

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: City Manager – Authorize agreement for sub-lease of City-owned property at  
Rolling Hills Shopping Center. Expenditure: None**

**RECOMMENDATION**

Recommendation of the City Manager that City Council authorize the Mayor to Execute and City Clerk to Attest to a Non Disturbance Agreement to Beverages and More, Inc., a Delaware corporation, for property Leased to ROLLING HILLS PLAZA, LLC, a California limited liability company on City-owned property located at Crenshaw Boulevard and Pacific Coast Highway known as Rolling Hills Shopping Center.

**FUNDING**

Funding is not required for this item.

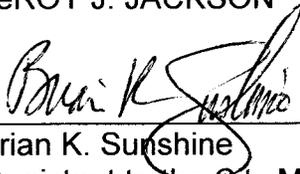
**BACKGROUND/ANALYSIS**

Beverages & More (Sub-tenant) will become a new sub-tenant at Rolling Hills Plaza Shopping Center (Center). The Sub-tenant has requested a Recognition and Attornment Agreement prior to finalizing their Agreement with the Center. The purpose of the Recognition and Attornment Agreement is to allow the sub-tenant to continue operating under the terms and conditions of their sub-lease should there be a default of the Master Tenant, Rolling Hills Plaza LLC. The Agreement further re-states the term of the Master Lease and serves to verify certain attributes of the Master Lease with Rolling Hills Plaza, LLC.

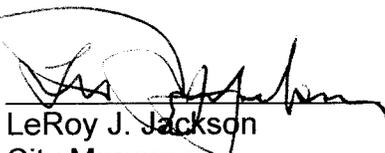
The Recognition and Attornment Agreement is a common instrument used to protect tenants and their investment in their business operation.

Respectfully submitted,

LeROY J. JACKSON

By:   
\_\_\_\_\_  
Brian K. Sunshine  
Assistant to the City Manager

CONCUR:

  
\_\_\_\_\_  
LeRoy J. Jackson  
City Manager

Attachment: Recognition and Attornment Agreement – LIMITED DISTRIBUTION



**RECOGNITION AND ATTORNMENT AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and among the CITY OF TORRANCE, a municipal corporation, having an office at 3031 Torrance Blvd., Torrance, California 90503 (hereinafter called "Owner"), Rolling Hills Plaza LLC, a California limited liability company, having an office at the offices of LaCaze Development Company, 2601 Airport Drive, Suite 300, Torrance, California 90505, and at the offices of Bristol Group, Inc., 400 Montgomery Street, 4<sup>th</sup> Floor, San Francisco, California 94104 (hereinafter called "Lessee") and Beverages & More, Inc., a Delaware corporation, having an office at 1470 Enea Circle, Suite 1600, Concord, California 94520 (hereinafter called "Sublessee").

**WITNESSETH:**

A. Owner is the owner in fee of the parcel of land more particularly described on Exhibit "A" attached hereto and made a part hereof, lying and being in the City of Torrance, Los Angeles County, California (hereinafter referred to as the "Shopping Center Land").

B. On or about October 21, 1987, Owner and Lessee entered into that certain Lease dated October 21, 1987 (the "Original Lease"), which was amended by (i) that certain Amendment No. 1 to Lease dated August 28, 1990 (the "First Amendment"); (ii) that certain Second Amendment to Lease dated January 23, 1996 (the "Second Amendment"); and (iii) that certain Third Amendment to Lease dated July 15, 1997 (the "Third Amendment")(the Original Lease, as amended by the First, Second, and Third Amendments is herein referred to as the "Ground Lease").

C. Lessee proposes to sublease, or has subleased to Sublessee certain premises (the "Premises") on a portion of the Shopping Center Land, together with improvements which are to be (or have been) constructed thereon by Lessor pursuant to a certain lease dated April 16, 2009 between Lessee and Sublessee (the "Occupancy Lease").

NOW, THEREFORE, in consideration of the premises and to induce Lessee and Sublessee to enter into the Occupancy Lease, the parties hereto mutually covenant and agree as follows:

1. Owner warrants and represents that (a) Owner is the owner in fee of the Shopping Center Land and of the Lessor's interest in the Ground Lease; (b) Owner has full right and lawful authority to execute and deliver this Agreement; (c) the Ground Lease is in full force and effect and has not been amended, and no default exists thereunder either in payment of rent or in the performance of any other covenant of the Lessee thereunder and that all conditions precedent to the commencement of the term of the Ground Lease have been satisfied; (d) the execution and delivery by Lessee of the Occupancy Lease will not constitute a violation of any term, covenant or condition of the Ground Lease; (e) Owner has a copy of the Occupancy Lease and has reviewed and approved such Lease; and (f) the Ground Lease expires not sooner than March 15, 2049 and that Owner will not enter into any agreement or take any action that will cause the Ground Lease to expire earlier than March 15, 2049.

2. Lessee warrants and represents (a) that it is the owner of the Lessee's interest under the Ground Lease; (b) it has full right and lawful authority to execute the Occupancy Lease and this Agreement; and (c) the Ground Lease expires not sooner than March 15, 2049 and that Lessee shall not enter into any agreement or take any action that will cause the Ground Lease to expire sooner than March 15, 2049.

3. Owner hereby approves the Occupancy Lease. Owner acknowledges that Lessee has the full right and power to enter into the Occupancy Lease upon the terms, covenants and conditions set forth therein, it being agreed by Owner and Lessee that if the Sublessee shall execute the Occupancy Lease, the Ground Lease shall (notwithstanding anything to the contrary therein contained) be deemed amended to the extent, if any, required to permit the Lessee to assume the obligations and to grant to the Sublessee the rights, powers, privileges and immunities provided for in the Occupancy Lease.

4. Owner agrees that, so long as the Ground Lease has not expired, terminated or been canceled, Owner shall do nothing to disturb or otherwise affect in any manner the quiet possession of the Sublessee under the Occupancy Lease. Owner further agrees that Lessee and the Sublessee shall have the right to amend the Occupancy Lease from time to time.

5. Owner agrees with Sublessee that in the event, for any reason whatsoever, the Ground Lease terminates or is canceled during the term of the Occupancy Lease, including any extension thereof, whether as the result of a default by the Lessee thereunder, notice by Lessee of cancellation thereof or otherwise:

(a) The Occupancy Lease shall continue for the duration of its terms and any extensions thereof (subject, however, to the rights of the Landlord and Tenant under the Occupancy Lease to terminate the Occupancy Lease as therein

set forth) as a direct lease between Owner and Sublessee with the same force and effect as if Owner had originally entered into such Occupancy Lease as Landlord thereunder;

(b) Sublessee shall not be named or joined in any action or proceeding by Owner under the Ground Lease to recover possession of the Shopping Center Land or any part thereof or for any other relief from Lessee;

(c) Sublessee shall perform all the covenants and agreements of the Occupancy Lease on its part to be performed for the direct benefit of Owner and Owner shall perform all the covenants and agreements of the Occupancy Lease to be performed on the part of the Landlord thereunder for the direct benefit of the Sublessee;

(d) Owner shall give Sublessee prompt notice in writing of such event (together with essential details and dates); and

(e) From and after receipt by Sublessee of such notice, the payment by Sublessee to Owner of rentals and other payments then due or thereafter becoming due to Lessee under the Occupancy Lease shall constitute full performance of all obligations with respect to such payments actually made by Sublessee but, prior to the receipt of such notice, Sublessee shall have no obligation to make any payment to Owner and shall be deemed to have fully performed in respect of any sums theretofore paid to Lessee in accordance with the provisions of the Occupancy Lease.

6. Owner and Lessee covenant and agree that the Ground Lease will not be modified or amended in any manner affecting Sublessee without the prior written consent of Sublessee.

7. Owner hereby waives any and all liens, claims, demands or rights including, but not limited to, rights of levy, execution, sale and distraint for unpaid rent, or any other rent, interest or lien which Owner now has or may hereafter acquire in any and all trade fixtures and equipment, signs, appliances, furniture and other personalty installed at any time by Sublessee on the Premises leased by Sublessee pursuant to the Occupancy Lease including, without limitation, lighting fixtures, projection and sound equipment and seats (all of the foregoing being collectively referred to as "Sublessee's Property"). In connection with the financing by Sublessee of "Sublessee's Property" (by granting a security interest therein or entering into an equipment lease therefore), Owner agrees to execute and deliver to Sublessee an Owner's waiver and all other documents reasonably required by such lessor or the holder of a security interest in Sublessee's Property.

8. Owner hereby acknowledges and agrees that it will not cause or suffer the creation of a mortgage or other security interest affecting the Shopping Center Land (and any attempt to do so shall be deemed null and void) unless the rights and interests acquired under such mortgage or security interest ("Owner Mortgage") by the holder thereof is subject and subordinate to the rights and interests of the Lessee under the Ground Lease and the rights and interest of Sublessee pursuant to the Occupancy Lease and this Agreement; provided, however, an Owner Mortgage may be superior to the Ground Lease and Occupancy Lease if there shall be recorded in the appropriate real property records of Los Angeles County, California, an agreement, in form and substance reasonably satisfactory to Lessee and Sublessee, whereby the holder of the Owner Mortgage, its successors and assigns, agrees that the foreclosure of the Owner Mortgage shall not affect the right to possession of the Shopping Center Land of Lessee and Sublessee pursuant to the Ground Lease and Occupancy Lease, respectively, nor any of the rights, privileges, interests or easements granted to them under the Ground Lease, the Occupancy Lease and this Agreement.

9. Any notice or demand provided for in this Agreement shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid to a party at its address first hereinabove given or to such other address as any such party may designate by notice to the other parties. Any such notice shall be deemed given on the third business day following the day on which the same is deposited in a regularly maintained post office box or Post Office of the United States Postal Service.

10. All parties to this Agreement agree to execute such further instruments as may be reasonably requested by another party hereto in order to carry out this Agreement in accordance with the tenor and purpose hereof.

11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or partners and their seals to be affixed and attested as of the day and year first above written.

**“OWNER”**

**CITY OF TORRANCE, a municipal corporation**

ATTEST

\_\_\_\_\_  
CITY CLERK

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

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

APPROVED AS TO FORM

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

\_\_\_\_\_  
CITY ATTORNEY

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

Print: \_\_\_\_\_

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

*[signatures continue on next page]*

“LESSEE”

ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: ROLLING HILLS PLAZA VENTURE 96, LLC,  
a California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING CENTER,  
a California limited partnership  
Managing Member

By: LA CAZE PARTNERSHIP, a California limited partnership  
General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

By: \_\_\_\_\_  
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC, a Delaware limited liability company,  
Its member

By: BRISTOL GROUP, INC.,  
Its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

“SUBLESSEE”

Beverages & More, Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A****ROLLING HILLS TRACT 1****PARCEL 1**

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 210.00 FEET; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 209.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 188.68 FEET TO THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2 IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 193.04 FEET; THENCE SOUTH 01 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION ALONG PACIFIC COAST HIGHWAY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST, 470.93 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 26 SECONDS WEST, 59.01 FEET TO A POINT OF TANGENCY WITH CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1,828.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 08 MINUTES 54 SECONDS, AN ARC DISTANCE OF 100.45 FEET TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 300.00 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 101 DEGREES 11 MINUTES 01 SECONDS, AN ARC DISTANCE OF 44.15 FEET TO A POINT OF TANGENCY WITH A LINE BEARING NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST, SAID LINE BEING THE SOUTHEASTERLY LINE OF THAT PARCEL OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40,9-2, SAID LINE BEING NOW RECOGNIZED AND ACCEPTED AS THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD (100.00 FEET); THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 16.55 FEET; THENCE SOUTH 1 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE POINT OF BEGINNING.

PARCEL 2

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 545.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 700.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 125.00 FEET; THENCE SOUTH 41 DEGREES 14 MINUTES 40 SECONDS WEST 74.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 263.58 FEET; THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 138.64 FEET; THENCE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 85.69 FEET; THENCE SOUTH 41 DEGREES 16 MINUTES 35 SECONDS WEST 90.44 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 156.18 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD, 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 932.23 FEET; THENCE SOUTH 37 DEGREES 34 MINUTES 19 SECONDS EAST 246.00 FEET; THENCE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 286.66 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT 1; THENCE ALONG SAID EASTERLY LINE SOUTH 00 DEGREES 11 MINUTES 20 SECONDS WEST 1,671.69 FEET TO THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY; THENCE ALONG SAID NORTHERLY LINE NORTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 26.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1,096.28 FEET, THROUGH A CENTRAL ANGLE OF 41 DEGREES 03 MINUTES 15 SECONDS, A LENGTH OF 785.52 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 349.67 FEET TO THE TRUE POINT OF BEGINNING.

# LEASE

Beverages & More, Inc.

---

TENANT

"Beverages & more!"/"BevMo!"

---

TRADE NAME

## ROLLING HILLS PLAZA

TORRANCE, CALIFORNIA



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THIS LEASE is made and entered into by the Landlord and Tenant named herein who agree as follows:

**FUNDAMENTAL LEASE PROVISIONS.** The fundamental provisions of this Lease are: Section

1. Effective Date of Lease: April 16, 2009
2. Landlord: Rolling Hills Plaza LLC, a California limited liability company
3. Tenant: Beverages & More, Inc., a Delaware corporation
4. Premises: 1.1
  - (a) Address: 2533-A Pacific Coast Highway, Torrance, California 90505
  - (b) Approximately 9,609 Square Feet ("Leasable Floor Area in the Premises").  
Is the Gross Floor Area in the Premises subject to measurement? (Yes/No) No
  - (c) Approximately 403,843 Square Feet ("Leasable Floor Area of the Shopping Center").
  - (d) Time to Complete Tenant's Work One Hundred Twenty (120) days following the Delivery Date.
5. Term 2.1
  - (a) Duration: Approximately Ten (10) Years from the Rent Commencement Date
  - (b) Commencement Date: Upon delivery of possession of the Premises to Tenant with Landlord's Work as set forth in Exhibit B substantially complete and after Tenant's satisfaction or waiver of its contingencies as set forth in Section 23.28 (the "Delivery Date").
  - (c) Expiration Date: The expiration of the one hundred twentieth (120<sup>th</sup>) full calendar month after the Rent Commencement Date.
  - (d) Option(s): Two (2) consecutive Options of sixty (60) months each
6. Rental:
  - (a) Schedule of Minimum Monthly Rent:
 

