrator, where such programs are in effect or where such actions were taken. Page (Number).
- The TENANT will submit with the proposal a schedule detailing the cost and time schedule of architectural, design, and construction costs; photos of the store front; and color selection, signage, and utility requirements, etc., along with the Projected Architectural, Design, and Construction Costs and Time Schedule information on the 's TENANT Franchise Program sheets. Page (Number).
- The TENANT will submit with the proposal a list of all equipment, furnishings, uniforms, and signage that are proposed to be used along with their specifications including utilities, voltage, plumbing, amperage, water/drains, etc., including associated costs. Page (Number).
- The TENANT will submit with the proposal the following information:
 - A CPA-certified financial statement or annual report.
 - TENANT's Dun and Bradstreet rating.
 - Summary of TENANT's management experience.
 - Listing of current clients, in particular institutions of higher education for which the TENANT operates a food facility.
 - Listing of former clients, in particular institutions of higher education for which the TENANT operated a food facility. Include the name and telephone number of the Contract Administrator.
- The TENANT will submit with the proposal the proposed SF rent above the minimum \$ 19.00 per square foot annually. After written proposals are reviewed, the University may require an oral presentation for the purpose of discussion. Upon request, the potential TENANT must provide samples of food products and customer convenience items that display proprietary marks such as bags, boxes, wrappers and cartons. The University also reserves the right to visit and inspect other sites of the potential TENANT. Page (Number).
- The TENANT will submit with the proposal creative methods of determining additional revenues to the UNIVERSITY over and above the minimum base rent.

Attachment

Sample Lease Agreement

LEASE AGREEMENT

This Lease is made as of _____, by and between BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, INC., a body politic of the State of Nevada, on behalf of the University of Nevada, Reno ("Landlord"), and _____ a _____ corporation ("Tenant").

IN CONSIDERATION of the agreements and covenants hereinafter set forth, Landlord and Tenant mutually agree as follows:

1. DEFINITIONS.

1.1. As used herein, the following terms shall have the following meanings:

"ADDITIONAL RENT" has the meaning given it in subsection 4.2.

"ALTERATIONS" has the meaning given it in subsection 10.2.

"BASE RENT" has the meaning given it in subsection 4.1.

"BUILDING" means the building known as The Joe Crowley Student Union. The Building, which contains approximately 16,000 to 17,000 rentable square feet, is more particularly shown on EXHIBIT A.

"BUILDING SERVICE EQUIPMENT" means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on the Premises and owned by the Landlord.

"COMMON AREAS" has the meaning given it in subsection 6.5.1.

"CONDEMNATION" has the meaning given it in subsection 13.1.

"EVENT OF DEFAULT" has the meaning given it in subsection 17.1.

"INSURANCE PREMIUMS" means the aggregate of any and all premiums paid by the Landlord for hazard, liability, loss-of-rent, worker's compensation or similar insurance upon any or all of the Property.

"LANDLORD" means the Person hereinabove named as such and its successors and assigns.

"LANDLORD'S WORK" has the meaning given to it in subsection 10.1.

"LEASE YEAR" means (a) the period commencing on the Rent Commencement Date and terminating at 11:59 p.m. on the first anniversary of the last day of the month in which the Rent Commencement Date occurs, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

"LIQUIDATED DAMAGES" has the meaning given it in subsection 17.3.

"MORTGAGE" has the meaning given it in subsection 16.1.

"OPERATING COSTS" means any and all costs and expenses incurred by the Landlord for services performed by the Landlord or by others on behalf of the Landlord with respect to the operation and maintenance of the Property and the Common Areas located therein and serving or allocable to the Premises, including, without limitation, all costs and expenses of:

(a) operating, maintaining, repairing, lighting, signing, cleaning, removing trash from, painting, striping, controlling

of traffic in, controlling of rodents in, policing and securing the Common Areas (including, without limitation, the costs of uniforms, equipment, assembly permits, supplies, materials, alarm and life safety systems, and maintenance and service agreements);

(b) purchasing and maintaining in full force insurance (including, without limitation, liability insurance for personal injury, death and property damage, rent insurance, insurance against fire, extended coverage, theft or other casualties, workers' compensation insurance covering personnel, fidelity bonds for personnel, insurance against liability for defamation and claims of false arrest occurring on or about the Common Areas, and plate glass insurance);

(c) removing snow, ice, water, litter and debris;

(d) operating, maintaining, repairing and replacing machinery, furniture, accessories and equipment used in the operation and maintenance of the Common Areas, and the personal property taxes and other charges incurred in connection with such machinery, furniture, accessories and equipment;

(e) maintaining and repairing roofs, awnings, paving, curbs, walkways, sidewalks, drainage pipes, ducts, conduits, grease traps and lighting fixtures throughout the Common Areas;

(f) planting, replanting and replacing flowers, shrubbery, trees, grass and planters;

(g) providing electricity, heating, ventilation and air conditioning to the Common Areas, and operating, maintaining and repairing any equipment used in connection therewith, including, without limitation, costs incurred in connection with determining the feasibility of installing, maintaining, repairing or replacing any facilities, equipment, systems or devices which are intended to reduce utility expenses of the Property as a whole;

(h) water and sanitary sewer services and other services, if any, furnished to the Common Areas for the non-exclusive use of tenants;

(i) janitorial services for the Building;

(j) enforcing any operating agreements pertaining to the Common Areas or any portions thereof, and any easement and/or rights agreements entered into by the Landlord for the benefit and use of the Landlord, the Property or tenants thereof, or any arbitration or judicial actions undertaken with respect to the same;

(k) maintaining and repairing the Property, including, without limitation, exhaust systems, sprinkler systems, pumps, fans, switchgear, loading docks and ramps, freight elevators, escalators, passenger elevators, stairways, service corridors, delivery passages, utility plants, transformers, doors, walls, floors, skylights, ceilings, windows and fences;

(l) accounting, audit and management fees and expenses, payroll, payroll taxes, employee benefits and related expenses of all personnel engaged in the operation, maintenance, security and management of the Property, including, without limitation, security and maintenance personnel, secretaries and bookkeepers (including, specifically, uniforms and working clothes and the cleaning thereof, tools, equipment and supplies used by such personnel, and the expenses imposed on or allocated to the Landlord or its agents pursuant to any collective bargaining or other agreement);

(m) the cost and expense of complying with all federal, state and local laws, orders, regulations and ordinances applicable to the Property which are now in force, or which may hereafter be in force;

(n) the cost of all capital improvements made to the Building and which are not provided for in subsections (a) through (m) above; provided that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized over the useful life thereof, as reasonably determined by Landlord.

(o) "OPERATING COSTS STATEMENT" has the meaning given it in subsection 4.3.2.

(p) "ORIGINAL TERM" has the meaning given it in subsection 3.1.

(q) "PARKING AREAS" has the meaning given it in subsection 6.5.1.

(r) "PERSON" means a natural person, a trustee, a corporation, a limited liability company, a partnership and/or any other form of legal entity.

(s) "PREMISES" means that certain space having a rentable area of _____ rentable square feet and located on the ground floor of the Building and known as Retail Space "A", as more particularly depicted on EXHIBIT B; provided, that if at any time hereafter any portion of the Premises becomes no longer subject to this Lease, "Premises" shall thereafter mean so much thereof as remains subject to this Lease.

"RENT" means all Base Rent and all Additional Rent.

"RENT COMMENCEMENT DATE" has the meaning given to it in subsection 3.1.

"RULES AND REGULATIONS" has the meaning given to it in section 15.

"TAX YEAR" means the 12-month period beginning July 1 of each year or such other 12-month period (deemed for the purposes of this Lease to have 365 days) established as a real estate tax year by the taxing authority having lawful jurisdiction over the Property.

"TAXES" means the aggregate of any and all real property and other taxes, metropolitan district charges, front-foot benefit assessments, special assessments and other taxes or public or private assessments or charges levied against a portion or the entire tax parcel containing the Premises. The parties to this Lease acknowledge that Landlord is exempt from taxes which may otherwise be levied by a political subdivision of the State of Nevada. However, the Parties to this Lease further acknowledge that a portion of the Property, including the Demised Premises, may be subject to Taxes.

"TENANT" means the Person hereinabove named as such and its successors and permitted assigns hereunder.

"TENANT'S PROPORTIONATE SHARE" (a) means the percentage assigned to the Premises for purposes of allocating Operating Costs and Taxes to the Premises (and the rest of the net rentable spaces within the Property), and (b) as of the Effective Date shall be _____ (____%) PERCENT.

"TERM" means the Original Term.

"TERMINATION DAMAGES" has the meaning given it in subsection 17.3.

"TERMINATION DATE" has the meaning given it in subsection 3.1.

"TRANSFER" has the meaning given it in subsection 14.1.

1.2. OTHER TERMS. Any other term to which meaning is expressly given in this Lease shall have such meaning.

2. PREMISES; MEASUREMENT. The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, the Premises. The Landlord shall be responsible for the construction of the Premises and the Building of which the Premises are a part pursuant to the obligations set forth in Exhibit (" ") hereto; together with the right to use, in common with others, the Common Areas. The rentable area of the Premises shall be reasonably determined by the Landlord.

3. TERM.

3.1. ORIGINAL TERM: RENT COMMENCEMENT DATE. This Lease shall be for a term (the "ORIGINAL TERM") commencing on the Effective Date and ending at 11:59 p.m. on the _____ (____) anniversary of the first day of the month, in which the Rent Commencement Date shall occur (which date is hereinafter referred to as the "TERMINATION DATE"). Monthly rent payments and additional rent shall commence on _____ (which

date is hereinafter referred to as the "RENT COMMENCEMENT DATE").

3.2. CONFIRMATION OF COMMENCEMENT AND TERMINATION. The Landlord and the Tenant at the Landlord's option and request after (a) the Rent Commencement Date or (b) the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner, shall confirm in writing by instrument in recordable form that, respectively, such rent commencement or such termination has occurred, setting forth therein, respectively, the Rent Commencement Date and the Termination Date.

3.3. SURRENDER. The Tenant, at its expense at the expiration of the Term or any earlier termination of this Lease, shall (a) promptly surrender to the Landlord possession of the Premises (including any fixtures or other improvements which are owned by the Landlord) in good order and repair (ordinary wear and tear excepted) and broom clean, (b) remove therefrom all signs, goods, effects, machinery, fixtures and equipment used in conducting the Tenant's trade or business which are neither part of the Building Service Equipment nor owned by the Landlord, and (c) repair any damage caused by such removal.