Months 1 – 60	\$20,819.50 per month, NNN (based upon \$26.00 per square foot of Leasable Floor Area, per year);	
Months 61 – 120	\$22,901.45 per month, NNN (based upon \$28.60 per square foot of Leasable Floor Area, per year);	
First Extension Term	As set forth in Section 23.25;	
Second Extension Term	As set forth in Section 23.25;	3.1
  - (b) Rental Commencement Date: The earlier of (i) the date one hundred twenty (120) days following the Delivery Date or (ii) the date Tenant opens for business to the public from the Premises.
  - (c) Prepaid Rent: None 3.1  
to be applied to N/A
  - (d) Minimum Rent Adjustment Lease Years: See 6(a) 3.2
  - (e) Annual Minimum Rent Adjustment: N/A 3.2
  - (f) Annual Minimum Rent Adjustment Ceiling: N/A 3.2
  - (g) Percentage Rent Rate: None, Tenant to report Gross Sales on an annual basis and no later than thirty (30) days following the closing of its fiscal year 3.3
  - (h) Radius Restriction: N/A 3.3f
  - (i) Initial Monthly Tax Payment: \$ Estimated Nine Hundred Sixty and 90/100 Dollars (\$960.90) per month. The foregoing is only an estimate and shall not be used to limit in any manner the actual charge to Tenant for this item. 3.4b
  - (j) Initial Monthly Common Area Payment: \$ Estimated at Four Thousand Six Hundred Eighty-Two and 93/100 Dollars (\$4,682.93) (excluding Tenant's share of Landlord's insurance which is estimated at \$600.56) per month. The foregoing is only an estimate and shall not be used to limit in any manner the actual charge to Tenant for this item. 3.5
  - (k) Security Deposit: \$ None 3.6

7. Permitted Use: Subject to (i) all existing lease, license and other occupancy agreements with other tenants and occupants of the Shopping Center which have been executed, and (ii) all Permitted Exceptions (defined below) which have been recorded, prior to the Effective Date of this Lease, Tenant, its sublessees, concessionaires and/or licensees shall be entitled to use the Premises for the purpose of operating a Beverages & more!/BevMo! store and (to the extent permitted by its liquor license) Tenant shall be allowed to sell alcoholic beverages for off-Premises consumption, and Tenant shall be permitted to have in-Premises tastings of alcoholic beverages, and to have a wine storage facility for its customers' use in an area not to exceed 500 square feet of Leasable Floor Area (to the extent Tenant has secured a license permitting each such use), and Tenant shall be allowed to sell (but not as a primary use) such other foods, accessories and products typically sold in the majority of other BevMo! Stores, including without limitation packaged coffee (ground and whole beans), related appliances, greeting cards and party supplies and, except as otherwise expressly provided in this Lease, for no other purpose. To Landlord's knowledge, Landlord represents that there are no existing use restrictions or existing tenant exclusives affecting the Shopping

Center that prohibit or materially restrict the sale for off-Premises consumption, or in-Premises tastings, of alcoholic beverages such as may be part of the operation of a BevMo! store in the Premises.

8. Tenant's Trade Name: BevMo!/Beverages & more! 4.1
9. Hours of Operation: 10:00 a.m. to 5:00 p.m., Monday through Saturday; 11:00 a.m. to 5:00 p.m., Sunday except New Years, Thanksgiving and Christmas Day. 4.2
10. Annual Contribution to Promotional Service: \$ None 23.23
11. Addresses for Rent and Notice: 18.0
- (a) Landlord:
- Rolling Hills Plaza LLC  
C/o La Caze Development Company  
2601 Airport Drive, Suite 300  
Torrance, CA 90505
- Copies to:
- Rolling Hills Plaza LLC  
C/o Bristol Group, Inc.  
400 Montgomery Street, 4<sup>th</sup> Floor  
San Francisco, CA 94104
- Wayne D. Hillyard, Esq.  
Honigman Miller Schwartz and Cohn LLP  
38500 Woodward Avenue  
Bloomfield Hills, Michigan 48304
- (b) Tenant: To Premises, and:
- Beverages & More, Inc.  
1470 Enea Circle, Suite 1600  
Concord, California 94520  
Attn: Real Estate Department
- Copy to:
- Theodore F. Bayer, Esq.  
Pinnacle Law Group, LLP  
425 California Street, Suite 1800  
San Francisco, CA 94104
12. Real Estate Broker: CB Richard Ellis 23.1
13. Exhibits
- Lease Rider
- A - Lease Site Plan and Shopping Center Legal Description
  - B - Construction Of Improvements
  - C - Tenant Sign Criteria and Initial Tenant Signage
  - D - Rules and Regulations
  - E - Memorandum Confirming Term
  - F - Honeywell International, Inc. Pension Plans in the Master Pension Trust
  - G - Use Restrictions
  - H - Permitted Exceptions
  - I - Memorandum of Lease
  - J - Subordination, Non-Disturbance and Attornment Agreement
  - K - Recognition and Attornment Agreement
  - L - Telecommunications License Agreement
  - M - Confidentiality Agreement
  - N - Environmental Reports
  - O - HVAC Report
- Others: None

*JK*  
*Meek*

Each reference in the Lease to any of the Fundamental Lease Provisions shall be construed to include the provisions set forth above as well as all of the additional terms and provisions of the applicable sections of the Lease where such Fundamental Lease Provisions are more fully set forth. In the event of a conflict between any Fundamental Lease Provisions and the Lease, the Lease shall control.

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## LEASE

## ROLLING HILLS PLAZA

## TORRANCE, CALIFORNIA

## SECTION 1. Premises.

1.1 **Premises.** Landlord leases to Tenant, and Tenant leases from Landlord the real property (hereinafter called the "Premises"), shaded and so designated on the "Lease Site Plan" attached hereto as Exhibit A, which has the address stated in Paragraph 4(a) of the Fundamental Lease Provisions and the Leasable Floor Area stated in Paragraph 4(b) of the Fundamental Lease Provisions. The preceding sentence notwithstanding, prior to the execution of this Lease by either party, Tenant, at its sole cost, was provided the right to confirm Landlord's determination of the number of square feet of Leasable Floor Area of the Premises. Landlord has had the opportunity to review and approve Tenant's measurement of the Premises Leasable Floor Area. Following Landlord's reasonable review of Tenant's measurement, the number of square feet of Leasable Floor Area in the Premises in Paragraph 4(b) of the Fundamental Lease Provisions is agreed by the parties to be the Leasable Floor Area of the Premises as of the Effective Date; and the Minimum Monthly Rent specified in Paragraph 6(a) of the Fundamental Lease Provisions has been determined by multiplying such mutually agreed Leasable Floor Area of the Premises by the rate per square foot of Leasable Floor Area specified in Paragraph 6(a). Landlord and Tenant agree that neither party shall have any other right whatsoever to have the Premises measured for the purpose of determining the Gross Floor Area in the Premises for this Lease at any time during the term of this Lease, except as provided in this Section 1.1. Tenant hereby acknowledges that it has had the opportunity to inspect the Premises and have the Premises inspected by architects, engineers, consultants and any other persons which Tenant desires to inspect the Premises on its behalf and has in fact inspected the Premises and/or had the Premises inspected by others on its behalf to its complete and full satisfaction. If Exhibit B, Construction of Improvements, requires Landlord to construct improvements in the Premises, then Landlord shall construct or prepare the Premises as provided in Exhibit B, which Exhibit B sets forth the obligations of Landlord and Tenant to perform work and to supply materials necessary to prepare the Premises for occupancy.

If Exhibit B does not require Landlord to construct any improvements in the Premises, then upon Delivery Date, Tenant shall take possession of the Premises and accept the Premises in its existing "as is" condition without any representation or warranty by Landlord (except as otherwise expressly provided in this Lease); provided, however, upon the Delivery Date, all of the elements of the Premises or the building in which the Premises are located that Landlord is required to maintain, repair and replace pursuant to Section 8.2 below shall be in good condition and repair, subject to ordinary wear and tear; and provided further that Tenant shall inspect the Premises prior to execution of this Lease by either party and shall advise Landlord of any repairs which Tenant believes are necessary to meet such requirements as to condition and Tenant shall be estopped from subsequently raising any issues regarding the initial condition of the Premises. If the Premises are occupied by another tenant or occupant as of the Effective Date of this Lease, then the Delivery Date shall not occur until the current tenant or occupant shall vacate the Premises. If Exhibit B does require Landlord to construct improvements in the Premises, then on the date that Landlord delivers possession of the Premises to Tenant, representatives of Landlord and Tenant shall jointly inspect the Premises and immediately prepare a written list (the "Punch List") of any additional work to be conducted by Landlord at the Premises. Landlord agrees to have such work completed as soon as practicable thereafter, and Tenant agrees to cooperate with Landlord in making the Premises available for such work. In any event, by occupying the Premises, Tenant shall be deemed to have accepted the Premises from Landlord in the condition in which Landlord is required to deliver the Premises to Tenant by this Lease, excepting only those items listed on the Punch List. Upon the Commencement Date, and in accordance with the provisions of Exhibit B, Tenant shall immediately commence all work and construction that is necessary to complete the Premises for the operation of Tenant's business in the Premises and diligently prosecute the same to completion within the Time to Complete Tenant's Work, as stated in Paragraph 4(d) of the Fundamental Lease Provisions. Tenant shall initially open for business to the public in the Premises no later than thirty (30) days after expiration of the Time to Complete Tenant's Work, as stated in Paragraph 4(d) of the Fundamental Lease Provisions, which period commences on the Delivery Date, as stated in Paragraph 5(b) of the Fundamental Lease Provisions, whether or not Tenant is prepared to accept possession of the Premises. Within ten (10) days after Tenant initially opens for business to the public in the Premises, Tenant shall deliver to Landlord the Certificate of Occupancy for the Premises, or such Certificate of Final Building Inspection if a Certificate of Occupancy was previously issued for the Premises and, due to the nature of Tenant's improvements to the Premises, a new Certificate of Occupancy will not be issued. Tenant shall not commence any such work and construction required of it hereunder without Landlord's prior written approval of Tenant's plans and specifications concerning such work, and any such work and construction shall also be carried out in accordance with all other applicable provisions of this Lease. Tenant acknowledges that, except as otherwise set forth in this Lease, neither Landlord, nor any agent, employee or representative of Landlord, has made any representation as to the condition or suitability of the Premises or the Shopping Center for Tenant's business.

1.2 **Shopping Center.** The Premises are part of the shopping center presently known as Rolling Hills Plaza, which shopping center is described and shown in Exhibit A ("Shopping Center"). Subject to the express limitations set forth in this Section 1.2, and in Sections 1.3, 4.3, 5.1 and 5.2 of this Lease, Landlord may increase, reduce, or change the number, dimensions, or locations of the walks, buildings, mall areas, parking areas, common areas and vehicle and pedestrian access points and other improvements located in the Shopping Center in any manner that Landlord, in its sole discretion, shall deem proper. Landlord further reserves the right to make alterations and/or additions to the building in which the Premises are located, to add any buildings adjoining the same or elsewhere in the Shopping Center and grant easements to others as Landlord, in its sole discretion, shall deem proper; provided, however, in making such alterations to the building in which the Premises are located, Landlord shall not materially interfere with or disrupt access to or from, or Tenant's normal business operations in, the Premises. Without limiting the generality of the foregoing, Landlord may add additional stores, retail shops, buildings and parking decks anywhere in the Shopping Center. Nothing herein contained shall be construed as a grant or rental by Landlord to Tenant of the roof and exterior walls of the building or buildings of which the Premises form a part (other than store fronts), the area beneath the Premises or the walks and/or other common areas beyond the Premises, except as may be hereinafter specifically set forth. Landlord reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Shopping Center in a manner that will not materially interfere with Tenant's use of, or access to and from, the Premises. Landlord shall also have the right to increase and expand the size of the Shopping Center by adding additional land, buildings and other structures to the Shopping Center. The Leasable Floor Area of the Shopping Center refers to buildings that are occupied by tenants and buildings which are completed and available for occupancy by tenants (even if vacant), but shall not refer to buildings that are under construction and not substantially completed. Leasable Floor Area of the Shopping Center does not include the number of square feet of any mezzanine or basement areas in the Shopping Center. Tenant acknowledges that any changes to the Shopping Center might have the effect of altering the Leasable Floor Area of the Shopping Center and Tenant's Proportionate Share of Taxes, as defined in Section 3.4(b)(iii) of this Lease, and Tenant's Proportionate Share of Common Area Costs, as defined in Section 3.5(a) of this Lease. Tenant shall not, in any such event, claim or be allowed any damages or right to terminate this Lease for injury or inconvenience occasioned by the exercise by Landlord of the foregoing rights in the manner set forth in this Section 1.2.

### 1.3 Common Areas.

(a) **Common Areas Defined.** The term "Common Areas" means all areas of the Shopping Center designated by Landlord from time to time for the common or joint use and benefit of the tenants of the Shopping Center and their respective authorized representatives, employees and invitees, Landlord and the general public. Common Areas are areas outside of buildings in the Shopping Center such as, without limitation, pedestrian walkways, landscaped areas, sidewalks, service corridors, stairways, decorative walls, plazas, malls, loading areas, parking areas and roads. Landlord, during the Lease term, shall maintain, repair and replace (as needed) the Common Areas in good condition and repair as is customary for comparable shopping centers in the local area, subject to conditions and circumstances beyond Landlord's reasonable control.

(b) **Tenant's Right to Use Common Areas.** Landlord gives to Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas of the Shopping Center with others who are entitled to use the Common Areas, subject to Landlord's rights set forth in Section 1.3(c) of this Lease.

(c) **Landlord's Control and Management.** Subject to the express limitations set forth in this Lease, Landlord may increase, reduce, or change in any manner the Common Areas as Landlord, in its sole discretion, shall deem proper. Landlord shall also have, without limitation, the right to:

(i) Establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use and operation of the Common Areas;

(ii) Close, if necessary, any of the Common Areas to whatever extent may be legally sufficient in the opinion of Landlord's counsel to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas;

(iii) Close temporarily any of the Common Areas for maintenance purposes;

(iv) Designate other lands outside the exterior boundaries of the Shopping Center to become part of the Common Areas; and

(v) Select a person(s), firm(s), or corporation(s) (which may be an entity related to Landlord) to maintain and operate any of the Common Areas, if at any time Landlord determines that the best interests of the Shopping Center will be served by having any of the Common Areas maintained and operated by that person(s), firm(s), or corporation(s).

Notwithstanding the provisions of this Section 1.3(c), in exercising its rights hereunder, Landlord shall provide reasonable access to and from, visibility of and parking for the Premises.

Notwithstanding the provisions of this Section 1.3 to the contrary, Landlord shall not make any permanent material changes to the portion of the Common Area identified on Exhibit A as "Tenant's Control Area" if such changes would materially and adversely affect Tenant's business in the Premises, including without limitation, any material and adverse changes to the striping, curbing, landscaping, directional signage access, ingress or egress, parking areas or delivery areas or erection of any structures, located within the area identified on Exhibit A as "Tenant's Control Area," without Tenant's prior written consent, which consent may be withheld in Tenant's reasonable discretion. Landlord shall also provide Tenant with ten (10) days advance written notice of any planned temporary material changes within the Tenant's Control Area. Any material change that will extend for no more than thirty (30) consecutive days shall be deemed a "temporary material change;" any material change that will extend for more than thirty (30) consecutive days shall be deemed a "permanent material change."

### SECTION 2. Term.

2.1 **Term.** The term of this lease shall be for the period as stated in Paragraph 5(a) of the Fundamental Lease Provisions or as may be extended by Section 23.25 of this Lease. The term shall commence on the Commencement Date as stated in Paragraph 5(b) of the Fundamental Lease Provisions, and shall expire on the Expiration Date as stated in Paragraph 5(c) of the Fundamental Lease Provisions, subject to extension, at Tenant's option, as provided in Section 23.25.