3.4. HOLDING OVER. If the Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease after obtaining the Landlord's express, written consent thereto, then:

(a) such occupancy (unless the parties hereto otherwise agree in writing) shall be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, at least one month before the end of any calendar month, that the notifying party elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) anything in this section to the contrary notwithstanding, the Rent payable for each monthly period shall equal the sum of (a) one-twelfth (1/12) of that amount which is equal to twice the Base Rent for the Lease Year during which such expiration of the Term or termination of this Lease occurs, plus (b) the Additional Rent payable under subsection 4.2; and

(c) except as provided herein, such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease; provided, however, that if the Landlord gives the Tenant, at least one month before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be upon the said terms and subject to the said conditions, as so modified.

4. RENT: As Rent for the Premises, the Tenant shall pay to the Landlord all of the following:

4.1. BASE RENT. An annual rent (the "BASE RENT") as follows: an amount equal to the sum of \$ _____ per rental square foot of the Premises. The measurement of the number of square feet of the Premises shall be conducted by Landlord pursuant to Definition "s" above.

4.2. ADDITIONAL RENT. Additional rent ("ADDITIONAL RENT") shall include any and all charges or other amounts which the Tenant is obligated to pay to the Landlord under this Lease, other than the Base Rent.

4.3 SECURITY DEPOSIT. As a deposit for the performance of each and every obligation arising under this Lease, TENANT shall pay to LANDLORD an amount equal to ___ months BASIC RENT. There shall be no requirement that said deposit be held in a separate, segregated fund. At the expiration or termination of this Lease, the amount of the security deposit then held by LANDLORD shall be returned to TENANT, less the amount of any damages, including unpaid rent, incurred by LANDLORD arising under this LEASE or otherwise due and owing LANDLORD from TENANT.

4.3. OPERATING COSTS.

4.3.1. COMPUTATION. Within one hundred twenty (120) days after the end of each calendar year during the Term, the Landlord shall compute the total of the Operating Costs incurred for the Property during such calendar year, and the Landlord shall allocate them to each separate rentable space within the Property in proportion to the respective operating costs percentages assigned to such spaces; provided that anything in this subsection 4.3 to

the contrary notwithstanding, whenever the Tenant and/or any other tenant of space within the Property has agreed in its lease or otherwise to provide any item of such services partially or entirely at its own expense, or wherever in the Landlord's sole judgment any such significant item of expense is not incurred with respect to or for the benefit of all of the net rentable space within the Building (including but not limited to any such expense which, by its nature, is incurred only with respect to those spaces which are occupied), in allocating the Operating Costs pursuant to this subsection, the Landlord shall make an appropriate adjustment, using generally accepted accounting principles, as aforesaid, so as to avoid allocating to the Tenant or to such other tenant (as the case may be) those Operating Costs covering such services already being provided by the Tenant or by such other tenant at its own expense, or to avoid allocating to all of the net rentable space within the Building those Operating Costs incurred only with respect to a portion thereof, as aforesaid. The Tenant shall have the right, during normal business hours at the Landlord's offices, to review the books and records of the Landlord with respect to the calculation of Operating Costs for the prior Lease Year, at the Tenant's sole expense, provided (i) the Tenant provides at least fifteen (15) days' advance written notice to the Landlord of its desire to inspect such books and records, and (ii) such request is made within sixty (60) days after the Operating Costs Statement is delivered by the Landlord to the Tenant. If the Tenant does not notify the Landlord within such 60-day period, then all sums included as Operating Costs shall be deemed acceptable to the Tenant and thereafter the Tenant shall have no right to dispute in any manner any sums included within Operating Costs for such prior Lease Year.

4.3.2. PAYMENT AS ADDITIONAL RENT. Within fifteen (15) days after demand therefore by the Landlord (with respect to each calendar year during the Term), accompanied by a statement setting forth the Operating Costs for such calendar year (the "OPERATING COSTS STATEMENT"), the Tenant shall pay to the Landlord, as Additional Rent, the amount equaling Tenant's Proportionate Share of the Operating Costs for such calendar year. In addition to the Base Rent, Tenant shall pay on a monthly basis, an estimated payment towards its obligation for Operating Costs.

4.3.3. PRORATION. If only part of any calendar year falls within the Term, the amount computed as Additional Rent for such calendar year under this subsection shall be prorated in proportion to the portion of such calendar year falling within the Term (but the expiration of the Term before the end of a calendar year shall not impair the Tenant's obligation hereunder to pay such prorated portion of such Additional Rent for that portion of such calendar year falling within the Term, which amount shall be paid on demand, as aforesaid).

4.3.4. LANDLORD'S RIGHT TO ESTIMATE. Anything in this subsection to the contrary notwithstanding, the Landlord, at its reasonable discretion, may (a) make from time to time during the Term a reasonable estimate of the Additional Rent which may become due under this subsection for any calendar year, (b) require the Tenant to pay to the Landlord for each calendar month during such year one twelfth (1/12) of such Additional Rent, at the time and in the manner that the Tenant is required hereunder to pay the monthly installment of the Base Rent for such month, and (c) increase or decrease from time to time during such calendar year the amount initially so estimated for such calendar year, all by giving the Tenant written notice thereof, accompanied by a schedule setting forth in reasonable detail the expenses comprising the Operating Costs, as so estimated. In such event, the Landlord shall cause the actual amount of such Additional Rent to be computed and certified to the Tenant within one hundred twenty (120) days after the end of such calendar year. Any overpayment or deficiency in the Tenant's payment of Tenant's Proportionate Share of Operating Costs shall be adjusted between the Landlord and the Tenant; the Tenant shall pay the Landlord or the Landlord shall credit to the Tenant's account (or, if such adjustment is at the end of the Term, the Landlord shall pay to the Tenant), as the case may be, within fifteen (15) days after such notice to the Tenant, such amount necessary to effect such adjustment. The Landlord's failure to provide such notice within the time prescribed above shall not relieve the Tenant of any of its obligations hereunder.

4.4. WHEN DUE AND PAYABLE.

4.4.1. BASE RENT. The Base Rent for any Lease Year shall be due and payable in twelve (12) consecutive, equal monthly installments, in advance, on the first (1st) day of each calendar month during such Lease Year. In addition, the Base Rent for the first full calendar month shall be due and payable upon execution of the Lease. Rent for any partial calendar month shall be due and payable five (5) days after the Rent Commencement Date.

4.4.2. ADDITIONAL RENT. Any Additional Rent accruing to the Landlord under this Lease, except as is otherwise set forth herein, shall be due and payable when the installment of Base Rent next falling due after such Additional

Rent accrues and becomes due and payable, unless the Landlord makes written demand upon the Tenant for payment thereof at any earlier time, in which event such Additional Rent shall be due and payable at such time.

4.4.3. NO SET-OFF; LATE PAYMENT. Each such payment shall be made promptly when due, without any deduction or setoff whatsoever, and without demand, failing which the Tenant shall pay to the Landlord as Additional Rent, after the fifth (5th) day after such payment remains due but unpaid, a late charge equal to ten percent (10%) of such payment which remains due but unpaid. In addition, any payment that is not paid by the tenth (10th) day after such payment is due shall bear interest at the rate of twelve percent (12%) per annum. Any payment made by the Tenant to the Landlord on account of Rent may be credited by the Landlord to the payment of any Rent then past due before being credited to Rent currently falling due. Any such payment which is less than the amount of Rent then due shall constitute a payment made on account thereof, the parties hereto hereby agreeing that the Landlord's acceptance of such payment (whether or not with or accompanied by an endorsement or statement that such lesser amount or the Landlord's acceptance thereof constitutes payment in full of the amount of Rent then due) shall not alter or impair the Landlord's rights hereunder to be paid all of such amount then due, or in any other respect.

4.5. WHERE PAYABLE. The Tenant shall pay the Rent, in lawful currency of the United States of America, to the Landlord by delivering or mailing it to the Landlord's address which is set forth in section 20, or to such other address or in such other manner as the Landlord from time to time specifies by written notice to the Tenant.

4.6 TAX ON LEASE. If federal, state or local law now or hereafter imposes any tax, assessment, levy or other charge directly or indirectly upon (a) the Landlord with respect to this Lease or the value thereof, (b) the Tenant's use or occupancy of the Premises, (c) the Base Rent, Additional Rent or any other sum payable under this Lease, or (d) this transaction, then the Tenant shall pay the amount thereof as Additional Rent to the Landlord upon demand, unless the Tenant is prohibited by law from doing so, in which event the Landlord at its election may terminate this Lease by giving written notice thereof to the Tenant.

5. TAXES.

5.1. PROPORTIONATE SHARE. The Tenant shall pay to the Landlord, as Additional Rent, Tenant's Proportionate Share of all Taxes levied upon or assessed against the Property, if any. Taxes shall be adjusted on a proportionate basis for any period which shall be less than a Tax Year.

5.2. PAYMENT. Tenant's Proportionate Share of Taxes shall be paid by the Tenant, at the Landlord's election (i) in advance, in equal monthly installments in such amounts as are estimated and billed for each Tax Year by the Landlord at the commencement of the Term and at the beginning of each successive Tax Year during the Term, each such installment being due on the first day of each calendar month or (ii) in a lump sum, following the Landlord's receipt of the tax bill for the Tax Year in question, and calculation of Tenant's Proportionate Share with respect thereto. If the Landlord has elected that the Tenant pay Tenant's Proportionate Share of Taxes in installments, in advance, then, at any time during a Tax Year, the Landlord may re-estimate Tenant's Proportionate Share of Taxes and thereafter adjust the Tenant's monthly installments payable during the Tax Year to reflect more accurately Tenant's Proportionate Share of Taxes. Within one hundred twenty (120) days after the Landlord's receipt of tax bills for each Tax Year, the Landlord will notify the Tenant of the amount of Taxes for the Tax Year in question and the amount of Tenant's Proportionate Share thereof. Any overpayment or deficiency in the Tenant's payment of Tenant's Proportionate Share of Taxes for each Tax Year shall be adjusted between the Landlord and the Tenant; the Tenant shall pay the Landlord or the Landlord shall credit to the Tenant's account (or, if such adjustment is at the end of the Term, the Landlord shall pay the Tenant), as the case may be, within fifteen (15) days after such notice to the Tenant, such amount necessary to effect such adjustment. The Landlord's failure to provide such notice within the time prescribed above shall not relieve the Tenant of any of its obligations hereunder.

5.3. TAXES ON RENT. In addition to Tenant's Share of Increased Taxes, the Tenant shall pay to the appropriate agency any sales, excise and other tax (not including, however, the Landlord's income taxes) levied, imposed or assessed by the state in which the Premises are located or any political subdivision thereof or other taxing authority upon any Rent payable hereunder. The Tenant shall also pay, prior to the time the same shall become delinquent or payable with penalty, all taxes imposed on its inventory, furniture, trade fixtures, apparatus, equipment, leasehold improvements installed by the Tenant or by the Landlord on behalf of the Tenant and any

other property of the Tenant.

6. USE OF PREMISES AND COMMON AREAS.

6.1 NATURE OF USE. The Tenant shall use the Premises only the retail sale of _____ and products and services reasonably ancillary thereto.

6.2 COMPLIANCE WITH LAW AND COVENANTS. The Tenant, throughout the Term and at its sole expense, in its use and possession of the Premises, shall:

(a) comply promptly and fully with (i) all laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, including but not limited to The Americans with Disabilities Act, 42 U.S.C. Section 12101 et. seq., and the ADA Disability Guidelines promulgated with respect thereto, and (ii) all requirements (Y) of the National Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions) which are applicable to any or all of the Premises, or (Z) imposed by any policy of insurance covering any or all of the Premises and required by section 5 to be maintained by the Tenant, and (iii) all covenants and restrictions which may encumber the title to any or all of the Premises, all if and to the extent that any of such requirements relate to any or all of the Premises or to any equipment, pipes, utilities or other parts of the Property which exclusively serve the Premises, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

(b) (without limiting the generality of the foregoing provisions of this subsection) keep in force throughout the Term all licenses, consents and permits necessary for the lawful use of the Premises for the purposes herein provided;

(c) pay when due all personal property taxes, income taxes, license fees and other taxes assessed, levied or imposed upon the Tenant or any other person in connection with the operation of its business upon the Premises or its use thereof in any other manner;

(d) Not obstruct, annoy or interfere with the rights of other tenants, and

(e) Not allow the transmission of any loud or objectionable sounds or noises or vibration from Tenants copy machines from the Premises; and

(f) Be responsible for the maintenance, cleaning and security of the Premises.

With respect to The Americans with Disabilities Act and the ADA Disability Guidelines thereto, the Tenant shall be responsible for the entire Premises, including all entry doors and signage (subject, however, to the provisions of subsection 10.2), and the Landlord shall be responsible for the Building and the Common Areas.

6.3 MECHANICS' LIENS.

6.3.1. Without limiting the generality of the foregoing provisions of this section, the Tenant shall not create or permit to be created, and if created shall discharge or have released, any mechanics' or materialmens' lien arising while this Lease is in effect and affecting any or all of the Premises, the Building and/or the Property, and the Tenant shall not permit any other matter or thing whereby the Landlord's estate, right and interest in any or all of the Premises, the Building and/or the Property might be impaired. The Tenant shall defend, indemnify and hold harmless the Landlord against and from any and all liability, claim of liability or expense (including but not limited to that of reasonable attorneys' fees) incurred by the Landlord on account of any such lien or claim.

6.3.2. If the Tenant fails to discharge any such lien within fifteen (15) days after it first becomes effective against any of the Premises, the Building and/or the Property, then, in addition to any other right or remedy held by the Landlord on account thereof, the Landlord may (a) discharge it by paying the amount claimed to be due or by deposit or bonding proceedings, and/or (b) in any such event compel the prosecution of any action for the foreclosure of any such lien by the lienor and pay the amount of any judgment in favor of the lienor with interest, costs and allowances. The Tenant shall reimburse the

Landlord for any amount paid by the Landlord to discharge any such lien and all expenses incurred by the

Landlord in connection therewith, together with interest thereon at the rate of twenty percent (20%) per annum from the respective dates of the Landlord's making such payments or incurring such expenses (all of which shall constitute Additional Rent).

6.3.3. Nothing in this Lease shall be deemed in any way (a) to constitute the Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialmen provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Premises, the Building and/or the Property, or (b) to give the Tenant any right, power or authority to contact for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the Premises, the Building and/or the Property, or the Landlord's estate or interest therein, or (c) to evidence the Landlord's consent that the Premises, the Building and/or the Property be subjected to any such lien.

6.4. SIGNS. The Tenant shall have no right to erect signs upon the Building or the Property unless the Landlord has given its express, written consent thereto, which consent may be withheld for any reason or for no reason. Tenant shall be permitted to place its business name on the front of the Premises and/or the glass portion of the entry door to the Premises. Tenant's said sign at the entry of the Premises is subject to Landlord's approval which approval shall not be unreasonably withheld.

6.5. LICENSE.

6.5.1. GRANT OF LICENSE. The Landlord hereby grants to the Tenant a non-exclusive license to use (and to permit its officers, directors, agents, employees and invitees to use), in the course of conducting business at the Premises, those areas and facilities of the Property which may be designated by the Landlord from time to time as common areas (portions of which may from time to time be relocated and/or reconfigured by the Landlord in its sole discretion so long as reasonable access to and from the Premises is maintained) (the "COMMON AREAS"), which Common Areas include footways, sidewalks, lobbies, elevators, stairwells, corridors, restrooms and certain exterior areas on the Property, subject, however, to the Rules and Regulations.

6.5.2. NON-EXCLUSIVE LICENSE. Such license shall be exercised in common with exercise thereof by the Landlord, the other tenants or occupants of the Property, and their respective officers, directors, agents, employees and invitees.

6.5.3 Intentionally omitted

6.5.4. ALTERATIONS. The Landlord reserves the right at any time and from time to time (i) to change or alter the location, layout, nature, or arrangement of the Common Areas or any portion thereof, including but not limited to the arrangement and/or location of entrances, passageways, doors, corridors, stairs, lavatories, elevators, parking areas, and other public areas of the Building, and (ii) to construct additional improvements on the Property and make alterations thereof or additions thereto and build additional stories on or in any such buildings adjoining the same; provided, however, that no such change or alteration shall deprive the Tenant of access to the Premises.

6.5.5. USE OF COMMON AREAS.

(a) The Landlord shall at all times have full and exclusive control, management and direction of the Common Areas. Without limiting the generality of the foregoing, the Landlord shall have the right to maintain and operate lighting facilities on all of the Common Areas and to police the Common Areas.

(b) The Tenant shall keep the service areas adjacent to the Premises swept and free from trash, rubbish, garbage and other refuse.

(c) The Tenant shall maintain in a neat and clean condition that area designated by the Landlord as the refuse collection area, and shall not place or maintain anywhere within the Property, other than within the area which may be designated by the Landlord from time to time as such refuse collection area, any trash, garbage or other items, except as may otherwise be expressly permitted by this Lease; provided, however, that in the event there is no room in the refuse collection area for the Tenant's trash, the Landlord shall notify the Tenant thereof and the Tenant shall be required to make its own arrangements for the removal of its trash from the Premises.

d) Landlord reserves the right to close off common areas and retail areas for special events. Advance notice will be provided to Tenant for any special events.

6.6. **LIABILITY OF LANDLORD.** The Landlord and its agents and employees shall not be liable to the Tenant or any other person whatsoever (a) for any injury to person or damage to property caused by any defect in or failure of equipment, pipes, wiring or broken glass, or the backing up of any drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, or (b) for any loss or damage that may be occasioned by or through the acts or omissions of any other tenant of the Property or of any other person whatsoever, other than the gross negligence of the Landlord's duly authorized employees or agents.

6.7. **FLOOR LOAD.** The Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry. The Landlord reserves the right to prescribe the weight and position of all sales and other heavy equipment, and to prescribe the reinforcing necessary, if any, which in the opinion of the Landlord may be required under the circumstances, such reinforcing to be at the Tenant's sole expense. Business machines and mechanical equipment shall be placed and maintained by the Tenant in settings sufficient in the Landlord's judgment to absorb and prevent vibration and noise, and the Tenant shall, at its sole expense, take such steps as the Landlord may direct to remedy any such condition.

6.8. **HAZARDOUS MATERIALS.** The Tenant warrants and agrees that the Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by the Tenant, its agents, employees, contractors or invitees. If the Tenant breaches the obligations stated in the preceding sentence, then the Tenant shall indemnify, defend and hold the Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, the Building and the Property generally, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Building or the Property generally, damages from any adverse impact on marketing of space in the Building, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of the Landlord by the Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority because of Hazardous Material present in the soil or ground water or under the Premises or the Property generally. As used herein (i) "ENVIRONMENTAL LAWS" means the Clean Air Act, the Resource Conservation Recovery Act of 1976, the Hazardous Material Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Clean Water Act, the Federal Water Pollution Control Act, the National Environmental Policy Act, as each of the foregoing shall be amended from time to time, and any similar or successor laws, federal, state or local, or any rules or regulations promulgated thereunder, and (ii) "HAZARDOUS MATERIALS" means and includes asbestos; "oil, petroleum products and their by-products" "hazardous substances;" "hazardous wastes" or "toxic substances," as those terms are used in Environmental Laws; or any substances or materials listed as hazardous or toxic in the United State Department of Transportation, or by the Environmental Protection Agency or any successor agency under any Environmental Laws.

7. INSURANCE AND INDEMNIFICATION.

7.1. **INSURANCE.** At all times from and after the earlier of (i) the entry by the Tenant into the Premises, or (ii) the Rent Commencement Date, the Tenant shall take out and keep in full force and effect, at its expense:

(a) commercial general liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Completed Operations/Products Liability, Personal Injury Liability, Premises Medical Payments, Interest of Employees as additional insureds, Incidental and Broad Form General Liability Endorsement, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;

(b) special form property insurance (including but not limited to burglary and theft insurance and plate glass insurance) written at full replacement cost value with endorsement covering all of Tenant's property, including, without limitation, inventory, trade fixtures, floor coverings, furniture, electronic data processing, equipment and any other property removable by Tenant under the provisions of this Lease, except for improvements which are

part of the Landlord's Work;

- (c) Worker's compensation or similar insurance in form and amounts required by law; and
- (d) Such other insurance in such types and amounts as Landlord may reasonably require.

7.2. TENANT'S CONTRACTOR'S INSURANCE. The Tenant shall require any contractor of the Tenant performing work in, on or about the Premises to take out and keep in full force and effect, at no expense to the Landlord:

- (a) commercial general liability insurance, including Contractor's Liability coverage, Blanket Contractual Liability coverage, Broad Form Property Damage Endorsement, Contractor's Protective Liability, Completed Operations/Products Liability (Completed Operations/Products Liability coverage to be provided for at least two (2) years after final completion of work). Personal Injury, Premises Medical Payments, Interest of Employees as additional insureds, Incidental Medical Malpractice and Broad Form General Liability Endorsement, in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- (b) comprehensive automobile liability insurance, with a combined single limit of not less than One Million Dollars (\$1,000,000) covering all owned, non-owned or hired automobiles to be used by the contractor;
- (c) worker's compensation or similar insurance in form and amounts required by law; and
- (d) employers liability coverage, including All States Endorsement, in an amount not less than One Million Dollars (\$1,000,000).