2.2 **Confirmation of Term.** If the Commencement Date, Expiration Date and the Rental Commencement Date are not known when this Lease is executed, then when the Commencement Date, Expiration Date and the Rental Commencement Date have been determined the parties shall execute a written memorandum substantially in the form attached hereto as Exhibit E, and such memorandum shall thereupon be deemed attached hereto and made a part of this Lease.

2.3 **Inability to Deliver Possession.** Landlord estimates that it will be in a position to deliver possession of the Premises within thirty (30) days following the date of the satisfaction (or earlier waiver by Tenant) of all of the contingencies set forth in Section 23.28 hereof (such estimated Delivery Date being referred to herein as the "Estimated Delivery Date"). If the Delivery Date has not occurred by the Estimated Delivery Date, Landlord shall not be liable for any damage caused for failing to deliver possession, and this Lease shall not be void or voidable. Tenant shall not be liable for rent until the Rent Commencement Date, but the length of the Lease term shall not be extended by the delay. If the Delivery Date has not occurred by the date which is one hundred (100) days following the Estimated Delivery Date ("Outside Delivery Date"), Tenant shall have the option to terminate this Lease by giving notice to Landlord delivered within sixty (60) days after the Outside Delivery Date, in which event neither party shall have any future liabilities or obligations hereunder; provided, however, Landlord shall have the right to prevent such termination by causing the Delivery Date to occur within fifteen (15) days after its receipt of such notice from Tenant. Notwithstanding the above, the Delivery Date shall not occur during the period between October 1<sup>st</sup> and January 2<sup>nd</sup> unless Tenant, in its sole and absolute discretion, agrees to take delivery of the Premises, or unless the Delivery Date occurs during such period due to Landlord's utilization of the 15-day window for the Delivery Date as provided in the preceding sentence.

2.4 **Possession Before Delivery Date.** If Landlord consents to Tenant temporarily entering the Premises prior to the Delivery Date for not more than two (2) days for the purpose of inspecting the same, taking measurements, laying out proposed improvements or similar preparatory actions, then all of the provisions of this Lease (except for the obligation to pay Minimum Monthly Rent or additional rent specified in Sections 3.4 and 3.5) shall be applicable and in full force and effect as of the date that Tenant takes actual physical possession of the Premises; provided however, the Delivery Date shall not be deemed to have occurred by reason of Tenant's temporary entry into the Premises for not more than two (2) days for any of the purposes specified in this Section 2.4.



### SECTION 3. RENTAL.

**3.1 Minimum Monthly Rent.** Tenant shall pay to Landlord as Minimum Monthly Rent, without any abatement, deduction, setoff, prior notice, or demand whatsoever (except as otherwise expressly set forth in Sections 4.8 and 23.22 of this Lease), the sum set forth in Paragraph 6(a) of the Fundamental Lease Provisions.

Minimum Monthly Rent shall commence on the Rental Commencement Date as set forth in Paragraph 6(b) of the Fundamental Lease Provisions and shall continue for the remainder of the term payable in advance on or before the first day of each month throughout the term. Minimum Monthly Rent for any partial month following the Rental Commencement Date shall be prorated at the rate of 1/30th of the monthly rent per day. All rent is to be paid to Landlord at the address shown in Section 11(a) of the Fundamental Lease Provisions. The foregoing to the contrary notwithstanding, if Tenant shall be late in the payment of the Minimum Monthly Rent for two times during any Lease Year (as defined in Section 3.5(a) of this Lease), as evidenced by notice from Landlord to Tenant of each such late payment, then Landlord shall have the election exercisable at any time thereafter, and in addition to all other rights and remedies, to require Minimum Monthly Rent for the remainder of the term to be paid two (2) months in advance.

### 3.2 INTENTIONALLY OMITTED.

### 3.3 Gross Sales.

(a) **Annual Report of Gross Sales.** Within thirty (30) days following the close of each of Tenant's fiscal years (each, a "Fiscal Year") occurring during the Lease term. Tenant shall deliver to Landlord a written statement of Tenant's total Gross Sales for such Fiscal Year (with Gross Sales set out by calendar months and showing, as well, any refunds, returns and other deductions made in the computations).

(b) **Definition of Fiscal Year.** A "Fiscal Year" is a twelve (12) consecutive month period, except the first Fiscal Year may be a partial 12-month period commencing on the Rental Commencement Date, and the last Fiscal Year shall end on the Expiration Date.

(c) **Definition of Gross Sales.** The term "Gross Sales" as used herein is hereby defined to mean the dollar aggregate of the sales prices of all goods, wares and merchandise sold, leased, licensed, or delivered in or from the Premises and services performed by Tenant and all permitted licensees, concessionaires and subtenants from all business conducted upon or from the Premises, whether made for cash, check, credit account, exchange or otherwise, and shall include, without limitation, sales and services where the orders originate or are accepted by Tenant at the Premises, even though delivery or performance is made from elsewhere, and where orders originate outside of the Premises but delivery or performance of such orders is made from the Premises, or whether such sales be made by means of mechanical or other vending devices in the Premises. If any one or more parts of Tenant's business shall be sublet, concessioned, and/or licensed by Tenant, and/or conducted by any person, firm or corporation other than Tenant, as permitted herein, then there shall be included in Gross Sales all the Gross Sales of such subtenants, concessionaires, licensees, other persons, firms and/or corporations whether such Gross Sales be made at the Premises or elsewhere, in the same manner and with the same effect as if the business or sales of such other persons had been conducted by Tenant itself. Each charge or sale upon installment or credit (including, without limitation, any so-called "lay-away" sale or like transaction) shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time, if ever, when Tenant shall receive payment (whether full or partial) therefor.

Gross Sales shall not include, or if included there shall be deducted (but only to the extent they have been previously included), as the case may be, the following:

- (1) The amount of any city, county, state or federal sales, use or excise taxes on sales or services rendered from the Premises where such taxes are added to the selling price, are stated separately, and are paid by Tenant directly to the taxing authority;
- (2) The net amount of cash or credit refunds in fact made upon sales from the Premises where the merchandise sold or some part of it is returned by the purchaser to and accepted by Tenant (but not exceeding in any instance the selling price of the item in question), but excluding any amount paid or payable from what are commonly referred to as trading stamps;
- (3) Exchanges or transfers of merchandise between stores of Tenant, where such exchanges or transfers are made solely for the convenient operation of Tenant's business and do not have the effect of consummating elsewhere a sale which has in fact been made in, at, upon or from the Premises;
- (4) Returns to shippers and manufacturers;
- (5) Sales of fixtures after their substantial use in the conduct of Tenant's business in the Premises as permitted by this Lease;
- (6) Sums and credits received in the settlement of claims for loss or damage to merchandise;
- (7) Receipts from public telephones, stamp machines, public toilet locks, or vending machines installed solely for the use of Tenant's employees;
- (8) Gift certificates or like vouchers, until such time as they shall have been redeemed; and,
- (9) Alteration workroom charges and delivery charges.
- (10) The actual uncollectible amount of any check or bank draft received by Tenant from a customer's bank as being uncollectible (commonly "not sufficient funds" checks), but only after Tenant has made reasonable efforts to collect the check; the actual uncollectible amount of any charge or credit account (commonly "bad debts") incurred by Tenant for the sale of merchandise or services, provided however, that the credit was extended to the customer by Tenant, and that reasonable efforts to collect said account have been made; and the actual uncollectible amount of any sale of merchandise or services for which Tenant accepted as payment a bank issued credit card, provided however, that Tenant made reasonable efforts to insure the validity of the charge at the time Tenant accepted the credit charge card as payment, and Tenant has made reasonable efforts to collect the debt after being notified by the issuing bank of the invalidity or uncollectability of the charge.
- (11) Bulk sales of merchandise outside Tenant's customary business (e.g., to other wholesalers or as part of sale of assets)

(12) Discounts and coupon sales extended to "Club Bev" Card members or pursuant to other promotional coupons to the extent of the discount provided by such Club Bev Card or coupons, and provided that Tenant receives no proceeds from the sale of such Club Bev Cards or coupons (that is, such Club Bev Cards and coupons are provided to customers free of charge).

(d) **Records; Inspection.** Tenant agrees to prepare and keep at Tenant's headquarters office in California for a period of not less than two (2) years following the end of each Fiscal Year accurate and complete records which shall show its Gross Sales.

(e) **Confidentiality of Information.** Any information obtained by Landlord pursuant to the provisions of this Section 3.3 shall be treated as confidential, except in any litigation or arbitration proceedings between the parties hereto, and except further that Landlord may divulge such information to a prospective buyer or lender of all or part of the Shopping Center.

(f) **Radius Restrictions. Intentionally omitted.**

(g) **Negation of Partnership.** Landlord is not and shall not, in any way or for any purpose, become an agent or a partner of Tenant in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Tenant.

### 3.4 Taxes.

(a) **Taxes on Tenant's Improvements and Personal Property.** Tenant shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied and assessed on Tenant's personal property, Tenant's alterations, Tenant's Improvements and/or Tenant's Trade Fixtures. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. Tenant shall also furnish Landlord with cost breakdowns relating to any Tenant's Improvements, Tenant's Trade Fixtures and Tenant's alterations relating to the Premises.

If any such taxes are levied against the building or the Shopping Center where the Premises are located, or if the assessed value of the building or Shopping Center where the Premises are located is increased and such increase is the result of the inclusion of a value placed on Tenant's personal property, alterations, Tenant's Improvements, and/or Tenant's Trade Fixtures and if Landlord pays such taxes on any of these items, Tenant, within thirty (30) days after Landlord's written demand (accompanied by copies of supporting documentation), shall immediately reimburse Landlord for the sum of the taxes levied against Landlord, or the proportion of the taxes resulting from the increase in Landlord's assessment. Landlord shall have the right to pay these taxes regardless of the validity of the levy; however, Tenant shall have the right to contest the validity of any such assessment (but such contest shall not delay Tenant's obligation to pay such taxes) and to retain any refund received by Tenant with respect to taxes paid by Tenant and determined as a result of such contest to be in excess of taxes that are validly owed.

(b) **Real Property Taxes.**

(i) **Taxes.** Tenant agrees to pay as set forth in Section 3.4(b)(iv) below Tenant's Proportionate Share of Taxes.

The term "Taxes" shall mean and include, without limitation, all taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever, including but not limited to (except as otherwise expressly provided in Section 3.4(b)(iv) of this Lease) property tax increases which may result from the sale of all or part of the Shopping Center, assessments for public improvements or benefits which shall during the Lease term be assessed, levied, and imposed upon the land, improvements and Landlord's personal property that constitute the Shopping Center. Taxes shall also include all reasonable consultants' fees, legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Taxes. Except as otherwise provided in Section 3.4(a), Landlord shall have the sole right to contest any Taxes assessed against the Shopping Center; provided, however, Landlord agrees that it shall contest all Taxes that it shall determine, in its reasonable business judgment, to be materially in excess of the Taxes that lawfully may be assessed under applicable California law against the Premises and/or the Shopping Center.

(ii) **Special Assessments.** With respect to any assessment which may be levied against or upon the Shopping Center and which under the laws then in force may be evidenced by improvement or other bonds, or may be paid in annual installments, there shall be included within the definition of "Taxes" with respect to any fiscal tax year, only the current annual installment for such tax fiscal year.

(iii) **Tenant's Proportionate Share of Taxes.** The term "Tenant's Proportionate Share of Taxes" shall mean one hundred percent (100%) if the Premises and underlying realty are separately assessed. In the event the Premises and underlying realty are not separately assessed, but are part of a larger parcel for assessment purposes (the "Larger Parcel"), Tenant's Proportionate Share of Taxes shall mean a fractional portion of Taxes on the Larger Parcel, the numerator of which shall be the Leasable Floor Area in the Premises, as stated in Paragraph 4(b) of the Fundamental Lease Provisions, and the denominator of which shall be the Leasable Floor Area of all buildings then constructed and available for occupancy (even if vacant) within the Larger Parcel to the extent that such buildings are assessed as part of the Larger Parcel and are included on the same tax bill (but excluding buildings that are under construction and not substantially completed).

(iv) **Payment of Taxes.** Commencing on the Rent Commencement Date, Tenant shall pay a monthly sum to Landlord ("Monthly Tax Payment") at the same time and in the same manner that Tenant is obligated to pay minimum monthly rent, which Monthly Tax Payment shall be applied toward Tenant's obligation to pay Tenant's Proportionate Share of Taxes. The amount of the Monthly Tax Payment shall initially be the sum set forth in Paragraph 6(j) of the Fundamental Lease Provisions. In the alternative, Landlord may elect to require Tenant to pay Tenant's Proportionate Share of Taxes semi-annually in two (2) installments within thirty (30) days after the date of Landlord's billing therefor.

Within a reasonable time after the date Landlord receives a tax bill(s) for the Shopping Center, Landlord shall notify Tenant of the following: (aa) the total Taxes for the fiscal tax year covered by the tax bill(s); (bb) the calculation of Tenant's Proportionate Share of Taxes for such fiscal tax year; (cc) the aggregate amount of monthly payments that Tenant shall have previously paid during such fiscal tax year toward Tenant's obligation to pay Tenant's Proportionate Share of Taxes for such fiscal tax year; and (dd) the amount either remaining unpaid toward Tenant's obligation to pay Tenant's Proportionate Share of Taxes for such fiscal tax year, or the amount by which Tenant's monthly payments toward Tenant's obligation to pay Tenant's Proportionate Share of Taxes for such fiscal tax year have exceeded Tenant's actual obligation for Tenant's Proportionate Share of Taxes for such fiscal tax year. Tenant's Monthly Tax Payments for the remainder of such fiscal tax year shall be recomputed by dividing the remaining number of full months in the fiscal tax year into the amount remaining unpaid toward Tenant's obligation to pay Tenant's Proportionate Share of Taxes for such fiscal tax year, and Tenant shall pay

such recomputed Monthly Tax Payments as herein provided. If at the time Landlord notifies Tenant of the information pursuant to the first sentence of this subparagraph it is determined that Tenant shall have paid Landlord more than Tenant's Proportionate Share of Taxes for such fiscal tax year, then the excess shall be applied toward Tenant's next monthly or semi-annual tax payment required herein.

At the beginning of each fiscal tax year during the Lease term, Landlord shall have the right to change the amount of Tenant's Monthly Tax Payments based on Landlord's estimate of Tenant's Proportionate Share of Taxes for the ensuing fiscal tax year by notice to Tenant and Tenant thereafter shall pay to Landlord such estimated Monthly Tax Payments until an adjustment is made when Tenant's Proportionate Share of Taxes are ascertained for such fiscal tax year pursuant to the provision of the preceding subparagraph.

Notwithstanding any contrary provision of this Lease, Tenant shall not be obligated to pay or to reimburse Landlord, at any time during the Lease term, for increases in Taxes attributable to a second (2<sup>nd</sup>) or subsequent change of ownership (as that term is defined by the California Revenue and Taxation Code) of the Premises or the Shopping Center occurring during the first forty eight (48) months after the Rental Commencement Date.

(v) **Proration of Tenant's Liability.** Tenant's liability to pay Tenant's Proportionate Share of Taxes shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Lease term at its commencement and expiration. After expiration or termination of the Lease term, Tenant shall pay to Landlord immediately on demand the amount remaining unpaid toward Tenant's obligation to pay Tenant's Proportionate Share of Taxes for the partial fiscal tax year included in the Lease term at its end, or Landlord shall pay to Tenant any excess amounts Tenant shall have paid to Landlord for such last fiscal tax year included in the Lease term at its end.

(c) **Gross Receipts Taxes.** The term "Gross Receipts Taxes" shall mean and include any tax, fee or excise levied, assessed, based on or measured by or on the rents or any other charges payable by Tenant under this Lease, including, but not limited to, any gross income tax, gross receipts tax, value added tax or excise tax applicable to the receipt of such rent or other charges or the possession, leasing or operation, use or occupancy of the Premises, or based on or measured by or on the number of square feet of the Premises, or any other tax, fee, or excise, however described, in substitution or addition to Gross Receipts Taxes, but not including any net income, franchise, transfer, capital stock, estate or inheritance taxes of Landlord. If any such Gross Receipts Tax is required to be paid to the governmental taxing entity directly by Landlord, then Landlord shall pay the amount due and, within thirty (30) days after Landlord's written demand, Tenant shall fully reimburse Landlord for such payment. Tenant shall pay directly to any governmental taxing entity any such Gross Receipts Tax required to be paid to the governmental taxing entity directly by Tenant.

### 3.5 Common Area Costs.

(a) **Tenant's Proportionate Share of Costs; Payment.** Commencing on the Rent Commencement Date, Tenant shall pay to Landlord a monthly sum ("Monthly Common Area Payment") at the same time and in the same manner that Tenant is obligated to pay minimum monthly rent, which Monthly Common Area Payment shall be applied toward "Tenant's Proportionate Share of Common Area Costs," as that term is defined below. The amount of the Monthly Common Area Payment shall initially be the sum set forth in Paragraph 6(j) of the Fundamental Lease Provisions. Notwithstanding the foregoing, Landlord shall have the right to separately bill for the cost of all Common Area insurance on an annual (or other periodic) basis. If Landlord bills Tenant separately for Common Area insurance on such non-monthly basis, Tenant shall pay Tenant's Proportionate Share of such insurance within thirty (30) days after the date of Landlord's billing therefor.

The term "Tenant's Proportionate Share of Common Area Costs" shall be computed by multiplying the total "Common Area Costs," as defined below, in any Lease Year by a fraction, the numerator of which shall be the Leasable Floor Area in the Premises, as stated in Paragraph 4(b) of the Fundamental Lease Provisions, and the denominator of which shall be the Leasable Floor Area of the Shopping Center, as stated in Paragraph 4(c) of the Fundamental Lease Provisions. However, if the cost of any item included in Common Area Costs is separately paid for or separately reimbursed to Landlord apart from Common Area Costs by any other tenant(s) of the Shopping Center, then with respect to such item Tenant's Proportionate Share of such item will be adjusted to equal the quotient obtained by dividing (i) the Leasable Floor Area in the Premises by (ii) the Leasable Floor Area of the Shopping Center excluding the total number of Leasable Floor Area of the premises occupied by the tenant(s) which separately pay for or separately reimburse Landlord for the cost of such item. As noted in Section 1.2 of this Lease, the Leasable Floor Area of the Shopping Center may change during the term of this Lease. Common Area Costs that cover a period that includes any period prior to or after expiration of the Lease term shall be prorated on the basis of a 365-day year. A "Lease Year" is a calendar year, except the first Lease Year may be a partial calendar year commencing on the date the Lease term commences, and the last Lease Year shall end on the date the term of this Lease expires.

Landlord shall have the right to adjust the Monthly Common Area Payment at any time during the term on the basis of Landlord's reasonably anticipated changes in Common Area Costs.

Landlord shall furnish to Tenant a statement showing the total Common Area Costs for each Lease Year, Tenant's Proportionate Share of Common Area Costs for such Lease Year, and the Monthly Common Area Payments made by Tenant with respect to the Lease Year in question, within a reasonable time after the end of each Lease Year (Landlord shall use reasonable efforts to provide such statement not later than ninety (90) days thereafter). The statement shall be prepared, signed and certified to be correct by Landlord. If Tenant's Proportionate Share of Common Area Costs for the Lease Year exceeds the Monthly Common Area Payments made by Tenant, Tenant shall pay to Landlord the deficiency within thirty (30) days after receipt of the statement. If Tenant's Monthly Common Area Payments made during the Lease Year exceed Tenant's Proportionate Share of Common Area Costs, Landlord shall apply such excess to the next Monthly Common Area Payment due from Tenant, except Landlord will pay to Tenant any excess at the time Landlord furnishes the statement to Tenant in connection with the final adjustment of Tenant's Proportionate Share of Common Area Costs for the last Lease Year.

At reasonable times and upon reasonable prior written notice, Tenant or its representative(s) shall have the right, not more frequently than once for each full Lease Year during the Lease term at Landlord's offices in California, during normal business hours, to audit all of Landlord's records pertaining to Common Areas Costs; provided that no such auditor shall be compensated on a contingency fee basis. If such audit discloses any error in the determination of Tenant's Proportionate Share of Common Area Costs, Tenant shall provide Landlord with a copy of the audit. Unless Landlord disputes the results of such audit, any over-billing discovered by such audit shall be promptly refunded to Tenant, and any under-billing shall be promptly paid by Tenant to Landlord. Unless Landlord disputes the results of such audit, in the event the overstatement of Common Areas Costs, or Tenant's Proportionate Share thereof, exceeds five percent (5%) of the sum previously billed to Tenant by Landlord, Landlord shall reimburse Tenant for all reasonable expenses of such audit. If Landlord disputes the results of such audit, and the parties cannot reach a resolution of such dispute within ninety (90) days of Landlord's notification to Tenant of same, then Tenant and Landlord shall jointly appoint an independent certified public accountant to conduct a new

audit, and the results thereof shall be final and binding. The party whose position is furthest from that determined by such new audit shall pay all of the costs of such jointly appointed accountant. Landlord shall retain its records regarding Common Area Costs for a period of at least twenty-four (24) months following the final billing for the Lease Year during the Lease term in question.

All taxes, insurance and utility costs included in Common Area Costs are hereinafter referred to as "Special Costs." Common Area Costs, exclusive of Special Costs, are hereinafter referred to as "Capped Costs." After the first full Lease Year during the term, Tenant's Proportionate Share of Capped Costs during each subsequent Lease Year of the initial Lease term and each extension term, if exercised by Tenant, shall be determined as follows: Capped Costs shall not exceed an amount equal to the Cap, as hereinafter defined. For the second full Lease Year of the term, the Cap shall equal the amount of the Capped Costs for the first full Lease Year increased by six percent (6%), and, for each successive Lease Year thereafter, the Cap for such year shall be determined by adding an amount equal to six percent (6%) of the Capped Costs for the first full Lease Year to the Cap for the immediately preceding Lease Year, on a cumulative basis. For example, if the Capped Costs for the first full Lease Year were \$1,000, then the Cap for the second Lease Year would be \$1,060, and the Cap for the third Lease Year would be \$1,120, and with the Cap to continue increasing by \$60 per Lease Year thereafter. The dollar amount used for the Capped Costs for the first full Lease Year in the foregoing example is for illustrative purposes only and is not meant to make any representation of an actual figure but is only used to illustrate a formula and the calculation thereof. It is understood and agreed that the foregoing shall not be construed to limit, and Tenant shall at all times be required to pay, the full amount of Tenant's Proportionate Share of the Special Costs.

(b) **Definition of Common Area Costs.** The phrase "Common Area Costs" shall mean the aggregate of all costs and expenses of every kind and nature whatsoever as may be actually paid or incurred by Landlord in operating, managing, maintaining and repairing the Premises (to the extent Landlord is obligated to maintain and is not expressly prohibited, under this Lease, from including such costs in Common Area Costs), Common Areas and the exterior walls, roofing systems and structural portions of the buildings in the Shopping Center, all such Common Area Costs as determined in accordance with standard accounting practices consistently applied as determined by Landlord in its reasonable discretion and allocated to any particular period on the accrual method of accounting. Common Area Costs shall include, by way of example, and not limitation, the costs and expenses of operating, repairing, maintaining, managing, resurfacing, replacing, repaving, restriping, sweeping, painting, maintenance contracts, lighting, cleaning and removing trash and other waste with respect to the Common Areas, exterior walls, fire and life safety systems, fire sprinkler systems, parking lot control equipment, roofing systems and structural portions of the buildings in the Shopping Center; all signs of any kind, excluding only tenant identification signs installed by tenants; all utility and drainage systems and equipment serving the Common Areas or multiple occupants of the Shopping Center, including gas, electricity, water, sanitary sewer, storm water drainage, telephone and other means of communications (except as specifically limited by the utility maintenance, repair and replacement required to be performed by Landlord under Section 8.2 below); landscaping and irrigation systems; exterior lighting; all utilities, including gas, electricity, water, sewer and telephone; janitorial services to the Common Areas; the costs of all insurance obtained by Landlord for the Shopping Center; any deductible portion of an insured loss if the premium for such insurance is included in Common Area Costs; any lease payments required to be made with respect to the Common Areas excluding ground lease payments applicable to the Common Areas under the Master Lease (hereinafter defined); the total costs of all compensation, benefits and employment taxes of all personnel which perform duties connected with the operation, repair and maintenance (but not the management, which management shall be compensated via the management fee set forth below) of the buildings in the Shopping Center and the Common Areas; all real estate taxes, other taxes and fees required for licenses and permits not included in Taxes or Gross Receipts Taxes, above; supplies; equipment; trash and waste removal; security systems, security guard services and security personnel; the costs to install, maintain, replace and repair seasonal decorations; audio and video equipment which serves the Common Areas; energy allocation, energy use surcharges, or environmental charges by any governmental entity; maintaining federal, state or local government ambient air and environmental standards; equipment maintenance agreements; reasonable depreciation on maintenance and operating machinery and equipment (if owned by Landlord) or rental paid for such machinery and equipment (if rented by Landlord); snow and ice removal; legal, accounting and consulting fees. In addition, Common Area Costs shall include an administrative/management fee equal to ten percent (10%) of all of the costs and expenses described above, excluding only Taxes and insurance costs. For the purposes of this Section 3.5(b), Common Area Costs shall not include any mortgage payments, leasing commissions, legal costs, the amount charged by any property management firm and expenses in connection with negotiations or disputes with other tenants or prospective tenants of the Shopping Center or depreciation on, or reserves with respect to, the buildings and other improvements on the Shopping Center.

Notwithstanding any contrary provision contained in this Lease, Common Area Costs shall exclude: (i) principal and interest payments pursuant to any mortgage or deed of trust which encumbers the Shopping Center or the Premises; (ii) Taxes (other than taxes on the improvements and land comprising the Common Areas); (iii) leasing commissions or attorneys' fees related to the negotiation, modification or termination of leases or eviction of occupants of the Shopping Center; (iv) expenses incurred due to the gross negligence or willful misconduct of Landlord, its agents, contractors or employees (and expenses incurred due to the gross negligence or willful misconduct of any tenant or occupant of the Shopping Center, or their respective agents, contractors or employees, but only to the extent that Landlord is actually reimbursed by such tenant or occupant for such expenses); (v) costs, fees, fines or penalties, or interest thereon, incurred due to violations by Landlord of any governmental law, ordinance, code, rule or regulation; (vi) repairs or other work occasioned by casualty or the exercise of the right of eminent domain (except for insurance deductibles); (vii) costs for which Landlord is reimbursed by insurance or otherwise compensated, including direct reimbursement by any occupant of the Shopping Center (except for any such occupant's share of Common Area Costs or similar charges); (viii) interest or penalties incurred as a result of Landlord's failure to pay any bill as the same shall become due; (ix) advertising, marketing and promotional expenditures or customer services; (x) any costs or expenses associated with the removal, cleanup or remediation of any Hazardous Materials from the Shopping Center, or any restoration in connection therewith, except for de minimis expenses related to the clean-up of the surface of the Common Areas (e.g. minor fluid leaks from vehicles using the Common Area) which may be included within the Common Area Costs; or (xi) Landlord's general overhead; provided, however this exception shall not exclude the administration/management fee.

### 3.6 Security Deposit. Intentionally Omitted.

## SECTION 4. Use of Premises.

4.1 **Authorized Use; Trade Name.** Tenant shall use and occupy the Premises during the Lease term hereof only for the purposes and under the trade name as set forth in Paragraphs 7 and 8, respectively, of the Fundamental Lease Provisions, except as otherwise expressly provided in Section 15 below. Tenant shall not use or permit the use of the Premises for any other use or purpose without the prior written consent of Landlord, which consent (except as otherwise provided in Section 15 below) may be withheld in Landlord's sole discretion. Landlord represents and warrants that, as of the Effective Date of this Lease, to Landlord's actual knowledge, there are no existing legal restriction(s) to which the Premises is subject and no existing exclusive use rights granted to other tenants or occupants of the Shopping Center, or deed restrictions affecting the Shopping Center, which prohibit or materially restrict the sale of alcoholic beverages for off-Premises consumption and/or in-Premises tastings of alcoholic beverages and wine storage as permitted under this Lease.

**4.2 Requirement of Use When Tenant is Open for Business.** During the one (1) day period at the beginning of the Lease term that Tenant is required to operate and thereafter whenever Tenant actually is open and operating in the Premises, Tenant shall not leave the Premises unoccupied or vacant, and shall conduct and carry on in the entire Premises the type of business for which the Premises are leased; keep in stock on the Premises a customary line of merchandise for the purpose of carrying on the business permitted under this Lease; maintain an adequate sales force to serve properly all customers; and operate Tenant's business in an efficient and diligent manner except when Tenant is prohibited from being open for business by applicable law, ordinance or government regulation, or is prevented from doing so by strikes, lockouts or other causes beyond the reasonable control of Tenant. At all times when Tenant is operating its business in the Premises, Tenant shall be open for business during those days and for at least those hours specified in Paragraph 9 of the Fundamental Lease Provisions, except during reasonable periods for repairing, decorating or counting inventory. Tenant further agrees to have its window displays and exterior sign adequately illuminated continuously during such days and hours.

Tenant shall initially open the Premises for business and operate from the Premises for at least one (1) day after the Rent Commencement Date; provided, however, that Tenant shall pay all rents and charges provided for in this Lease from and after the Rent Commencement Date whether or not Tenant shall then be open for business from the Premises.