7.3. POLICY REQUIREMENTS.

7.3.1. The company or companies writing any insurance which the Tenant is required to take out and maintain or cause to be taken out or maintained pursuant to subsections 7.1 and/or 7.2, as well as the form of such insurance, shall at all times be subject to the Landlord's approval, and any such company or companies shall be licensed to do business in the state in which the Premises are located and have a rating of at least A or better and a financial size rating of XII or larger from BEST'S KEY RATING GUIDE AND SUPPLEMENTAL SERVICE (or comparable rating from a comparable insurance rating service). Public liability and all-risk casualty insurance policies evidencing such insurance shall name the Landlord, Valley Management Group, Inc. and their designees (including, without limitation, any Mortgagee) as additional insureds, shall be primary and noncontributory, and shall also contain a provision by which the insurer agrees that such policy shall not be cancelled, materially changed, terminated or not renewed except after thirty (30) days' advance written notice to the Landlord and/or such designees. All such policies, or certificates thereof, shall be deposited with the Landlord promptly upon commencement of the Tenant's obligation to procure the same. None of the insurance which the Tenant is required to carry and maintain or cause to be carried or maintained pursuant to subsections 7.1 and/or 7.2 shall contain deductible provisions in excess of _____ Dollars (\$_____), unless approved in writing in advance by the Landlord. If the Tenant fails to perform any of its obligations pursuant to this section 7, the Landlord may perform the same and the cost thereof shall be payable by the Tenant as Additional Rent upon the Landlord's demand.

7.3.2. The Landlord and the Tenant agree that on January 1 of the second (2nd) full calendar year during the Term and on January 1 of every second (2nd) calendar year thereafter, the Landlord will have the right to request commercially reasonable changes in the character and/or amounts of insurance required to be carried by the Tenant pursuant to the provisions of this section 7, and the Tenant shall comply with any requested change in character and/or amount within thirty (30) days after the Landlord's request therefore.

7.4 INDEMNITIES BY TENANT AND LANDLORD.

7.4.1. Notwithstanding any policy or policies of insurance required of the Tenant, the Tenant, for itself and its successors and assigns, to the extent permitted by law, shall defend, indemnify and hold harmless the Landlord, the Landlord's agents, Valley Management Group, Inc. and any Mortgagee against and from any and all liability or claims of liability by any person asserted against or incurred by the Landlord and/or such agent or Mortgagee in

connection with (i) the use, occupancy, conduct, operation or management of the Premises by the Tenant or any of its agents, contractors, servants, employees, licensees, concessionaires, suppliers, materialmen or invitees during the Term; (ii) any work or thing whatsoever done or not done on the Premises during the Term; (iii) any breach or default in performing any of the obligations under the provisions of this Lease and/or applicable law by the Tenant or any of its agents, contractors, servants, employees, licensees, suppliers, materialmen or invitees during the Term; (iv) any negligent, intentionally tortuous or other act or omission by the Tenant or any of its agents, contractors, servants, employees, licensees, concessionaires, suppliers, materialmen or invitees during the Term; or (v) any injury to or death of any person or any damage to any property occurring upon the Premises (whether or not such event results from a condition existing before the execution of this Lease or resulting in the termination of this Lease), and from and against all costs, expenses and liabilities incurred in connection with any claim, action, demand, suit at law, in equity or before any administrative tribunal, arising in whole or in part by reason of any of the foregoing (including, by way of example rather than of limitation, the fees of attorneys, investigators and experts), all regardless of whether such claim, action or proceeding is asserted before or after the expiration of the Term or any earlier termination of this Lease.

7.4.2. If any such claim, action or proceeding is brought against the Landlord and/or any agent or Mortgagee, the Tenant, if requested by the Landlord or such agent or Mortgagee, and at the Tenant's expense, promptly shall resist or defend such claim, action or proceeding or cause it to be resisted or defended by an insurer. The Landlord, at its option, shall be entitled to participate in the selection of counsel, settlement and all other matters pertaining to such claim, action or proceeding, all of which shall be subject, in any case, to the prior written approval of the Landlord.

7.4.3. Subject to the provisions of subsection 7.8, the Landlord hereby agrees for itself and its successors and assigns to indemnify and save the Tenant harmless from and against any liability or claims of liability arising solely out of the gross negligence or intentional acts and omissions of the Landlord, its agents or employees.

7.5. LANDLORD NOT RESPONSIBLE FOR ACTS OF OTHERS. The Landlord shall not be responsible or liable to the Tenant, or to those claiming by, through or under the Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying or using space adjoining the Premises or any part of the premises adjacent to or connecting with the Premises or any other part of the Building or the Property, or for any loss or damage resulting to the Tenant (or those claiming by, through or under the Tenant) or its or their property, from (a) the breaking, bursting, stoppage or leaking of electrical cable and/or wires, or water, gas, sewer or steam pipes, (b) falling plaster, or (c) dampness, water, rain or snow in any part of the Building. To the maximum extent permitted by law, the Tenant agrees to use and occupy the Premises, and to use such other portions of the Property as the Tenant is herein given the right to use, at the Tenant's own risk.

7.6. LANDLORD'S INSURANCE. During the Term, the Landlord may maintain, in commercially reasonable amounts, (a) Insurance on the Property against loss or damage by fire and all of the hazards included in the extended coverage endorsement, (b) comprehensive liability and property damage insurance with respect to the Common Areas, against claims for personal injury or death, or property damage suffered by others occurring in, on or about the Property, and (c) any other insurance, in such form and in such amounts as are deemed reasonable by the Landlord, including, without limitation, rent continuation and business interruption insurance, theft insurance and workers' compensation, and boiler and machinery insurance. The costs and expenses of any and all insurance carried by the Landlord pursuant to the provisions of this subsection 6.6 shall be deemed a part of Operating Costs.

7.7. INCREASE IN INSURANCE PREMIUMS. The Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises, the Building or the Property which will contravene the Landlord's policies of hazard or liability insurance or which will prevent the Landlord from procuring such policies from companies acceptable to the Landlord. If anything done, omitted to be done, or suffered by the Tenant to be kept in, upon or about the Premises, the Building or the Property shall cause the rate of fire or other insurance on the Premises, the Building or the Property to be increased beyond the minimum rate from time to time applicable to the Premises or to any such other property for the use or uses made thereof, the Tenant shall pay to the Landlord, as Additional Rent, the amount of any such increase upon the Landlord's demand therefore.

7.8. WAIVER OF RIGHT OF RECOVERY. To the extent that any loss or damage to the Premises, the Building the Property, any building, structure or other tangible property, or resulting loss of income, are covered by

insurance, neither party shall be liable to the other party or to any insurance company insuring the other party (by way of subrogation or otherwise), even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees; provided, however, that if, by reason of the foregoing waiver, either party shall be unable to obtain any such insurance, then such waiver shall be deemed not to have been made by such party. Notwithstanding the foregoing, in the event that such waiver of subrogation shall not be available to the Tenant except through the payment of additional premium therefore, the Tenant shall pay such additional premium.

8. UTILITIES.

8.1. UTILITIES PROVIDED BY TENANT. The Tenant shall; (i) make application in the Tenant's own name for all utilities not provided by the Landlord, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities directly from, and pay for the same when due directly to the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, gas, water, sewer, steam, fire protection, telephone, Ethernet and other communication and alarm services, and all taxes or other charges thereon. The Tenant shall install and connect all equipment and lines required to supply such utilities to the extent not already available at or serving the Premises, or at the Landlord's option shall repair, alter or replace any such existing items. The Tenant shall maintain, repair and replace all such items, operate the same, and keep the same in good working order and condition. The Tenant shall not install any equipment or fixtures, or use the same, so as to exceed the safe and lawful capacity of any utility equipment or lines serving the same. The installation, alteration, replacement and connection of any utility equipment and lines shall be subject to the requirements for alterations of the Premises set forth in subsection 10.3. The Tenant shall ensure that all HVAC equipment is installed and operated at all times in a manner to prevent roof leaks, damage, and noise due to vibrations or improper installation, maintenance or operation. The Tenant shall at all times keep the Premises sufficiently heated or air conditioned such that heated or chilled air is not drawn to or from the Premises.

8.2 UTILITIES PROVIDED BY LANDLORD. The Landlord reserves the right from time to time to provide any or all utilities to the Premises. In such case, the Tenant shall pay such charges as the Landlord may establish from time to time, which the Landlord may determine on a per-square-foot basis applicable to the square footage of the Premises as a monthly charge, or which the Landlord may determine based on the quantity of utilities used or consumed at the Premises on a monthly or other regular basis. Such charges shall not exceed the rates, if any, that the Landlord is permitted to charge pursuant to applicable law. In addition, if the Landlord establishes charges based on consumption or use: (i) such charges shall not be in excess of the rate that the Tenant would be charged directly by the utility company serving the general area in which the Property is located, (ii) if the Premises are separately metered for such utilities, the Tenant shall pay for amounts of such utilities based on such meters, and (iii) if the Premises are not separately metered for such utilities, the Tenant shall pay for amounts of such utilities based on the reasonable estimates of the Landlord's engineer or consultant, or, at the Landlord's election, shall pay the Landlord's cost for installing separate meters, and shall thereafter pay based on such meters. Except to the extent prohibited by applicable law, the Landlord may also impose a reasonable administrative charge to cover meter-reading and other overhead expenses. All such charges shall be payable as Additional Rent ten (10) days after billed by the Landlord. The Landlord may discontinue providing any utilities then being provided by the Landlord upon fifteen (15) days' advance written notice to the Tenant (in which case the Tenant shall obtain such utilities directly from the applicable utility company). If the Landlord supplies ventilated air or chilled or heated air or water for air-conditioning or heating of the Premises, the Landlord may nevertheless require that the Tenant, at the Tenant's expense, maintain, repair and replace any portion of the systems and equipment therefore exclusively serving the Premises, including without limitation any air handling equipment, ductwork and lines. Tenant shall pay for its share of the electricity, which shall be at two times Tenant's proportionate share, which shall be _____ percent (_____%).

8.3 INTERRUPTIONS. The Landlord does not warrant that any utilities provided by any utility company or the Landlord will be free from shortages, failures, variations or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, governmental requirements or requests, or other causes beyond the Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of the Tenant's use and possession of the Premises or any part thereof, or render the Landlord liable to the Tenant for abatement of Rent, or relieve the Tenant from performance of the Tenant's obligations under this

Lease. The Landlord in no event shall be liable for damages by reason of such shortage, failure or variation, including without limitation loss of profits, business interruption or other incidental or consequential damages.

9. REPAIRS AND MAINTENANCE.

9.1 LANDLORD'S DUTY TO MAINTAIN STRUCTURE. The Landlord shall maintain or cause to be maintained in good operating condition the structure of the Building and shall be responsible for structural repairs to the exterior walls, load bearing elements, foundations, roofs, structural columns and structural floors with respect thereto, and the Landlord shall make all required repairs thereto, provided, however, that if the necessity for such repairs shall have arisen, in whole or in part, from the negligence or willful acts or omissions of the Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors, or by any unusual use of the Premises by the Tenant, then the Landlord may collect the cost of such repairs, as Additional Rent, upon demand.