Should Tenant, after opening for business in the Premises, thereafter fail to operate its business for a period of ninety (90) consecutive days in accordance with this Section 4.2, Landlord shall have the right to cancel the remaining term of this Lease by written notice to Tenant given at any time after the expiration of such ninety (90) day period and prior to Tenant resuming such operations. If Landlord exercises such right to so terminate this Lease, Tenant shall vacate the Premises within thirty (30) days after receipt of Landlord's exercise of such right to terminate this Lease and this Lease shall be terminated upon the date Tenant vacates the Premises. Tenant shall continue to pay the monthly Minimum Rent and all additional rents and charges payable hereunder through such termination and upon such termination Tenant shall pay to Landlord the unamortized portion of the tenant improvement allowance provided for in Exhibit B hereto and the brokerage commissions paid by Landlord with respect to this Lease, such amortization to be computed on a straight-line basis over the 10-year initial Lease term and with simple interest at eight percent (8%) per annum. Notwithstanding the foregoing, Landlord shall not have the right to terminate this Lease pursuant to this Section 4.2 if there is a temporary cessation of business in the Premises occasioned by causes described in Section 23.12, condemnation, repairs to improvements required as a result of damage by fire or other casualty or alterations being performed by Tenant, provided that Tenant shall diligently prosecute to completion all necessary repairs to the Premises required as a result of such condemnation, fire or other casualty and all alterations being made to the Premises. Tenant shall have the right within ten (10) days of delivery Landlord's termination notice to provide its own notice to Landlord of its intent to reopen within thirty (30) days following the date of Tenant's notice, and, in the event of such reopening within such time period, Landlord's termination notice shall be rendered void and of no effect.

#### **4.3 Compliance With Law.**

(a) **General Compliance.** Tenant, at Tenant's sole cost and expense, shall comply with all laws, rules, orders, ordinances, directions, codes, regulations and requirements of federal, state, county and municipal authorities and the requirements of any board of fire underwriters, including NFPA standards, or other similar body now or hereafter constituted, pertaining to Tenant's use of the Premises and with the covenants, conditions and restrictions recorded against the Premises as of the Effective Date of this Lease, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental matters, the Americans with Disabilities Act, all zoning and other land use matters, and utility availability, and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant with respect to Tenant's use or occupation of the Premises. Tenant shall procure, at its sole cost and expense, any and all permits and licenses required for the transaction of business in the Premises. The judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any laws in the use of the Premises shall be a conclusive determination of that fact between Landlord and Tenant even though Landlord is not a party to any such action or proceeding. Tenant hereby agrees to indemnify and hold Landlord harmless from and against any liability, claims or damages (but specifically excluding Landlord's consequential, special or punitive damages or lost profits) as a result thereof and against all costs, expenses, fines or other charges, including, without limitation, reasonable attorneys' fees and related costs incurred by Landlord in connection therewith, which indemnity shall survive the expiration or earlier termination of this Lease. Landlord shall comply with laws applicable to Landlord's operation of the Common Areas, as and to the extent that compliance is mandatory and Landlord does not qualify for an exemption from such mandatory compliance, except to the extent that such compliance is required due to Tenant's use of the Premises or its actions or omissions (in which event, Tenant shall be obligated to comply therewith). Notwithstanding any contrary provision of this Lease, Tenant shall not be obligated to make any structural alterations to the Premises on account of applicable laws, unless the same is necessitated by Tenant's use of the Premises, Tenant's Improvements, Tenant's Trade Fixtures or Tenant's alterations relating to the Premises, Tenant's repairs in the Premises and/or the negligence or willful misconduct of Tenant, its agents, employees, customers (while within the Premises) or contractors (in which event Tenant, at Tenant's sole cost and expense, shall be solely responsible for the same). Notwithstanding any contrary provision contained in this Lease, Landlord shall comply, as and to the extent required by law, with all laws (including without limitation the "Americans with Disabilities Act"), codes, regulations and other governmental requirements (both now or hereafter in effect) in connection with (i) alterations or improvements required to be made to or installed in the Premises or in the Shopping Center by Landlord which are unrelated to Tenant's specific use of the Premises and which are not necessitated by the negligence or willful misconduct of Tenant or its representatives, or (ii) any changes or improvements in or to the Common Areas at any time after the Effective Date, irrespective of the factors necessitating such changes or improvements (unless solely as a result of Tenant's specific use of the Premises, Tenant's Improvements, Tenant's Trade Fixtures or Tenant's alterations relating to the Premises, Tenant's repairs in the Premises and/or the negligence or willful misconduct of Tenant, its agents, employees, customers (while within the Premises) or contractors).

#### **(b) Use of Hazardous Materials.**

(i) 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, while within the Premises, its invitees, without the prior written consent of Landlord, which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all applicable local, state and federal laws, statutes, orders, ordinances, rules and regulations (as interpreted by judicial and administrative decisions) regulating any such Hazardous Material so brought upon or used or kept in or about the Premises. If Tenant breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Material in the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, liability,

loss, damages (but specifically excluding Landlord's consequential, special or punitive damages or lost profits), penalties, fines, costs, liabilities, including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease 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 clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises. Without limiting the foregoing, Tenant shall give to Landlord immediate verbal and follow-up notice of any spills, releases or discharges of Hazardous Materials in, on or about the Premises, the Common Areas and/or the Shopping Center caused by the acts or omissions of Tenant, or its agents, employees, representatives, invitees (while within the Premises), licensees, subtenants or contractors. Tenant covenants to fully investigate, clean up and otherwise remediate any spill, release or discharge of Hazardous Materials caused by the acts or omissions of Tenant, or its agents, employees, representatives, invitees (while within the Premises), licensees, subtenants or contractors at Tenant's cost and expense; such investigation, clean up and remediation to be performed after Tenant has obtained Landlord's written consent, which shall not be unreasonably withheld; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's written consent. Tenant shall not be entitled to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole discretion. This Section 4.3(b) shall survive the expiration or earlier termination of this Lease.

(ii) As used herein, the term "Hazardous Material" means (i) any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by all applicable local, state or federal laws including, without limitation, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, 42 U.S.C. 6901 et seq, and 42 U.S.C. 9601 et seq; (ii) petroleum and petroleum-based products and constituents, components, fractions and additives thereof; (iii) asbestos; (iv) polychlorinated biphenyls; and (v) radioactive materials.

(iii) **Disclosure.** At the commencement of this Lease, and upon Landlord's request, which request shall not be made more frequently than once in each Lease Year, and at the termination of this Lease, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials, or any combination thereof, which, to Tenant's actual knowledge, were stored, used or disposed of on the Premises in the preceding Lease Year, if applicable, and the names and amounts of all Hazardous Materials which to Tenant's actual knowledge, Tenant intends to store, use or dispose of on the Premises in the Lease Year just then beginning, if applicable.

(iv) **Inspection.** Landlord and its Agents shall have the right, but not the duty, to inspect the Premises and conduct tests and investigations during Tenant's normal business hours to determine whether Tenant is complying with the terms of this Section 4.3(b). If Landlord determines from any such inspection, tests or investigations that a violation of a law or governmental rule or regulation exists with respect to Hazardous Materials, Tenant shall pay to Landlord, upon demand, all of Landlord's costs of such inspection, tests and investigations. If Tenant is not in compliance with the provisions of this Section 4.3(b), Landlord, upon reasonable advance written notice to Tenant (except only in the case of an emergency) shall have the right to immediately enter upon the Premises to remedy any contamination caused by Tenant's failure to comply notwithstanding any other provision of this Lease. Landlord shall use reasonable efforts to minimize interference with Tenant's business but shall not be liable for any interference caused thereby.

(v) **Health and Safety Disclosure.** California law requires landlords to disclose to tenants the existence of certain Hazardous Materials. Hazardous Material includes any hazard or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local governmental authority having jurisdiction over the Shopping Center. Gasoline and other automotive fluids are found in the parking areas adjacent to the Shopping Center and may, under some circumstances, be found within the Shopping Center. Cleaning, lubricating and hydraulic fluids used in the operation and maintenance of the Shopping Center may be found in certain areas of the Shopping Center. Shopping Center occupants may use products which contain Hazardous Materials. Certain adhesives, paints and other construction materials and finishes used in portions of the Shopping Center may contain Hazardous Materials. Although smoking is prohibited in portions of the Shopping Center, there may, from time to time, be tobacco smoke exposure in the portions of the Shopping Center.

In addition to the foregoing, Landlord has disclosed to the Tenant that certain portions of the Shopping Center may contain asbestos or asbestos containing materials ("ACM") or other Hazardous Materials. Certain reports and letters dealing with the presence of asbestos and ACMs or other Hazardous Materials in the Shopping Center have been provided or made available to Tenant for its review prior to the Effective Date (collectively, "Reports"), a detailed listing of which is set forth on Exhibit N, and other documents relating to such materials may be subsequently provided as the same may be available. The Reports contain the specific locations within the Shopping Center where asbestos and ACMs or other Hazardous Materials are present and set forth certain information to convey that moving, drilling, boring or otherwise disturbing the asbestos and ACMs or other Hazardous Materials may present a health risk, and consequently, should not be attempted by any person who is not qualified to handle asbestos and ACMs or other Hazardous Materials. During the Lease term, and so long as Tenant occupies any portion of the Shopping Center, Tenant shall familiarize itself and comply with all recommendations under the Reports, with respect to the maintenance of any and all asbestos and ACMs or other Hazardous Materials in the Shopping Center so as to limit or reduce the likelihood of any release of any asbestos fibers or other ACMs or other Hazardous Materials, and Tenant shall comply with such recommendations. Tenant shall be responsible for insuring that all employees and agents of Tenant are aware of the matters set forth in the Reports with respect to the presence of asbestos and ACMs or other Hazardous Materials at the Shopping Center. Tenant shall indemnify, defend, protect and hold Landlord harmless from any and all claims, losses, liabilities or damages (but specifically excluding Landlord's consequential, special or punitive damages or lost profits), including attorneys' fees and costs, resulting from Tenant's failure to follow the prescribed safety requirements, precautions and procedures outlined in the Reports. By its execution of this Lease, Tenant acknowledges that the notice set forth hereinabove shall constitute the notice required under California Health and Safety Code Section 25915.5.

(vi) **Landlord's Indemnity.** Landlord shall deliver the Premises to Tenant free of any Hazardous Materials. Landlord hereby makes the following warranties and representations to Tenant, each of which is made to Landlord's actual knowledge (without investigation) as of the Effective Date and, except as otherwise disclosed in the Reports or otherwise by written notice to Tenant prior to the Delivery Date, as of the Delivery Date: (1) The Premises and the Shopping Center, and Landlord's operations concerning the Premises and the Shopping Center, are in substantial compliance, as and to the extent required by law, with all applicable laws, rules and regulations regarding Hazardous Materials; (2) except as stated in the Reports, there are no Hazardous Materials, including without limitation polychlorinated biphenyls (PCB), hydrocarbons or asbestos materials, located in, on, under or about the Premises or the Shopping Center in violation of applicable laws; (3) there are no underground petroleum, fuel oil or other storage tanks located on or under the Shopping Center (excluding underground petroleum pipes); and (4) no litigation has been brought or threatened, nor any settlements reached with any governmental or private party, concerning the actual or alleged presence of Hazardous Materials on or about the Premises or the Shopping Center or any disposal, release or threatened release of Hazardous Materials in or about the Premises or the Shopping Center prior to the

Effective Date, nor has Landlord received any notice of any violation, or any alleged violation of any laws, rules or regulations regarding Hazardous Materials, pending claims or pending investigations with respect to the presence of Hazardous Materials on or about the Premises or the Shopping Center. Landlord shall indemnify, defend upon demand with counsel reasonably acceptable to Tenant, and hold Tenant harmless from and against any and all (i) liabilities, lawsuits, claims, damages (but expressly excluding Tenant's consequential, special or punitive damages or lost profits), interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees and court costs and (ii) incurred remediation costs, investigation costs and other expenses which result from or arise in any manner whatsoever out of the following: (A) the breach of any warranty or any representation by Landlord contained in this sub-section, (B) the presence of Hazardous Materials in the Premises on the Delivery Date or (C) the use, storage, release or disposal of Hazardous Materials in the Premises or the Shopping Center at any time during the Lease Term by Landlord, its agents, employees or contractors in amounts which exceed the minimum action levels or other minimum standards imposed by applicable laws, rules and regulations regarding Hazardous Materials (except only if such presence of Hazardous Materials is the result of the acts of Tenant, its agents, employees or contractors or Tenant's invitees while within the Premises). Landlord's obligations and liabilities pursuant to this sub-section shall survive the expiration or earlier termination of this Lease. Landlord shall give Tenant written notice as soon as reasonably practicable of (a) any communication received by Landlord from any governmental authority concerning any Hazardous Materials which relates to the Premises or Shopping Center and any contamination of the Premises or Shopping Center which constitutes a violation of any applicable laws, rules and regulations regarding Hazardous Materials. Landlord shall be responsible for the abatement of any Hazardous Material within the Premises as of the Delivery Date and any Hazardous Materials thereafter discharged or placed within the Premises as a result of the act or omission of Landlord, its agents, contractors or employees.

(vii) **Third-Party Acts.** In the event that the presence of Hazardous Materials in the Premises or within the Shopping Center which is not the result of the act of Landlord or Tenant, or their respective agents, employees or contractors, results in Tenant determining, in its reasonable business judgment, to close for business in the Premises due to the presence of such Hazardous Materials and the material health risk posed to Tenant's employees and customers as a result of such Hazardous Materials, Tenant shall provide advance written notice to Landlord of the date of such closure within fifteen (15) days after Tenant obtains actual knowledge of the presence of such Hazardous Materials and third-party origin. In the event Tenant has remained closed for business for a period of forty-five (45) days after Tenant delivers such notice to Landlord and such closure continues to exist due to the material health risk posed to Tenant's employees and customers as a result of such Hazardous Materials and Landlord is unable or unwilling to remediate (or cause the remediation of) such Hazardous Materials as required by applicable laws so as to permit operations to again commence within such 45-day period without the existence of such material health risk to Tenant's employees and customers as a result of such Hazardous Materials, then Tenant shall be entitled to terminate this Lease upon an additional forty-five (45) days' advance written notice to Landlord, which termination notice may only be given within forty-five (45) days after expiration of the 45-day closure period noted above, provided that such election to terminate shall be nullified if the Hazardous Materials that have caused Tenant to close for business are sufficiently remediated within such additional 45-day notice period so as to permit Tenant's operations to again commence without the existence of a material health risk to Tenant's employees and customers as a result of such Hazardous Materials. Landlord shall in no event be liable for damages incurred by Tenant as a result of the presence of such Hazardous Materials.