9.2 TENANT'S DUTY TO MAINTAIN PREMISES.

9.2.1 Except as provided in subsection 9.1, the Tenant shall keep and maintain the Premises and all fixtures, equipment, light fixtures and bulbs, doors (including, but not limited to, entrance doors, patio doors and balcony doors), door hardware, carpeting, floor and wall tiles, window and door glass, security systems, ventilation fans, window and door treatments (including, but not limited to, blinds, shades, screens and curtains), plumbing fixtures and drains, ceiling tiles and grids, counters, shelving, light switches, base cove and moldings, locks, bathroom and kitchen equipment and appliances (including, but not limited to, tissue dispensers, handrails, mirrors, cabinets, disposals, dishwashers, sinks, faucets, drinking fountains and water purifiers) located therein in a good, safe, clean and sanitary condition consistent with the operation of a first-class office building, and in compliance with all legal requirements with respect thereto. Except as provided in subsection 9.1, all injury, breakage and damage to the Premises (and to any other part of the Building and/or the Property, if caused by any act or omission of the Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors) shall be repaired or replaced by the Tenant at its expense. The Tenant shall keep and maintain all pipes and conduits and all mechanical, electrical and plumbing systems contained within the Premises in good, safe, clean and sanitary condition, shall make all required repairs thereto, shall maintain a contract with a licensed and qualified contractor to provide semiannual preventive maintenance for the HVAC system and shall provide evidence from time to time that such contract is in full force and effect. In the event the Landlord agrees, upon request by the Tenant, to repair or maintain any of the items listed in this subsection 9.2.1, the Tenant shall pay all costs and expenses in connection with the Landlord's repair or maintenance services, including, but not limited to, wages, materials and mileage reimbursement.

9.2.2. The Tenant shall keep the Premises in a neat, clean and orderly appearance to a standard of cleanliness and hygiene reasonably satisfactory to the Landlord. The Tenant also shall maintain the Premises free of all pests. The Tenant shall (a) surrender the Premises at the expiration of the Term or at such other time as the Tenant may vacate the Premises in as good condition as when received, except for (i) ordinary wear and tear, (ii) damage by casualty (other than such damage by casualty which is caused, in whole or in part, by the negligence or willful act or omissions of the Tenant, its agents, officers, employees, licensees, invitees or contractors and which is not wholly covered by the Landlord's hazard insurance policy), or (iii) acts of God, and (b) take care not to overload the electrical wiring serving the Premises or located within the Premises.

10. IMPROVEMENTS

10.1. BY LANDLORD. The Landlord shall make or cause to be made those improvements to the Premises set forth in Exhibit " " hereto.

10.2. LANDLORD APPROVAL. The Tenant shall not make any alteration, improvement or addition (collectively "ALTERATIONS") to the Premises without first (a) presenting to the Landlord plans, drawn and sealed by a licensed architect or space planner of a reasonable scale and amount of detail to clarify the work to be done, and specifications, therefore and obtaining the Landlord's written consent thereto (which shall not, in the case of (i) non-structural interior Alterations, or (ii) Alterations which would not affect any electrical, mechanical, plumbing or other Building systems, be unreasonably withheld so long as such Alterations will not violate applicable law or the provisions of this Lease, or impair the value of the Premises, the Building or the rest of the Property or be visible from the exterior of the Building) and (b) obtaining any and all governmental permits or approvals for such

Alterations, which are required by applicable law; provided, that (i) any and all contractors or workmen performing such Alterations must first be approved by the Landlord, (ii) all work is performed in a good and workmanlike manner in compliance with all applicable codes, rules, regulations and ordinances, and (iii) all persons, contractors, tradesman or workman performing such improvements or alteration work shall be a licensed tradesman for the type of work they are doing on the property, evidence of which shall be submitted to the Landlord prior to the commencement of the work and (iv) the Tenant shall restore the Premises to its condition immediately before such Alterations were made, free of Tenants fixtures and furniture by not later than the date on which the Tenant vacates the Premises or the Termination Date, whichever is earlier, with the exception of all Landlord approved partitions. The Tenant, at its own expense, shall repair promptly any damage to the Building caused by bringing therein any property for its use, or by the installation or removal of such property, regardless of fault or by whom such damage is caused. As a further condition for approving any such Alterations, the Landlord shall have the right to require the Tenant and/or its contractor(s) to execute a copy of the Landlord's "Contractor Policies and Procedures."

10.3 ACCEPTANCE OF POSSESSION. The Tenant shall for all purposes of this Lease be deemed to have accepted the Premises and the Building and to have acknowledged them to be in the condition called for hereunder.

10.4 FIXTURES. Any and all improvements, repairs, alterations and all other property attached to, used in connection with or otherwise installed within the Premises by the Landlord or the Tenant shall become the Landlord's property, without payment therefore by the Landlord, immediately on the completion of their installation; provided that any machinery, equipment or fixtures installed by the Tenant and used in the conduct of the Tenant's trade or business (rather than to service the Premises, the Building or the Property generally) and not part of the Building Service Equipment shall remain the Tenant's property; but further provided that if any leasehold improvements made by the Tenant replaced any part of the Premises, such leasehold improvements that replaced any part of the Premises shall be and remain the Landlord's property.

11. LANDLORD'S RIGHT OF ENTRY. The Landlord and its authorized representatives shall be entitled to enter the Premises at any reasonable time during the Tenant's usual business hours, after giving the Tenant at least twenty-four (24) hours' oral or written notice thereof, (a) to inspect the Premises, (b) to exhibit the Premises (i) to any existing or prospective purchaser or Mortgagee thereof, or (ii) to any prospective tenant thereof, provided that in doing so the Landlord and each such invitee observes all reasonable safety standards and procedures which the Tenant may require, and (c) to make any repair thereto and/or to take any other action therein which the Landlord is permitted to take by this Lease or applicable law (provided, that in any situation in which, due to an emergency or otherwise, the Landlord reasonably believes the physical condition of the Premises, the Building or any part of the Property would be unreasonably jeopardized unless the Landlord were to take such action immediately, the Landlord shall not be required to give such notice to the Tenant and may enter the same at any time). Nothing in this section shall be deemed to impose any duty on the Landlord to make any such repair or take any such action, and the Landlord's performance thereof shall not constitute a waiver of the Landlord's right hereunder to have the Tenant perform such work. The Landlord shall not in any event be liable to the Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by the Tenant by reason of the making of such repairs, the taking of such action or the bringing of materials, supplies and equipment upon the Premises during the course thereof, and the Tenant's obligations under this Lease shall not be affected thereby.

12. DAMAGE OR DESTRUCTION.

12.1. OPTION TO TERMINATE. If during the Term either the Premises or any portion of the Building or the Property are substantially (meaning more than 33% of the floor area of either) damaged or destroyed by fire or other casualty, the Landlord shall have the option (which it may exercise by giving written notice thereof to the Tenant within sixty (60) days after the date on which such damage or destruction occurs) to terminate this Lease as of the date specified in such notice (which date shall not be earlier than the thirtieth (30th) day after such notice is given). On such termination, the Tenant shall pay to the Landlord all Base Rent, Additional Rent and other sums and charges payable by the Tenant hereunder and accrued through such date (as justly apportioned to the date of such termination). If the Landlord does not terminate this Lease pursuant to this section, the Landlord shall restore the Premises as soon thereafter as is reasonably possible to their condition on the date of completion of the Landlord's Work, taking into account any delay experienced by the Landlord in recovering the proceeds of any

insurance policy payable on account of such damage or destruction and in obtaining any necessary permits. Until the Premises are so repaired, the Base Rent (and each installment thereof) and the Additional Rent shall abate in proportion to the floor area of so much, if any, of the Premises as is rendered substantially unusable by the Tenant by such damage or destruction.

12.2. NO TERMINATION OF LEASE. Except as is otherwise expressly permitted by subsection 12.1. no total or partial (meaning less than 33% of the floor area) damage to or destruction of any or all of the Premises shall entitle either party hereto to surrender or terminate this Lease, or shall relieve the Tenant from its liability hereunder to pay in full the Base Rent, any Additional Rent and all other sums and charges which are otherwise payable by the Tenant hereunder, or from any of its other obligations hereunder, and the Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Premises, or to have any suspension, diminution, abatement or reduction of the Base Rent or any Additional Rent or other sum payable by the Tenant hereunder.

13. CONDEMNATION.

13.1. TERMINATION OF LEASE. If any or all of the Premises and/or of that portion of the Property underlying the Premises is taken by the exercise of any power of eminent domain or is conveyed to or at the direction of any governmental entity under a threat of any such taking (each of which is herein referred to as a "CONDEMNATION"), this Lease shall terminate on the date on which the title to so much of the Premises as is the subject of such Condemnation vests in the condemning authority, unless the parties hereto otherwise agree in writing. If all or any substantial portion of the Building or the Property other than that portion thereof underlying the Premises is taken or conveyed in a Condemnation, the Landlord shall be entitled, by giving written notice thereof to the Tenant, to terminate this Lease on the date on which the title to so much thereof as is the subject of such Condemnation vests in the condemning authority. If this Lease is not terminated pursuant to this subsection, the Landlord shall restore any of the Premises damaged by such Condemnation substantially to its condition immediately before such Condemnation, as soon after the Landlord's receipt of the proceeds of such Condemnation as is reasonably possible under the circumstances.

14. ASSIGNMENT AND SUBLETTING.

14.1. LANDLORD'S CONSENT REQUIRED. The Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease departments therein, nor otherwise permit any other person to occupy or use any portion of the Premises (collectively, a "TRANSFER"), without in each instance first obtaining the written consent of the Landlord, which consent will not be unreasonably withheld or delayed, provided that, among other things as reasonably required by Landlord, the net worth and financial condition of the proposed assignee or transferee is the same or better than that of the Tenant on the effective date hereof, in Landlord's sole discretion. This prohibition includes any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of the Tenant's corporate or proprietary structure (including, without limitation, the transfer of partnership interests, the creation of additional partnership interests or the transfer of corporate shares or beneficial interests), or an assignment or subletting to or by a receiver or trustee in any federal or state bankruptcy, insolvency or other similar proceedings. Consent by the Landlord to any assignment, subletting, licensing or other transfer shall not (i) constitute a waiver of the requirement for such consent to any subsequent assignment, subletting, licensing or other Transfer, (ii) relieve the Tenant from its duties, responsibilities and obligations under the Lease, or (iii) relieve any guarantor of this Lease from such guarantor's obligations under its guaranty agreement.

14.2. TRANSFER, ISSUANCE OF CORPORATE SHARES; CREATION OF PARTNERSHIP INTERESTS. If the Tenant (or any general partner of the Tenant, or any guarantor of the Tenant) is a corporation (other than a corporation the outstanding voting stock of which is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934), or a general or limited partnership or a limited liability company, the Tenant shall give the Landlord notice with fifteen (15) days following the date upon which (i) additional voting stock is issued by the Tenant or by any such general partner or guarantor or member of Tenant, or any part or all of the corporate shares of the Tenant or any such general partner or guarantor or member is Transferred, or (ii) additional partnership or member interests are created by the Tenant or by any such guarantor, general partner or member, or any part or all of the partnership or member interests of the Tenant or of any such guarantor are

Transferred, by sale, assignment, pledge, bequest, inheritance, operation of law or otherwise. In the event of a Transfer and whether or not the Tenant has given such notice, the Landlord may elect, in the Landlord's sole discretion, to deem such Transfer to be an Event of Default hereunder, thereby entitling the Landlord to all of the rights and remedies set forth in section 17.

14.3. ACCEPTANCE OF RENT FROM TRANSFEREE. The acceptance by the Landlord of the payment of Rent from any person following any act, assignment or other Transfer prohibited by this section shall not constitute a consent to such act, assignment or other Transfer, nor shall the same be deemed to be a waiver of any right or remedy of the Landlord's hereunder.

14.4. CONDITIONS OF CONSENT.

14.4.1. If the Tenant receives consent to a Transfer under subsection 14.1 above, then, in addition to any other terms and conditions imposed by the Landlord in the giving of such consent, the Tenant and the transferee shall execute and deliver, on demand, an agreement prepared by the Landlord providing that the transferee shall be directly bound to the Landlord to perform all obligations of the Tenant hereunder including, without limitation, the obligation to pay all Rent and other amounts provided for herein; acknowledging and agreeing that there shall be no subsequent Transfer of this Lease or of the Premises or of any interest therein without the prior consent of the Landlord pursuant to subsection 14.1 above; acknowledging that the Tenant as originally named herein shall remain fully liable for all obligations of the tenant hereunder, including the obligation to pay all Rent provided herein and including any and all obligations arising out of any subsequent amendments to this Lease made between the Landlord and the transferee (whether or not consented to by the Tenant), jointly and severally with the transferee; and such other provisions as the Landlord shall require.

14.4.2. All costs incurred by the Landlord in connection with any request for consent to a Transfer, including costs of investigation and the fees of the Landlord's counsel, shall be paid by the Tenant on demand as a further condition of any consent which may be given.

14.5. PROFITS FROM USE OR TRANSFER.

14.5.1. Neither the Tenant nor any other person having an interest in the use, occupancy or other utilization of space in the Premises shall enter into any lease, sublease, license, concession or other Transfer which provides for rent or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived from the Premises, and any such purported lease, sublease, license, concession or other Transfer shall be absolutely void and ineffective as a conveyance or creation of any right or interest in the possession, use, occupancy or utilization of any part of the Premises.

14.5.2. The Tenant agrees that in the event of a Transfer, the Tenant shall pay the Landlord, within ten (10) days after receipt thereof, one hundred percent (100%) of the excess of (i) any and all consideration, money or thing of value, however characterized, received by the Tenant or payable to the Tenant in connection with or arising out of such Transfer, over (ii) all amounts otherwise payable by the Tenant to the Landlord pursuant to this Lease.

15. RULES AND REGULATIONS. The Landlord shall have the right to prescribe, at its sole discretion, reasonable rules and regulations (the "RULES AND REGULATIONS") having uniform applicability to all tenants of the Property (subject to their respective leases) and governing their use and enjoyment of the Property; provided, that the Rules and Regulations shall not materially interfere with the Tenant's use and enjoyment of the Premises in accordance with this Lease for the purposes listed in subsection 6.1. The Rules and Regulations may govern, without limitation, the use of sound apparatus, noise or vibrations emanating from machinery or equipment, obnoxious fumes and/or odors, the parking of vehicles, lighting and storage and disposal of trash and garbage. The Tenant shall adhere to the Rules and Regulations and shall cause its agents, employees, invitees, visitors and guests to do so. A copy of the Rules and Regulations in effect on the date hereof is attached hereto as EXHIBIT D. The Landlord shall have the right to amend the Rules and Regulations from time to time.

16. SUBORDINATION AND ATTORNMENT.

16.1. SUBORDINATION.

16.1.1. Unless a Mortgagee otherwise shall elect as provided in subsection 15.2, the Tenant's rights under this Lease are and shall remain subject and subordinate to the operation and effect of any mortgage, deed of trust or other security instrument constituting a lien upon the Premises, and/or the Property, whether the same shall be in existence on the date hereof or created hereafter (any such lease, mortgage, deed of trust or other security instrument being referred to herein as a "MORTGAGE," and the party or parties having the benefit of the same, whether as beneficiary, trustee or noteholder, being referred to hereinafter collectively as "MORTGAGEE"). The Tenant's acknowledgment and agreement of subordination as provided for in this section is self-operative and no further instrument of subordination shall be required; however, the Tenant shall execute, within ten (10) days after request therefore, a document providing for such further assurance thereof and for such other matters as shall be requisite or as may be requested from time to time by the Landlord or any Mortgagee.

16.1.2. The Landlord hereby directs the Tenant, upon (i) the occurrence of any event of default by the Landlord, as mortgagor under any Mortgage, (ii) the receipt by the Tenant of a notice of the occurrence of such event of default under such Mortgage from the Landlord or such Mortgagee, or (iii) a direction by the Mortgagee under such Mortgage to the Tenant to pay all Rent thereafter to such Mortgagee, to make such payment to such Mortgagee, and the Landlord agrees that in the event that the Tenant makes such payments to such Mortgagee, as aforesaid, the Tenant shall not be liable to the Landlord for the same.

16.2. MORTGAGEE'S UNILATERAL SUBORDINATION. If a Mortgagee shall so elect by notice to the Tenant or by the recording of a unilateral declaration of subordination, this Lease and the Tenant's rights hereunder shall be superior and prior in right to the Mortgage of which such Mortgagee has the benefit, with the same force and effect as if this Lease had been executed, delivered and recorded prior to the execution, delivery and recording of such Mortgage, subject, nevertheless, to such conditions as may be set forth in any such notice or declaration.

16.3. ATTORNMENT. If any Person shall succeed to all or any part of the Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise and if such successor-in-interest requests or requires, the Tenant shall attorn to such successor-in-interest and shall execute within ten (10) days after receipt thereof an agreement in confirmation of such attornment in a form as may be reasonably requested by such successor-in-interest. Failure to respond within such (10) day period shall be deemed to be a confirmation by the Tenant of the facts and matters set forth therein.

17. DEFAULTS AND REMEDIES.

17.1. "EVENT OF DEFAULT" DEFINED. Any one or more of the following events shall constitute a default under the terms of this Lease ("EVENT OF DEFAULT"):

- (a) the failure of the Tenant to pay any Rent or other sum of money due hereunder to the Landlord or any other person, within five (5) days after the same is due;
- (b) the sale of the Tenant's interest in the Premises under attachment, execution or similar legal process without the Landlord's prior written approval;
- (c) the filing of a petition proposing the adjudication of the Tenant as a bankrupt or insolvent, or the reorganization of the Tenant, or an arrangement by the Tenant with its creditors, whether pursuant to the Federal Bankruptcy Act or any similar federal or state proceeding, unless such petition is filed by a party other than the Tenant and is withdrawn or dismissed within sixty (60) days after the date of its filing;
- (d) the admission in writing by the Tenant of its inability to pay its debts when due;
- (e) the appointment of a receiver or trustee for the business or property of the Tenant, unless such appointment is vacated within sixty (60) days of its entry;
- (f) the making by the Tenant of an assignment for the benefit of its creditors;
- (g) a default by the Tenant in the performance or observance of any covenant or agreement of this Lease to be performed or observed by the Tenant (other than as set forth in clauses (a) through (f) above), which default is not cured within thirty (30) days after the giving of written notice thereof by the Landlord, unless such default is of

such nature that it cannot be cured within such 30-day period, in which event an Event of Default shall not be deemed to have occurred if the Tenant institutes a cure within the 30-day period and thereafter diligently and continuously prosecutes the curing of the same until completion, but in no event shall such cure period exceed ninety (90) days; provided, however, that if the Tenant defaults in the performance of any such covenant or agreement more than two (2) times during the Term, then notwithstanding that such defaults have each been cured by the Tenant, any further defaults shall be deemed an Event of Default without the ability to cure; or

(h) the vacating or abandonment of the Premises by the Tenant at any time during the Term.

17.2 LANDLORD'S REMEDIES. Upon the occurrence of an Event of Default, the Landlord, without notice to the Tenant in any instance (except where expressly provided for below), may do any one or more of the following:

(a) perform, on behalf and at the expense of the Tenant, any obligation of the Tenant under this Lease which the Tenant has failed to perform beyond any applicable grace or cure periods and of which the Landlord shall have given the Tenant notice (except in an emergency situation in which no notice is required), the cost of which performance by the Landlord, together with interest thereon at the rate of fifteen percent (15%) per annum from the date of such expenditure, shall be deemed Additional Rent and shall be payable by the Tenant to the Landlord as otherwise set forth herein;

(b) elect to terminate this Lease and the tenancy created hereby by giving notice of such election to the Tenant without any right on the part of the Tenant to save the forfeiture by payment of any sum due or by other performance of condition, term, agreement or covenant broken, or elect to terminate the Tenant's possessory rights and all other rights of the Tenant without terminating this Lease, and in either event, at any time thereafter without notice or demand and without any liability whatsoever, re-enter the Premises by force, summary proceedings or otherwise, and remove the Tenant and all other persons and property from the Premises, and store such property in a public warehouse or elsewhere at the cost and for the account of the Tenant without resort to legal process and without the Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby;

(c) accelerate the Rent and any other charges, whether or not stated to be Additional Rent, for the entire balance of the Term, or any part of such Rent, and any costs, whether chargeable to the Landlord or the Tenant, as if by the terms of this Lease the balance of the Rent and other charges and expenses were on that date payable in advance.

(d) cause an attorney for the Landlord to proceed in any competent court for judgment in ejectment against the Tenant and all persons claiming under the Tenant for the recovery by the Landlord of possession of the Premises, and if for any reason after such action has been commenced it is canceled or suspended and possession of the Premises remains in or is restored to the Tenant, the Landlord shall have the right upon any subsequent default or upon the expiration or termination of this Lease, or any renewal or extension hereof, to bring one or more actions to recover possession of the Premises; and

(e) exercise any other legal and/or equitable right or remedy which it may have at law or in equity, including rights of specific performance and/or injunctive relief, where appropriate.

In any action for possession of the Premises or for monetary damages, including Termination Damages and Liquidated Damages, or for the recovery of Rent due for the balance of the Term, the Landlord may cause to be filed in such action an affidavit setting forth the facts necessary to authorize the entry of judgment. If a true copy of this Lease (and of the truth of the copy, such affidavit shall be sufficient proof) must be filed in such action, it shall not be necessary to file the original, notwithstanding any law, rule of court, custom or practice to the contrary.