**4.4 Miscellaneous Limitations on Tenant's Use of Premises.** Tenant shall not use the Premises for or carry on or permit in or upon the Premises, or any part thereof, any noisy or dangerous trade, business, manufacture or occupation (excluding the general sale of alcoholic beverages for off-Premises consumption and in-Premises tastings of alcoholic beverages), or any nuisance, or anything against public policy, or interfere with the business of any other tenants in the Shopping Center, or permit any auction, liquidation, fire or bankruptcy sale to be held or conducted in and about the Premises. Tenant agrees not to cause, or to permit its agents, employees or contractors to cause any waste or damage, disfigurement or injury to the Premises, or the fixtures or equipment thereof, or the Common Areas, nor to permit or suffer any overloading of the floor of the Premises. Tenant shall not use the Premises for washing clothes and/or cooking, and nothing shall be prepared, manufactured or mixed in the Premises which would emit any offensive odor into the Shopping Center. No second-hand store shall be conducted on the Premises. Tenant shall not, without Landlord's prior written consent, keep anything within the Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Premises or other part of the Shopping Center by Landlord. Tenant shall pay, upon demand by Landlord, any such increased premium cost due to Tenant's use or occupation of the Premises. All property kept, stored or maintained on or about the Premises by Tenant shall be at Tenant's sole risk. Tenant shall have the right to load and unload merchandise to and from its customers' vehicles at all times when Tenant is open for business in the Premises; provided that Tenant shall be fully liable and responsible for such loading and unloading activities and equipment used therefor and shall hold Landlord harmless from any liability, claim, cost or expense arising from such activities. Tenant agrees that it shall not use the Premises or permit the Premises to be used in any manner which violates the use restrictions specified in Exhibit G to this Lease.

**4.5 Exterior Displays.** Except as otherwise expressly provided in Sections 23.26 and 23.27 of this Lease, Tenant shall not keep, display or sell or suffer or permit the display or sale of any merchandise outside of the Premises, or otherwise obstruct the sidewalks, mall or Common Areas in the Shopping Center. Except as otherwise expressly provided in Section 23.27 of this Lease, Tenant shall not solicit business or distribute advertising materials in the Common Areas. Tenant shall maintain the windows and permitted signs on the Premises in a neat and clean condition.

**4.6 Coin Machines.** Tenant shall not install, maintain, use or allow in or upon the Premises any pinball machine, coin operated music machine, video game machine, or any other coin operated amusement device of any kind or character. If Tenant shall violate the provisions of this Section, Landlord may, in addition to any other rights and remedies, enter the Premises and remove any such machines and devices at the expense of Tenant, and shall not be deemed guilty of any forcible entry, detainer or trespass.

**4.7 No Warranties or Representations Regarding Zoning, Etc.** Tenant acknowledges that Landlord and/or its authorized representatives have not made any warranties and/or representations as to the permitted use that can be made of the Premises under existing laws, including, without limitation, the present general plan, zoning ordinances, and the like of the state, county and municipality in which the Shopping Center is located.

**4.8 Tenant's Exclusive.** Subject to (i) all existing leases and agreements with other tenants and occupants of the Shopping Center (collectively, "existing tenants") which have been executed, and (ii) all Permitted Exceptions (defined below) which have been recorded, prior to the Effective Date of this Lease, and only as long as Tenant is operating in the Premises in compliance with the Permitted Use specified in this Lease, Tenant shall have the exclusive right within the Shopping Center to sell alcoholic beverages for off-premises consumption. Tenant's exclusive shall not apply to (A) any existing tenant(s), as of the Effective Date, who currently sell such products (or who are permitted to sell the same without Landlord's consent), (B) any assignees/sublessees of any existing tenant(s) if, under the existing tenant's occupancy agreement, Landlord's consent to such assignment or sublease or similar transfer or to any change in use is not required (and, in such event, Landlord shall not be required to modify such existing tenant's occupancy agreement in conjunction with the

assignment or subletting or similar transfer), or (C) any renewal, relocation or term extension of the lease for any such existing tenant. Nothing contained herein shall restrict any tenant in the Shopping Center from selling alcoholic beverages for off-premises consumption on an incidental basis, which for the purposes of this Section 4.8, shall be defined as the sale, display or distribution of alcoholic beverages for off-premises consumption in an area within such tenant's premises which shall not exceed the lesser of (a) ten percent (10%) of such tenant's Leasable Floor Area or (b) one thousand (1,000) square feet of Leasable Floor Area. The provisions of this paragraph shall not apply to the operation of a business in the Shopping Center which is owned in whole or in part by, or operated by, Tenant or by any licensee, franchisee, assignee or sublessee under this Lease. This exclusive right shall not create any liability from Landlord to Tenant for a breach of this provision in the event that a court order specifically allows for or causes the breach of such exclusive provision in connection with the assignment and assumption of another occupant's lease. Landlord's agreement under this paragraph shall become null and void and of no further force and effect immediately upon a finding or judgment of any Federal court or agency or State court or agency that the provisions of this subsection, are unenforceable, invalid or illegal.

The parties hereby acknowledge the inadequacy of Tenant's legal remedy and the irreparable harm which would be caused to Tenant by any such violation of Tenant's exclusive set forth above. In the event such violation continues for more than two (2) months after written notice from Tenant thereof, and Landlord is not at that time involved in legal proceedings in an attempt to cure any such violation, Tenant may, as its sole remedy against Landlord (but not third parties unaffiliated with Landlord), reduce its monthly installments of Minimum Monthly Rent to fifty percent (50%) of the amount otherwise specified in Section 6(a) of the Fundamental Lease Provisions (such reduced rent being referred to as "Substitute Rent"), and Tenant shall have the right to continue paying Substitute Rent until the first to occur of (i) Landlord's initiation of legal proceedings to cure such violation, or (ii) the cessation of the violation. Any reduction in Tenant's monthly installment of Minimum Monthly Rent shall commence on the first day of the first calendar month following Landlord's receipt of Tenant's written notice that Tenant is availing itself of the remedy provided under this Section. Notwithstanding the foregoing, in the event a "Rogue Tenant" (as hereinafter defined) violates Tenant's exclusive set forth above, provided so long as Landlord commences and thereafter uses reasonable and diligent efforts to cause a cessation of such violation (including, without limitation, Landlord's initiation of legal proceedings to force such Rogue Tenant to cease violating Tenant's exclusive, if necessary) within two (2) months after written notice from Tenant to Landlord of the existence of a violation of Tenant's exclusive set forth above, Tenant's installments of Minimum Monthly Rent shall not be reduced. In the event Landlord fails to use reasonable and diligent efforts to cause the cessation of such violation of Tenant's exclusive by such Rogue Tenant, Tenant, as its sole remedy, may pay Substitute Rent until the earlier of (i) Landlord's initiation of legal proceedings to cure such violation or (ii) the cessation of the violation of Tenant's exclusive. A "Rogue Tenant" for the purposes of this Section shall mean a tenant or occupant within the Shopping Center who is prohibited and/or not permitted by its lease from using its premises for a use that violates Tenant's exclusive. Tenant shall only be entitled to pay Substitute Rent pursuant to the terms of this Section so long as Tenant (at the time in which Tenant would be permitted to pay Substitute Rent) is using the Premises for the use set forth in Section 7 of the Fundamental Lease Provisions above.

#### SECTION 5. Parking.

5.1 **Tenant's Parking Rights.** Within the Common Areas, Landlord shall provide parking areas with necessary access. Only automobiles and pickup trucks with a payload capacity not exceeding three-quarters of a ton shall be permitted in the parking areas. Solely in the event Landlord is required to do so by applicable Federal, state or local initiative, law or ordinance, Landlord may establish parking charges (by meters, gates or otherwise) with appropriate provisions for parking ticket validation by Tenant. Landlord agrees that any such parking charges and validation charges shall be determined by it from time to time in good faith and in compliance with the applicable Federal, state or local initiative, law or ordinance and shall be primarily for the purpose of discouraging the misuse and encouraging the maximum use of parking spaces by invitees of the various tenants in the Shopping Center and not primarily for the purpose of realizing a profit from parking operations, but the earning of a profit shall not constitute a breach of this provision. Any such parking or validation charges shall be at no cost to Tenant.

5.2 **Landlord's Control Over Parking.** Tenant and its employees shall park their cars only in areas specifically designated from time to time for that purpose by Landlord, whether such areas be inside or outside (as long as reasonably near) the Shopping Center; provided, however, that during the hours of their work at the Premises, Tenant's employees shall be permitted to park their cars in the area behind the Premises. Within five (5) days after request by Landlord, Tenant shall furnish to Landlord the automobile license numbers assigned to its cars and the cars of all its authorized employees. If Tenant or its authorized employees fail to park their cars in designated parking areas, Landlord may charge Tenant, as and for liquidated damages, Thirty Dollars (\$30.00) for each day or partial day for each car parked in any area other than those designated; provided, however, such liquidated damages shall not preclude Landlord from maintaining any legal and/or equitable proceedings against Tenant as a result of such violation. Tenant shall not at any time park or permit the parking of the vehicles of it or its employees adjacent to loading areas so as to interfere in any way with the use of such areas. Landlord shall also have the right to institute, at any time during the term hereof, reasonable procedures and/or methods in order to enforce the terms of this Section.

#### SECTION 6. Signs; Advertising.

6.1 **Tenant's Obligations; Landlord's Approval of Signs.** Tenant, at Tenant's sole cost and expense, shall, subject to Landlord's approval as stated below, be obligated to install and maintain on the exterior of the Premises adjacent to the entrances to the Premises a sign or signs. Tenant shall be permitted to install the largest storefront, building and window signs as shall be permitted by applicable City codes and by Landlord's sign criteria, all at Tenant's sole cost and expense and subject to approval by Landlord, which approval shall not be unreasonably withheld. Additionally, Tenant shall be allowed panel signage on the existing pylon and/or monument sign(s), indicated on Exhibit ~~A~~, ~~in the existing "Adventure 16" panel positions.~~ The cost of such panels shall be paid by Tenant; however, Tenant shall not be required to pay for the costs of originally constructing, erecting and install any Shopping Center pylon and/or monument sign(s). The size, location and color of Tenant's initial signage, as approved by Landlord, shall be as reflected on Exhibit C. Tenant also shall have the right, at its expense, to erect, maintain, place and install its usual and customary signs on the windows and within the interior of the Premises subject to the Tenants Sign Criteria. Landlord will use reasonable efforts to work with Tenant to secure signage for Tenant on one (1) of the existing monument signs along Crenshaw Boulevard subject to existing agreements, provided that such efforts shall be at no out-of-pocket cost to Landlord. Tenant also shall be entitled to place its sign panel on all directional signs located within the Shopping Center, if any, during the Lease term, (but only to the extent that such signs shall be in reasonable proximity to the Premises and/or to a primary means of ingress and egress to the Premises). At all times when Tenant shall be operating its business in the Premises, Tenant shall continuously illuminate from dusk until 11:00 pm every day, including Sundays and holidays, all exterior Premises signs. Tenant shall not have the right to place, construct or maintain on or about the exterior of the Premises, the Shopping Center or the Common Area, signs, names, insignia, logos, advertising placards, trademarks, lettering, decorations, canopies, awnings or any other similar item ("Advertising Matter") without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. In the event that Landlord consents to Tenant placing any Advertising Matter on or about the exterior of the Premises, or the Shopping Center, any such Advertising

Matter shall be subject to Landlord's approval of the type, construction, method of attachment, shape, color, size, dimensions, lighting, style, location and general appearance of such Advertising Matter, and shall conform to the Tenant Sign Criteria attached hereto as Exhibit C. Tenant agrees to maintain all of its Advertising Matter in good condition and proper working order at all times. Any sign and/or Advertising Matter must be prepared by a professional sign company or advertising organization and all electric signs must be U.L listed.

**6.2 Other Advertising Devices.** Except as otherwise expressly permitted in Section 23.27 of this Lease, Tenant shall not permit, allow or cause to be used in or at the Shopping Center any advertising media or device such as phonographs, radios, public address systems, sound production or reproduction devices, excessively bright lights, changing, flashing, flickering or moving lights or lighting devices or any similar devices, the effect of which shall be visible or audible from the exterior of the Premises. No signs as permitted by this Section shall advertise and/or refer to other stores of Tenant.

**6.3 Removal of Signs.** Tenant covenants and agrees that if the display of any Advertising Matter exhibited by it in the windows or outside of, in or about the Premises or Shopping Center shall violate the terms and conditions of this Lease at any time or times during the term hereof and if notice in writing is given by Landlord of such violation, Tenant will immediately and as often as such notices are received remove and/or cease to utilize such Advertising Matter, and failing to do so, expressly agrees that Landlord may enter the Premises and remove such violative Advertising Matter, using such force as may be necessary without being guilty of any forcible entry, detainer or trespass. The installation and maintenance of any signs or other Advertising Matter shall at all times be in strict compliance with any and all laws. Upon expiration or the termination of this Lease, Tenant, at the election of Landlord, but at the cost and expense of Tenant, shall immediately remove any and all such signs and other Advertising Matter and shall restore the exterior of the Premises or elsewhere where such signs and other Advertising Matter have been placed in a manner satisfactory to Landlord.

**6.4 Advertising of Premises.** Tenant shall prominently use in its business advertising for the Premises the name of the Shopping Center. Tenant shall not use or permit others on its behalf to use the name of the Premises, or the Shopping Center for any purpose other than as the address of the business to be conducted in or at the Premises as permitted by the preceding sentence, or to use any picture or likeness of the Premises, or the Shopping Center or any part of any of the same in any advertising, notice, correspondence or other type of announcement or communication. Landlord may require Tenant to discontinue its use of the name or logo of the Shopping Center at any time. Tenant shall not have or acquire any property right or interest in or to any name or distinctive designation which may become identified or associated with the Premises, or the Shopping Center or any part of same. If such name or distinctive designation shall contain as a part thereof the name of any reference to the Premises, the Shopping Center or any part or combination of parts of any of the same, all property rights and right of use of the name of the Shopping Center in combination with other words used by Tenant during the term of this Lease shall not be construed to permit the continuation of such after termination of this Lease or at locations other than in the Shopping Center, and Tenant agrees that such name or other identification of its business within the Shopping Center shall not be used after the termination of this Lease or at locations other than the Premises. Landlord shall have the right to change the name of the Shopping Center from time to time at Landlord's election.

#### **SECTION 7. Utilities.**

**7.1 Payment by Tenant.** Tenant, from and after the Delivery Date and thereafter throughout the term of this Lease, shall pay before delinquency the full cost for all water, gas, heat, electricity, power, sewage, telephone, janitorial and all other services and utilities supplied to or consumed in or on the Premises, together with all applicable taxes and surcharges. Any such utilities that are separately metered to the Premises shall be separately metered by meters installed by Landlord, at its sole expense, prior to the Delivery Date. For all services and utilities supplied to the Premises which are separately metered, Tenant agrees to contract for such services and utilities in its own name and to pay such costs for such services and utilities directly. For all services and utilities supplied to the Premises which are not separately metered, the costs of providing such services and utilities will be initially paid by Landlord subject to reimbursement by Tenant of its Proportionate Share of the cost of such services and utilities pursuant to Section 3.5 of this Lease. If Landlord reasonably determines that Tenant uses excessive amounts of any services or utilities which are not separately metered, Landlord may make reasonable appropriate adjustments to Tenant's Proportionate Share of the costs of such services and utilities to more equitably allocate the costs of such services and utilities among those tenants using such services and utilities. Landlord has the right at any time to install, at its sole expense, separate meters and/or submeters on any services or utilities which are not currently separately metered, in which event Tenant shall pay the costs for such services and utilities as measured by such meters and/or submeters. Landlord shall not be liable for any utility over which Landlord has no direct control, or to Tenant for any interruption of utility services to the Premises caused by events beyond Landlord's reasonable control; provided, however, Landlord shall work with the utility provider so as to effect the resumption of such utility services as quickly as is reasonably possible (unless such interruption of service has been caused by the negligence or willful misconduct of Tenant, its agents or employees). In the event (i) the supply of any utility service is interrupted for more than seventy-two (72) continuous hours as a result of the gross negligence, willful misconduct or breach of this Lease by Landlord, (ii) such interruption materially interferes with Tenant's normal business operations in the Premises (and is not merely an annoyance or inconvenience), and Tenant, in fact, temporarily ceases operating its business in the Premises as a result thereof, and (iii) Tenant has given Landlord reasonably prompt written notice that such interruption is materially interfering with Tenant's use of the Premises, then Tenant shall be entitled to an abatement of Minimum Monthly Rent on the seventy-third (73rd) hour of interruption, which abatement shall continue until such interruption in utility service is restored (or until such earlier date that Tenant shall reopen for business in the Premises).