17.3. DAMAGES

(a) If this Lease is terminated by the Landlord pursuant to subsection 17.2, the Tenant nevertheless shall remain liable for any Rent and damages which may be due or sustained prior to such termination, as well as all reasonable costs, fees and expenses, including, without limitation, sheriffs' or other officers' commissions whether chargeable to the Landlord or the Tenant, watchmen's wages, brokers' and attorneys' fees, and repair and renovation costs incurred by the Landlord in pursuant of its remedies hereunder, and/or in connection with any

bankruptcy proceedings of the Tenant, and/or in connection with renting the Premises to others from time to time (all such Rent, damages, costs, fees and expenses being referred to herein as "TERMINATION DAMAGES"), plus additional damages for all Rent treated as in arrears ("LIQUIDATED DAMAGES"). At the election of the Landlord, Termination Damages shall be an amount equal to either.

(i) the Rent which, but for the termination of this Lease, would have become due during the remainder of the Term, less the amount or amounts of rent, if any, which the Landlord receives during such period from others to whom the Premises may be rented (other than any additional rent received by the Landlord as a result of any failure of such other person to perform any of its obligations to the Landlord), in which case Termination Damages shall be computed and payable in monthly installments, in advance, on the first business day of each calendar month following the termination of this Lease and shall continue until the date on which the Term would have expired but for such termination, and any action or suit brought to collect any such Termination Damages for any month shall not in any manner prejudice the right of the Landlord to collect any Termination Damages for any subsequent months by similar proceeding; or

(ii) the present worth (as of the date of such termination) of the Rent which, but for the termination of this Lease, would have become due during the remainder of the Term, less the fair rental value of the Premises, as determined by an independent real estate appraiser or broker selected by the Landlord, in which case such Termination Damages shall be payable to the Landlord in one lump sum on demand, and shall bear interest at the rate of fifteen percent (15%) per annum. "Present worth" shall be computed by discounting such amount to present worth at a rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank.

(b) Notwithstanding anything to the contrary set forth in this subsection 17.3, in the event (i) the Landlord must initiate legal action to enforce any one or more of the provisions of this Lease against the Tenant, its successors or assigns, or (ii) the Landlord must consult with and/or engage an attorney(s) in order (A) to enforce any one or more of the provisions of this Lease against the Tenant, its successors or assigns, or (B) in connection with any bankruptcy proceeding of the Tenant, whether or not such consultation and/or engagement results in the initiation of any judicial action or termination of this Lease, then and in any of such events, the Tenant, its successors and assigns, undertakes and agrees to pay any and all reasonable costs incurred by the Landlord in connection therewith, including, by way of illustration and not of limitation, all reasonable attorneys' fees (inclusive of consultation fees, research costs and correspondence fees), court costs (if awarded post-judgment) and any similar professional fees or costs associated therewith.

17.4. WAIVER OF JURY TRIAL. Each party hereto hereby waives any right which it may otherwise have at law or in equity to a trial by jury in connection with any suit or proceeding at law or in equity brought by the other against the waiving party or which otherwise relates to this lease, as a result of an event of default or otherwise. The Tenant further agrees that in the event the Landlord commences any summary proceeding for nonpayment of rent or possession of the Premises, the Tenant will not, and hereby waives, all right to interpose any counterclaim of whatever nature in any such proceeding.

17.5. LANDLORD'S SECURITY INTEREST. In addition to any lien for Rent available to the Landlord, the Landlord shall have, and the Tenant hereby grants to the Landlord, a continuing security interest for all Rent and other sums of money becoming due hereunder from the Tenant, upon all the Tenant's accounts receivable, inventory, equipment and all other personal property located on the Premises. If an Event of Default occurs, the Landlord shall have, in addition to any other remedies provided herein or by law, all of the rights and remedies afforded to secured parties under the Uniform Commercial Code, as codified in applicable state law ("the U.C.C."), including but not limited to (a) the right to sell the Tenant's said property at public or private sale upon ten (10) days' notice to the Tenant, and (b) the right to take possession of such property without resort to judicial process in accordance with applicable provisions of the U.C.C. The Tenant, on its receipt of a written request therefore from the Landlord, shall execute such financing statements and other instruments as are necessary or desirable, in the Landlord's judgment, to perfect such security interest.

17.6 CONFESSIOIN OF JUDGMENT. If any Event of Default occurs which is not cured within any applicable grace period provided herein, the Tenant and any guarantor of any of the Tenant's obligations hereunder hereby authorizes and empowers any attorney of any court of record within the United States to appear for the Tenant and any such guarantor or any one or more of them in any court in one or more proceedings or before any clerk

thereof, and confess judgment against the Tenant and each such guarantor without prior notice, or opportunity for prior hearing, in favor of the Landlord for all unpaid Rent and other sums due hereunder, hereby waiving and releasing, to the extent permitted by law, all errors and all rights of exemption, appeal, stay of execution, inquisition and extension upon any levy on real estate or personal property to which the Tenant or any such guarantor may otherwise be entitled under the laws of the United States or of any state or possession of the United States now in force or which may hereafter be passed. Such authority and power may be exercised on one or more occasions, from time to time, in the same or different jurisdictions, as often as the Landlord deems necessary or desirable, for all of which this Lease shall be a sufficient warrant.

18. ESTOPPEL CERTIFICATE. The Tenant shall, without charge, at any time and from time to time, within ten (10) days after receipt of request therefore from the landlord, execute, acknowledge and deliver to the Landlord, and to such Mortgagee or other party as may be designated by the Landlord, a written estoppel certificate in form and substance as may be requested from time to time by the Landlord, the other party or any Mortgagee, certifying to the other party, any Mortgagee, any purchaser of Landlord's interest in all or any part of the Property, or any other person or entity designated by the other party, as of the date of such estoppel certificate, the following: (a) whether the Tenant is in possession of the Property; (b) whether this Lease is in full force and effect; (c) whether there are any amendments to this Lease, and if so, specifying such amendments; (d) whether there are any then-existing setoffs or defenses against the enforcement of any rights hereunder, and if so, specifying such matters in detail; (e) the dates, if any, to which any rent or other sums due hereunder have been paid in advance and the amount of any security deposit held by the Landlord; (f) that the Tenant has no knowledge of any then-existing defaults of the Landlord under this Lease, or if there are such defaults, specifying them in detail; (g) that the Tenant has no knowledge of any event having occurred that authorized the termination of this Lease by the Tenant, or if such event has occurred, specifying it in detail; (h) the address to which notices to the Tenant should be sent; and (i) any and all other matters reasonably requested by the Landlord, any Mortgagee and/or any other person or entity designed by the Landlord. Any such estoppel certificate may be relied upon by the person or entity to whom it is directed or by any other person or entity who could reasonably be expected to rely on it in the normal course of business. The failure of the Tenant to execute, acknowledge and deliver such a certificate in accordance with this section within fifteen (15) days after a request therefore by the Landlord shall constitute an acknowledgment by the Tenant, which may be relied on by any person or entity who would be entitled to rely upon any such certificate, that such certificate as submitted by the requesting party to the other party is true and correct, and the requesting party is hereby authorized to so certify.

19. QUIET ENJOYMENT. The Landlord hereby warrants that, so long as all of the Tenant's obligations hereunder are timely performed, the Tenant will have during the Term quiet and peaceful possession of the Premises and enjoyment of such rights as the Tenant may hold hereunder to use the Common Areas, except if and to the extent that such possession and use are terminated pursuant to this Lease. The Tenant hereby acknowledges that it has examined the Premises, the title thereto, the zoning thereof, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state, without restriction, representation, covenant or warranty, express or implied, in fact or at law, by the Landlord or any other person, and without recourse to the Landlord, as to the title thereto, any encumbrances thereon, any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Premises may be put.

20. NOTICES. Except as may be otherwise provided in this Lease, any notice, demand, consent, approval, request or other communication or document to be provided hereunder to the Landlord or the Tenant (a) shall be in writing, and (b) shall be deemed to have been provided (i) two (2) days following the date sent as certified mail in the United States mails, postage prepaid, return receipt requested, (ii) on the day following the date it is deposited prior to the close of business with FedEx or another national courier service or (iii) on the date of hand delivery (if such party's receipt thereof is acknowledged in writing), in each case to the address of such party set forth hereinbelow or to such other address as such party may designate from time to time by notice to each other party hereto.

If to the Landlord, notice shall be sent to:

All rent and other payments shall be sent to:

If to the Tenant, notice shall be sent to:

21. GENERAL

21.1 EFFECTIVENESS. This Lease shall become effective on and only on its execution and delivery by each party hereto.

21.2 COMPLETE UNDERSTANDING. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements and agreements, either written or oral, between the parties hereto as to the same.

21.3 AMENDMENT. This Lease may be amended by and only by an instrument executed and delivered by each party hereto, provided, however, that the Landlord shall have the right at any time, and from time to time, during the Term unilaterally to amend the provisions of this Lease if the Landlord (or any of its partners) is advised by its counsel that all or any portion of the monies paid, directly or indirectly, by the Tenant to the Landlord (and/or its partners) hereunder are, or may be deemed to be, unrelated business income within the meaning of the United States Internal Revenue Code or regulations issued thereunder, and the Tenant agrees that it will execute all documents or instruments necessary to effect such amendment or amendments, provided that no such amendment shall result in the Tenant having to pay in the aggregate a larger sum of money on account of its occupancy of the Premises under the terms of this Lease as so amended, and provided further that no such amendment or amendments shall result in the Tenant receiving under the provisions of this Lease less services than it is entitled to receive, nor services of a lesser quality. Furthermore, the Tenant agrees not to take any steps or actions knowingly which may jeopardize the Landlord's (and/or its partners') tax-exempt status.

21.4 WAIVER. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right. Without limiting the generality of the foregoing provisions of this subsection, the Landlord's receipt or acceptance of any Base Rent, Additional Rent or other sum from the Tenant or any other person shall not be deemed a waiver of the Landlord's right to enforce any of its rights hereunder on account of any default by the Tenant in performing its obligations hereunder.

21.5 APPLICABLE LAW. This Lease shall be given effect and construed by application of the laws of the state in which the Premises are located, and any action or proceeding arising hereunder shall be brought in the courts of the state in which the Premises are located; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it may be brought only in the United States District Court for the state in which the Premises are located or any successor federal court having original jurisdiction.

21.6 COMMISSIONS. The parties hereto hereby acknowledge and agree that, in connection with the leasing of the Premises hereunder, neither party has used the services of any real estate broker. Each party hereto hereby represents and warrants to the other that, in connection with such leasing, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each party hereto shall indemnify and hold harmless the other against and

from any inaccuracy in such party's representation.