**7.2 Refuse.** Tenant shall not allow refuse, garbage or trash to accumulate outside the Premises.

**7.3 Deliveries.** Tenant shall complete, or cause to be completed, all deliveries, loading, unloading, and services to the Premises solely from the rear of the Premises (unless the Premises do not contain a rear access in which event Tenant shall use reasonable efforts to have all deliveries accomplished prior to 2:00 p.m. each day, unless the rules and regulations of the Shopping Center, if any, and as promulgated and amended from time to time, state a later time by which deliveries shall be accomplished). No delivery trucks or other vehicles servicing the Premises shall park or stand in front of the Premises. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries and servicing of the Premises and Tenant agrees to abide by such further regulations of Landlord. Notwithstanding any contrary provision of this Lease, Tenant shall have the right to load and unload merchandise to and from its customers' vehicles at all times when Tenant is open for business in the Premises; provided that Tenant shall be fully liable and responsible for such loading and unloading activities and equipment used therefore and shall hold Landlord harmless from any liability, claim, cost or expense arising from such loading or unloading.

#### **SECTION 8. Repair and Maintenance; Alterations.**

**8.1 Tenant's Obligations.** Subject to the provisions of Sections 8.2 and 13 of this Lease, Tenant, at its sole cost and expense, shall keep and maintain the interior of the Premises (and the following appurtenances which directly serve the Premises: Tenant's trash area,

separate utility meters for utility service exclusively to the Premises and Tenant's cart corral area) and every part thereof, including, without limitation, signs, the store front(s), plate glass, plumbing and sewage facilities, electrical and lighting facilities and equipment and all other utility systems located within the Premises and which exclusively serve the Premises, interior ceilings, walls, floors (other than the slab) and floors coverings, including finishes thereto, the interior surface of exterior walls and all of Tenant's personal property therein in good condition and repair, and in compliance with all applicable laws, ordinances, orders, rules, regulations and building codes of all governmental authorities having jurisdiction, ordinary wear and tear excepted. All repairs and maintenance by Tenant shall be performed promptly, in a good and workmanlike fashion, and without diminishing the quality of the Premises or the Shopping Center. Tenant shall be responsible for the cleaning and maintenance of any grease trap serving the Premises and shall enter into, and upon request furnish a copy to Landlord of, a grease trap cleaning contract reasonably acceptable to Landlord. Tenant shall be solely responsible for the maintenance, repair and replacement of the heating, ventilating and air conditioning systems and equipment which exclusively serve the Premises, and Tenant shall, at its sole cost and expense, enter into a regularly scheduled preventative maintenance service contract with a maintenance contractor, reasonably approved by Landlord, for servicing all of the heating, ventilating and air conditioning systems and equipment which serve the Premises. The service contract must include all services suggested by the equipment manufacturer within the operations and maintenance manuals, including any updates or revisions thereto, and must become effective within thirty (30) days after the Delivery Date. Tenant shall provide a current copy of the service contract to Landlord within thirty (30) days after the Delivery Date and within ten (10) days after the date of Landlord's request at any time thereafter during the term of this Lease. Landlord will warrant that the heating, ventilating and air conditioning systems and equipment will be operational on the Delivery Date. Except for Tenant's heating, ventilating and air conditioning maintenance contractor approved by Landlord or as otherwise expressly provided in this Lease, Tenant and its employees, contractors, invitees, agents, subtenants and representatives shall not be permitted access to the roof of the Premises or the Shopping Center. Tenant shall give prompt notice to Landlord of any repair or maintenance which Tenant has performed which costs more than one thousand dollars (\$1,000.00), or which Tenant has had performed by third parties on Tenant's behalf which costs more than one thousand dollars (\$1000.00), to any of the utility systems or equipment which serve the Premises, including, by way of example and not limitation, those systems and equipment which provide water, gas, heat, electricity, power, sewage, telephone and other means of communications. If any repairs required to be made by Tenant hereunder are not made within twenty (20) days after written notice from Landlord to Tenant of the necessity therefor or, if such repairs require more than twenty (20) days to complete, if Tenant fails to commence such repairs within such twenty (20) day period and diligently pursue such repairs to completion, Landlord may, at its option, make such repairs without liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, and Tenant shall pay to Landlord immediately upon demand as additional rental hereunder the actual cost of such repairs together with interest at five percent (5%) above the Prime Rate being quoted by the Wall Street Journal beginning on the date Landlord commences repairs. To the maximum extent permitted by law, Tenant hereby waives the provisions of any statute or law now or hereafter in effect in any jurisdiction in which the Premises is located (including, without limitation, California Civil Code Sections 1941 and 1942), permitting a tenant to make repairs at the expense of a landlord or to terminate a lease by reason of the condition of the Premises.

In the event Tenant's Permitted Use includes the preparation of cooked food or restaurant services, Tenant agrees to perform the following at its own expense: (i) Tenant shall employ a pest control agency, duly licensed by the State of California, to provide service regularly and as necessary for the purpose of preventing and/or eliminating rodents and pests from the Premises; (ii) Tenant shall retain a dependable bonded degreasing service on a regular basis and as needed throughout the Term to clean and degrease Tenant's entire kitchen area, ranges, cooking equipment, broilers, stoves, hoods, fans, exhausts and blower systems, filters and flue stacks, whether or not within the Premises; (iii) Tenant shall maintain all Tenant's motors and blower whether or not within the Premises in such a manner as not to transmit noises or vibrations to any part of the Building (Tenant further agrees forthwith to repair on demand by landlord any damage caused to the Building by such motors and blowers); (iv) Tenant shall design, install and maintain all equipment necessary or appropriate to minimize the escape of odors from the Premises into other areas of the Building, (v) Tenant shall prevent any noises on the Premises that will interfere or cause annoyance to any of the occupants of the Building; (vi) Tenant shall at all times maintain a state of cleanliness throughout the Premises in accordance with standards established by any health department having jurisdiction over the Premises or Tenant's operation therein; and (vii) Tenant shall provide suitable water-tights receptacles for garbage and garbage procedures eliminating all garbage from the Premises at least once daily. Said procedures shall ensure the transportation of garbage from the Premises without spillage to points of collection specified by Landlord. The collection of garbage shall be arranged by Tenant at Tenant's expense. Any spillage of garbage shall be immediately cleaned by Tenant, and failure to do so shall allow Landlord to immediately clean said spillage at Tenant's expense.

**8.2 Landlord's Obligations.** Subject to the provisions of Section 13 of this Lease, Landlord, at its sole expense and not as a Common Area Cost, shall maintain in good condition, and repair the roof of the Premises including the roof structure and membrane (but excluding roof membrane maintenance, which shall be included as a Common Area Cost), structural columns, footings, foundation and floor slab of the Premises, and the exterior walls (but not plate glass, glass windows, window frames, doors, door frames, hardware and store fronts, which items are the responsibility of Tenant) of the Premises, and any common utility delivery system serving the Premises (e.g., gas, electric, water, sewer) located outside or beneath the Premises building and/or serving any premises other than or in addition to the Premises and for replacement of the Shopping Center parking lot (which replacement shall be defined for the purposes of this Section 8.2 as the entire removal and replacement of more than 25% of the entire parking area in any twelve (12) month period), unless such maintenance becomes necessary in whole or in part as a result of the gross negligence or willful misconduct of Tenant or its agents, employees, subtenants, licensees or contractors, in which case Tenant shall pay to Landlord the reasonable cost of such repairs or maintenance. Any maintenance, repair, replacement, alteration or improvement activities being conducted by or on behalf of Landlord shall be performed by Landlord in a manner reasonably calculated to have as little adverse effect as reasonably possible (under the circumstances) on Tenant's operation in the Premises; access to and visibility of the Premises shall not be materially and adversely affected by such activities and in no event shall any portion of the parking areas immediately adjacent to the Premises be used for the staging of trucks or equipment or the storage of materials. In addition, to the extent reasonably possible, Landlord shall avoid scheduling parking lot replacement or resurfacing to be performed within Tenant's Control Area on national holidays or on weekends, expressly subject to unforeseen work delays, emergencies, necessary repairs of limited scope (e.g., fixing pavement crack or pothole), or any other work which cannot reasonably be scheduled during a period other than on a holiday or on a weekend (in which case, Landlord will perform such work in a manner reasonably calculated to have as little adverse effect as reasonably possible (under the circumstances) on Tenant's operation in the Premises. Provided Landlord has complied with the provisions of this Section 8.2 in effecting the same, Landlord shall not be liable for and there shall be no abatement of rent with respect to, any injury to or interference with Tenant's business arising from any repair, maintenance, alteration or improvement in or to any portion of the Premises or the Shopping Center. Landlord shall not be liable for any failure to perform any maintenance unless such failure shall persist for an unreasonable time after notice of the need for such maintenance is given to Landlord by Tenant.

**8.3 Alterations.** Tenant shall not make any alterations or install any Tenant's Improvements or Tenant's Trade Fixtures (as those terms are defined in Section 23.7(e) of this Lease) to the Premises, or any part thereof, whether structural or nonstructural ("Alterations") without Landlord's prior written consent, except for the installation of unattached, movable equipment which may be installed without

drilling, cutting or otherwise defacing the Premises. In order to obtain Landlord's consent, Tenant shall submit such information as Landlord may require, including, without limitation, (i) plans and specifications, (ii) all permits, licenses and bonds required by any governmental authority having jurisdiction, and (iii) evidence of insurance coverage in such types and amounts and from such insurers as reasonably may be approved by Landlord. Tenant agrees that all plans and specifications for mechanical, electrical, plumbing or structural systems shall be designed by a licensed engineer at Tenant's expense. All Alterations shall be done in a good workmanlike manner using first class materials substantially in accordance with the plans and specifications approved by Landlord by qualified and licensed architect(s) and contractor(s), which contractors shall be subject to Landlord's reasonable consent. In no event shall any Alterations affect the structure or exterior appearance of the building of which the Premises are a part except upon the prior written approval of Landlord, which may be withheld in its sole and absolute discretion. The portion of any Alterations which will cause venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense. Upon completion, Tenant shall provide to Landlord a certificate from Landlord's roofing contractor stating that such Alterations to the roof have been completed in accordance with the plans and specifications approved by Landlord and that the existing roof warranty, if any, remains in full force and effect. Tenant shall be liable for any and all damage to the roof including, without limitation, restoration of any manufacturer's or other roof bond or warranty which may have been voided by the actions of Tenant. Any cost for such restoration shall be payable by Tenant and shall be considered as additional rent. Tenant shall hold Landlord harmless from any claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's liens and to insure completion of the work; provided, however, Tenant shall not be required to provide any bond with respect to Tenant's Work in the Premises. If Tenant makes any Alterations to the Premises as provided in this Section, the Alterations shall not be commenced until two (2) days after Landlord has received notice from Tenant stating the date the installation of the Alterations is to commence so that Landlord can post and record an appropriate notice of non-responsibility. In the event that Tenant's proposed Alterations shall involve structural changes, Tenant shall reimburse Landlord, upon demand, for any reasonable costs and expenses incurred by Landlord in reviewing the plans and specifications, including, without limitation, the reasonable costs of any outside consultants retained by Landlord. Alterations shall immediately become Landlord's property and shall remain in the Premises at the end of the term of this Lease without any compensation to Tenant unless Landlord, at the time it gives its written consent with respect to the affected Alterations, notifies Tenant that Tenant will be required to remove all or any part of such Alterations, in which event Tenant shall, prior to the last day of the term of this Lease, remove such Alterations and restore the affected portion of the Premises to its condition prior to the installation of such Alterations.

**8.4 Mechanic's Liens.** Tenant shall pay all costs for construction done by or at the direction of Tenant in the Premises as permitted by this Lease. Tenant shall keep the building, other improvements, and land of which the Premises are a part free and clear of all mechanic's liens resulting from construction done by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided in this Lease and by law, the right, but not the obligation, to cause such lien to be released by such means as Landlord deems proper, including payment of the claim giving rise to such lien. All such sums paid and all expenses incurred by Landlord in connection therewith shall be due and payable to Landlord by Tenant within thirty (30) days after written demand together with interest at five percent (5%) above the Prime Rate being quoted by the Wall Street Journal beginning on the date Landlord makes payment to discharge such lien.

#### **SECTION 9. Right of Entry; Estoppel Certificate.**

**9.1 Entry.** Landlord and its authorized representatives shall have the right during Tenant's normal business hours (except only in the case of an emergency), upon providing reasonable prior written or oral notification to the person supervising or managing the Premises, to enter upon the Premises for the purpose of inspecting, serving or posting notices, and, upon reasonable prior written notice to Tenant (except in the event of any emergency, in which event no notice shall be required), making any necessary or appropriate repairs, maintenance, alterations or additions to any portion of the Premises or the Shopping Center, including the erection and maintenance of scaffolding, canopies, fences and props, as shall be required for complying with any laws, protecting the Premises, or for any other lawful purposes, including showing the Premises to prospective purchasers, insurers, lenders, and, during the last six (6) months of the term hereof, showing the Premises to prospective tenants and placing on the Premises customary "for rent" or "for lease" signs. The preceding notwithstanding, Landlord shall have no obligation to provide prior notice to Tenant of Landlord's entry of the Premises if such entry is in response to what Landlord reasonably believes is an emergency. In making such entry, Landlord shall not unreasonably interfere with or disrupt Tenant's normal business operations in the Premises.

Tenant hereby grants to Landlord such licenses or easements in or over the Premises or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits, pipes or other facilities to serve the Shopping Center, or any part thereof, including, without limitation, the premises of any occupant; provided, however, that Landlord shall pay for any alteration required on the Premises as a result of the exercise, occupancy under, or enjoyment of any such license or easement; and provided further, that any such exercise, occupancy under, or enjoyment of any such license or easement shall be performed in a manner reasonably calculated to have as little adverse effect as reasonably possible (under the circumstances) on Tenant's operations in the Premises; access to and visibility of the Premises shall not be materially and adversely affected by such activities (other than to a de minimis degree, e.g., replacement of the parking lot lighting may necessitate the closing of a few parking spaces in Tenant's Control Area during some portion of the period of such work which would be permitted) and in no event shall any portion of the parking area(s) immediately adjacent to the Premises be used for the staging of trucks or equipment or the storage of materials. Any entry to the Premises or portions thereof obtained by Landlord, as provided by this Section 9.1, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof.