21.7 LANDLORD'S LIABILITY. No Person holding the Landlord's interest hereunder (whether or not such Person is named as the "Landlord" herein) shall have any liability hereunder after such Person ceases to hold such interest, except for any such liability accruing while such Person holds such interest. No Mortgagee not in possession of the Premises shall have any liability hereunder. Neither the Landlord nor any principal of the Landlord, whether disclosed or undisclosed, shall have any personal liability under this Lease. If the Landlord defaults in performing any of its obligations hereunder or otherwise, the Tenant shall look solely to the Landlord's equity, interest and rights in the Property to satisfy the Tenant's remedies on account thereof.

21.8 DISCLAIMER OF PARTNERSHIP STATUS. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

21.9. REMEDIES CUMULATIVE. No reference to any specific right or remedy shall preclude the Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by the Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by the Landlord of any breach by the Tenant under this Lease or of any breach by any other tenant under any other lease of any portion of the Building shall affect or alter this Lease in any way whatsoever.

21.10. SEVERABILITY. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

21.11. AUTHORITY. If the Tenant is a corporation, partnership, limited liability company or similar entity, the person executing this Lease on behalf of the Tenant represents and warrants that (a) the Tenant is duly organized and validly existing and (b) this Lease (i) has been authorized by all necessary parties, (ii) is validly executed by an authorized officer or agent of the Tenant and (iii) is binding upon and enforceable against the Tenant in accordance with its terms.

21.12. JOINT AND SEVERAL LIABILITY. If the Tenant shall be one or more individuals, corporations or other entities, whether or not operating as a partnership or joint venture, then each such individual, corporation, entity, joint venturer or partner shall be deemed to be both jointly and severally liable for the payment of the entire Rent and other payments specified herein.

21.13. RECORDATION. Neither this Lease, any amendment to this Lease, nor any memorandum, affidavit or other item with respect thereto shall be recorded by the Tenant or by anyone acting through, under or on behalf of the Tenant, and the recording thereof in violation of this provision shall (i) be deemed an Event of Default and (ii) at the Landlord's election, make this Lease null and void.

21.14. TIME OF ESSENCE. Time shall be of the essence with respect to the performance of the parties' obligations under this Lease.

21.15. INTERPRETATION. The Landlord and the Tenant hereby agree that both parties were equally influential in preparing and negotiating this Lease, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Lease. Therefore, the Landlord and the Tenant agree that no presumption should arise construing this Lease more unfavorably against any one party.

21.16. HEADINGS. The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

21.17. CONSTRUCTION. As used herein, all references made (a) in the neuter, masculine or feminine gender

shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Lease.

21.18. EXHIBITS. Each writing or drawing referred to herein as being attached hereto as a schedule, an exhibit or otherwise designated herein as a schedule or an exhibit hereto is hereby made a part hereof.

21.19. NET LEASE. The Tenant acknowledges and agrees that this Lease is intended to be a complete, "triple" net lease to the Landlord (except as expressly set forth herein) and that the Landlord is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Premises, the use and occupancy thereof, or the contents thereof. The Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises (except as expressly set forth herein).

IN WITNESS WHEREOF, each party hereto has executed this Lease, or caused it to be executed on its behalf by its duly authorized representatives, on the date written below.

EXECUTED as of _____.

LANDLORD:

NEVADA SYEM OF HIGHER EDUCATION

By: _____

TENANT:

AGREEABLE TENANT, INC.,
a _____ corporation

By: _____

EXHIBIT "A"

CURRENT RULES AND REGULATIONS

1. The sidewalks, passages and stairways shall not be obstructed by the Tenant or used by the Tenant for any purpose other than ingress and egress from and to the Tenant's premises. The Landlord shall in all cases retain the right to control or prevent access thereto by any person whose presence, in the Landlord's judgment, would be prejudicial to the safety, peace, character or reputation of the Property or of any tenant of the Property.
2. The toilet rooms, water closets, sinks, faucets, plumbing and other services apparatus of any kind shall not be used by the Tenant for any purpose other than those for which they were installed, and no sweepings, rubbish, rags, ashes, chemicals or other refuse or injurious substances shall be placed therein or used in connection therewith by the Tenant, or left by the Tenant in the lobbies, passages, elevators or stairways of the Building. The expense of any breakage, stoppage or damage to such sinks, toilets and the like shall be borne by the tenant who, or whose employees, contractors or invitees, caused it.
3. No skylight, window, door or transom of the Building shall be covered or obstructed by the Tenant, and no window shade, blind, curtain, screen, storm window, awning or other material shall be installed or placed on any window or in any window space, except as approved in writing by the Landlord. If the Landlord has installed or hereafter installs any shade, blind or curtain in the Premises, the Tenant shall not remove it without first obtaining the Landlord's written consent thereto which shall not be unreasonably withheld.
4. No sign, lettering, insignia, advertisement, notice or other thing shall be inscribed, painted, installed, erected or placed in any portion of the Premises which may be seen from outside the Building, or on any window, window space or other part of the exterior or interior of the Building, unless first approved in writing by the Landlord. Names on suite entrances may be provided by and only by the Landlord and at the Tenant's expense, using in each instance lettering of a design and in a form consistent with the other lettering in the Building, and first approved in writing by the Landlord. The Tenant shall not erect any stand, booth or showcase or other article or matter in or upon the Premises, the Building and/or the Property without first obtaining the Landlord's written consent thereto which shall not be unreasonably withheld.
5. The Tenant shall not place any other or additional lock upon any door within the Premises or elsewhere upon the Property, and the Tenant shall surrender all keys for all such locks at the end of the Term. The Landlord shall provide the Tenant with one set of keys to the Premises when the Tenant assumes possession thereof.
6. The Tenant shall not do or permit to be done anything which obstructs or interferes with the rights of any other tenant of the Property. No bird, fish or animal shall be brought into or kept in or about the Premises, the Building and/or the Property.
7. If the Tenant desires to install signaling, telegraphic, telephonic, protective alarm or other wires, apparatus or devices within the Premises, the Landlord shall direct where and how they are to be installed and, except as so directed, no installation, boring or cutting shall be permitted. The Landlord shall have the right (a) to prevent or interrupt the transmission of excessive, dangerous or annoying current of electricity or otherwise into or through the Premises, the Building and/or the Property, (b) to require the changing of wiring connections or layout at the Tenant's expense, to the extent that the Landlord may deem necessary, (c) to require compliance with such reasonable rules as the Landlord may establish relating thereto, and (d) in the event of noncompliance with such requirements or rules, immediately to cut wiring or do whatever else it considers necessary to remove the danger, annoyance or electrical interference with apparatus in any part of the Building and/or the Property.
8. The Landlord shall in no event be responsible for admitting or excluding any person from the Premises. In cases of invasion, hostile attack, insurrection, mob violence, riot, public excitement or other commotion,

explosion, fire or any casualty, the Landlord shall have the right to bar or limit access to the Property to protect the safety of occupants of the Property, or any property within the Property.

9. The use of any area within the Property as sleeping quarters is strictly prohibited at all times.

10. The Tenant shall keep the windows and doors of the Premises (including those opening on corridors and all doors between rooms entitled to receive heating or air conditioning service and rooms not entitled to receive such service) closed while the heating or air-conditioning system is operating, in order to minimize the energy used by, and to conserve the effectiveness of, such systems. The Tenant shall comply with all reasonable rules and regulations from time to time promulgated by the Landlord with respect to such systems or their use.

11. The Landlord shall have the right to prescribe the weight and position of inventory and of other heavy equipment or fixtures, which shall, if considered necessary by the Landlord, stand on plank strips to distribute their weight. Any and all damage or injury to the Property arising out of the Tenant's equipment being on the Property shall be repaired by the Tenant at his expense. The Tenant shall not install or operate any machinery whose installation or operation may affect the structure of the Building without first obtaining the Landlord's written consent thereto, and the Tenant shall not install any other equipment of any kind or nature whatsoever which may necessitate any change, replacement or addition to, or in the use of, the water system, the heating system, the plumbing system, the air-conditioning system or the electrical system of the Premises, the Building or the Property without first obtaining the Landlord's written consent thereto. Business machines and mechanical equipment belonging to the Tenant which cause noise or vibration that may be transmitted to the structure of the Building, any other buildings on the Property, or any space therein to such a degree as to be objectionable to the Landlord or to any tenant, shall be installed and maintained by the Tenant, at its expense, on vibration eliminators or other devices sufficient to eliminate such noise and vibration. The Tenant shall remove promptly from any sidewalks and other areas on the Property any of the Tenant's furniture, equipment, inventory or other material delivered or deposited there.

12. The Tenant shall not place or permit its agents, employees or invitees to place any thing or material on the roof or in the gutters and downspouts of the Building or cut, drive nails into or otherwise penetrate the roof, without first obtaining the Landlord's written consent thereto. The Tenant shall be responsible for any damage to the roof caused by its employees or contractors. The Tenant shall indemnify the Landlord and hold the Landlord harmless against expenses incurred to correct any damage to the roof resulting from the Tenant's violation of this rule, as well as any consequential damages to the Landlord or any other tenant of the Property. The Landlord shall repair damage to the roof caused by the Tenant's acts, omissions or negligence and the Tenant shall reimburse the Landlord for all expenses incurred in making such repairs. The Landlord or its agents may enter the Premises at all reasonable hours to make such roof repairs. If the Landlord makes any expenditure or incurs any obligation for the payment of money in connection therewith, including but not limited to attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of twenty percent (20%) per annum, and costs, shall be deemed to be Additional Rent and shall be paid by the Tenant to the Landlord within five (5) days after rendition of any bill or statement to the Tenant therefore. The Tenant shall not place mechanical or other equipment on the roof without the Landlord's prior written consent, which shall be conditioned in part upon the Landlord's approval of the Tenant's plans and specifications for such installations. The costs of any roof improvements made pursuant hereto shall be borne by the Tenant.

13. The Landlord reserves the right to institute energy management procedures when necessary.

14. The Tenant shall assure that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before the Tenant and its employees leave the Premises each day.

15. The Landlord shall have the right to rescind, suspend or modify these Rules and Regulations and to promulgate such other rules or regulations as, in the Landlord's reasonable judgment, are from time to time needed for the safety, care, maintenance, operation and cleanliness of the Building or the Property, or for the preservation of good order therein. Upon the Tenant's having been given notice of the taking of any such action, the Rules and Regulations as so rescinded, suspended, modified or promulgated shall have the same force and effect as if in effect at the time at which the Tenant's lease was entered into (except that nothing in the Rules and Regulations shall be deemed in any way to alter or impair any provision of such lease).

16. Nothing in these Rules and Regulations shall give any Tenant any right or claim against the Landlord or any other person if the Landlord does not enforce any of them against any other tenant or person (whether or not the Landlord has the right to enforce them against such tenant or person), and no such nonenforcement with respect to any tenant shall constitute a waiver of the right to enforce them as to the Tenant or any other tenant or person.