**9.2 Estoppel Certificate.** Tenant shall at any time, and from time to time, execute, acknowledge and deliver to Landlord, within twenty (20) days after request by Landlord, a statement in writing certifying, if such be the case, that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified); that Tenant has accepted the Premises; the date of commencement of this Lease; the date that this Lease expires; the dates for which the minimum monthly rent and other charges have been paid; that, to Tenant's actual knowledge, there exists no default on Landlord's part under the Lease (or stating the nature of such default if the same shall exist); that Tenant has no claim of offset or credit against any sum due Landlord hereunder; and such other information as Landlord shall reasonably request. Tenant hereby acknowledges that any such statements are intended to be delivered by Landlord to, and relied upon by, third parties, such as, without limitation, prospective purchasers, mortgagees, beneficiaries under deeds of trust, or assignees thereof.

#### **SECTION 10. Intentionally Left Blank.**

**SECTION 11. Insurance; Waiver of Subrogation.**

11.1 **Insurance to be Carried by Tenant.** During the term Tenant shall take out and maintain the following insurance:

(a) Fire and all risk insurance (excluding earthquake and flood) in an amount not less than the current replacement cost of Tenant's merchandise, all of Tenant's Improvements and Tenant's Trade Fixtures (but expressly excluding any HVAC equipment located outside of the Premises) and Tenant's Alterations. Such policy or policies of insurance shall name Landlord as an additional insured as its interest may appear. The parties agree that the proceeds from any such policy or policies shall be used for the replacement of merchandise and the repair or replacement of those portions of the Premises which Tenant is required to restore under this Lease, including all of Tenant's Improvements and Tenant's Trade Fixtures;

(b) Comprehensive general liability insurance, with products liability and personal injury endorsement, for bodily injury or death to any one person, injury and/or death to any number of persons in any one incident, and for property damage in any one occurrence, with a limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence and a limit of not less than Three Million Dollars (\$3,000,000.00) in the aggregate. Landlord reserves the right to require reasonable increases in the limits of coverage from time to time during the term of this Lease; provided, however, such increases may not be required more frequently than once every three (3) years during the Lease term. Such liability insurance shall contain "Contractual Liability" which specifically insures the hold harmless and indemnity provisions of Section 12 of this Lease, and shall contain a provision that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery under such policy or policies for any damage to Landlord or its authorized representatives by reason of the acts or omissions of Tenant or its authorized representatives, commonly known as severability of interest clause;

(c) Plate glass insurance on all plate glass, if any, on the Premises (except Tenant may, and hereby elects to, self-insure this risk);

(d) Boiler broad form and/or machinery breakdown insurance, if any is applicable, in an amount not less than the current repair or replacement cost.

(e) Workers' Compensation Insurance in compliance with laws in the state in which the Shopping Center is located;

(f) Business interruption or loss of income insurance in amounts customary for Tenant's business (but in any event for a period of at least twelve (12) months).

Tenant agrees that all of the insurance required under this Section shall be effected under enforceable policies issued by insurers of recognized responsibility with a Best's Policy Holder Rating of not less than "A" and a Best's Financial Rating of not less than "XIII" as rated in the most current available "Best's Insurance Reports" and licensed to do business in the state in which the Shopping Center is located. All policies shall provide that they shall not be subject to cancellation or material change which affects Landlord except upon at least fifteen (15) days prior notice to Landlord at the address set forth for notice in Paragraph 11(b) of the Fundamental Lease Provisions. All policies of insurance shall name Tenant as insured and Landlord, Landlord's Property Manager and Landlord's Investment Manager as additional insured as their respective interests may appear. At the request of Landlord, any fire and all risk insurance policy shall be made payable to Landlord's lender(s) pursuant to a standard mortgage clause. All policies of insurance shall be on an "occurrence" basis and not a "claims made" basis.

All public liability, property damage and other casualty policies shall be written as primary policies and shall not be contributing with any coverage which Landlord shall carry. Tenant's obligations to carry the insurance provided for herein may be satisfied within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant so long as Landlord shall be named as an additional insured thereunder, as its interest may appear, and that the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements of the Section are otherwise satisfied. If Tenant fails to maintain and secure the insurance coverage required hereunder, then Landlord shall have, in addition to all other remedies provided herein and at law, the right, but not the obligation, upon not less than five (5) business days' advance written notice to Tenant, to procure and maintain such insurance, the cost and expenses therewith shall be due and payable to Landlord by Tenant within thirty (30) days after Landlord's written demand together with interest at five percent (5%) above the Prime Rate being quoted by the Wall Street Journal beginning on the date Landlord makes payment for such insurance.

11.2 **Insurance to be Carried by Landlord.** Landlord shall maintain a policy of all risk insurance and any other physical damage insurance which Landlord may elect to carry (including earthquake, flood and boiler and machinery), in an amount not less than the current replacement cost (including endorsements for costs of demolition and code-required upgrades) for all buildings in the Shopping Center except those portions of the Shopping Center subject to leases the terms of which obligate the lessee thereunder to so insure the premises leased thereunder; a policy of comprehensive general liability insurance covering bodily injury, death and damage to property to others with a limit of not less than Three Million Dollars (\$3,000,000) in the aggregate; and any other insurance covering the Shopping Center that Landlord deems appropriate in its sole discretion. Any insurance provided pursuant to this Section 11.2 may be maintained as part of a policy or policies of blanket insurance, covering additional locations. All of the costs of the insurance provided pursuant to this Section 11.2 shall be included in Common Area Costs as provided in Section 3.5 of this Lease.

Tenant agrees that it will not keep, use, sell or offer for sale, in or upon the Premises, any article which may be prohibited by the Landlord's fire insurance policy then in effect covering the Premises; provided, however, notwithstanding the foregoing, in no event shall Tenant be prohibited from selling or offering for sale alcoholic beverages, cigars, cheese or glassware.

11.3 **Waiver of Subrogation.** The parties release each other, and their respective authorized representatives from any claims for damage to any person, the Premises, or the Shopping Center, and to Tenant's Trade Fixtures, personal property, equipment, fixtures, merchandise, Tenant's Improvements, and alterations of either Landlord or Tenant in or on the Shopping Center that are caused by or result from risks insured against under any fire insurance policies carried by the parties and in force at the time of any such damage to the extent of the available insurance proceeds. Each party shall cause each fire insurance policy carried by it to be written to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Landlord and Tenant shall cooperate with each other and their respective insurers in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution of any proof of loss forms or other actions required to effect recovery.

11.4 **Evidence of Insurance.** Tenant agrees to deliver to Landlord a certificate ("Certificate") of insurance evidencing all insurance required to be maintained by Tenant hereunder prior to Tenant's occupancy of the Premises. Notwithstanding anything contained in this

Lease to the contrary, Landlord shall have no obligation to deliver possession of the Premises to Tenant until Landlord has received the Certificate.

**11.5 Cancellation of Insurance.** If any insurance policy carried by Landlord shall be cancelled or cancellation shall be threatened or the coverage thereunder materially reduced or threatened to be materially reduced, by reason of the use or occupation of the Premises or any part thereof by Tenant or by assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be upon the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or material reduction of coverage within five (5) business days after written notice thereof from Landlord, Landlord may enter upon the Premises and attempt to remedy such condition and Tenant shall pay the cost thereof to Landlord as additional rent within thirty (30) days after Landlord's written demand. Landlord shall effect any such entry in a manner reasonably calculated to have as little adverse effect as reasonably possible (under the circumstances) on Tenant's operations in the Premises; and, provided Landlord effects such entry in accordance with this Section 11.5, Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located on the Premises as a result of such entry. In the event that Landlord shall be unable to remedy such condition, then Landlord shall have all of the remedies provided for in the Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this Section 11.5, if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligation hereunder and Landlord shall have no obligation to attempt to remedy such default.

**SECTION 12. Hold Harmless; Indemnity.**

(a) Except for claims arising solely from Landlord's negligence or willful misconduct, Tenant agrees to indemnify, protect, defend and hold Landlord, Landlord's Investment Manager, Landlord's Property Manager and their respective authorized representatives, shareholders, officers, directors, trustees, employees, individuals, and partners harmless from all damages (but expressly excluding any such parties' consequential, special or punitive damages or lost profits), liabilities, demands, claims, penalties, fines, expenses and costs, including attorneys' fees and expenses and court costs, arising from or out of any occurrence in the Premises or from the negligence or willful misconduct in the Premises or the Shopping Center of Tenant, its authorized representatives, employees, contractors, licensees, concessionaires and subtenants. The provisions of this Section 12 shall survive the termination of this Lease with respect to any claims or liability accruing or occurring prior to such termination. Landlord shall indemnify, protect, defend and hold Tenant and its authorized representatives, shareholders, officers, directors, trustees, employees and contractors harmless from all damages but expressly excluding any such parties' consequential, special or punitive damages or lost profits), liabilities, demands, claims, penalties, fines, expenses and costs, including attorneys' fees and expenses and court costs, arising solely from or out of the negligence or willful misconduct in or about the Premises or the Shopping Center of Landlord, its authorized representatives, employees, agents or contractors.

(b) Except as otherwise specifically provided in this Lease, Tenant shall store its property in and shall occupy the Premises and all other portions of the Shopping Center at its own risk. Except as otherwise specifically provided in this Lease, Tenant releases Landlord, to the fullest extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage.

(c) Except as otherwise specifically provided in this Lease, Landlord shall not be responsible or liable at any time for any damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or to Tenant's business.

(d) Except as otherwise specifically provided in this Lease, Landlord shall not be responsible or liable to Tenant or to those claiming by, through or under Tenant for any damage to either person or property that may be occasioned by or through the acts or omissions of third parties.

(e) Except as otherwise specifically provided in this Lease, Landlord shall not be responsible or liable for any defect in any building or Common Areas in the Shopping Center or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breakage or by or from leakage, steam or the running, backing up, seepage, or the overflow of water or sewage in any part of the Premises or for any damage caused by or resulting from acts of God or the elements, the failure of any public utility in supplying utilities to the Premises or for any damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of any of the Premises, building, machinery, apparatus or equipment by any other person or by or from the acts of negligence of any occupant of the Premises.

(f) Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or in the building in which the Premises are located or of defects therein or in any fixtures or equipment.

(g) In case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant shall hold Landlord harmless and shall pay all costs, expenses, and reasonable attorneys' fees. In case Tenant shall without fault on its part be made a party to any litigation commenced by or against Landlord, then Landlord shall hold Tenant harmless and shall pay all costs, expenses, and reasonable attorneys' fees.

**SECTION 13. Damage or Destruction.**

**13.1 Destruction to Premises Due to Risk Covered by Insurance.** Subject to the provisions of Sections 13.3 and 13.4, if, during the term, the Premises are totally or partially destroyed from a risk covered by insurance which Landlord is required to maintain under this Lease or which is actually maintained by Landlord, Landlord shall restore the Premises to substantially the same condition as they were in immediately before such destruction; provided, however, that (i) Landlord's obligations shall not exceed Landlord's delivery and construction obligations at the commencement of the term; (ii) the costs to Landlord to restore the Premises shall not exceed the insurance proceeds for such restoration (together with any deductible and self-insurance retention amount); and (iii) Landlord's lender, if any, does not apply the insurance proceeds to reduce the indebtedness of Landlord to said lender. Tenant shall promptly with reasonable diligence at its sole cost and expense restore Tenant's Improvements and Tenant's Trade Fixtures to substantially the same condition as they were in immediately before such destruction. Such destruction shall not terminate this Lease. If the existing laws do not permit the Premises to be restored to substantially the same condition as they were in immediately before destruction, either party can terminate this Lease by giving notice to the other party. Any reconstruction work to be done by Tenant shall be carried out in accordance with the provisions of Exhibit B and Section 8.3 of this Lease to the extent applicable.

**13.2 Destruction of Premises Due to Risk Not Covered by Insurance.** If, during the term, the Premises are totally or partially destroyed from a risk not covered by insurance which Landlord is required to maintain under this Lease or which is actually maintained by Landlord and then in effect, Landlord shall have the election within thirty (30) days after the date of such destruction to terminate this Lease or restore the Premises in accordance with the provisions of Section 13.1. If Landlord does not elect to restore the Premises within

thirty (30) days after the date of destruction, then Tenant shall have the right to terminate this Lease within sixty (60) days after the date of destruction.

**13.3 Destruction to Other Parts of Shopping Center.** If the buildings in the "Neighboring Area" as designated on Exhibit A (the "Neighboring Area") are substantially damaged by fire or other casualty, Landlord shall have the right to terminate this Lease upon notice given to Tenant within thirty (30) days after the date of destruction. Likewise, if during the Lease term the Shopping Center (outside of the Neighboring Area) is substantially damaged or destroyed by fire or other casualty (whether or not insured), then Landlord shall have the right to elect within thirty (30) days after the date of such destruction to terminate this Lease whether or not the Premises are destroyed, provided that Landlord shall have no right to terminate this Lease under this Section 13.3 unless Landlord also terminates the leases of a majority of other then-existing tenants in the Neighboring Area whose leases give Landlord the right of termination by reason of such damage or destruction. The term "substantially damaged" shall mean that the buildings in the Shopping Center shall have been damaged to the extent that the cost of restoration of the buildings then constructed in the Shopping Center exceeds forty percent (40%) of the total replacement cost of such then-existing buildings in the Shopping Center, or, with respect to the Neighboring Area, if the damage to the buildings therein exceeds forty (40%) percent of the total replacement cost of such then-existing buildings.

**13.4 Destruction During Last Part of Term.** If any destruction occurs to the Premises during the last 12 months of the term, irrespective of the extent of the destruction, either party can elect to terminate this Lease within a reasonable time thereafter, otherwise the applicable provisions of Sections 13.1 or 13.2 shall apply. If Landlord shall exercise its right of termination pursuant to this Section 13.4 and at that time Tenant shall have an Option to extend the term and Tenant, as of such time, has given notice exercising such Option, or gives notice to Landlord of Tenant's election to exercise such Option within twenty (20) days after the giving of Landlord's termination notice in accordance with this Section, Tenant may render Landlord's notice of termination null and void.

**13.5 Abatement or Reduction of Rent.** In case of destruction to the Premises, there shall be an abatement or reduction of Minimum Monthly Rent only between the date of destruction and the date sixty (60) days after the Landlord substantially completes its reconstruction obligations based on the extent to which the destruction interferes with Tenant's use of the Premises, but all other obligations of Tenant under this Lease shall remain in full force and effect, and Tenant shall continue to operate its business in the Premises to the extent practicable. Landlord and Tenant shall cooperate with each other in restoring the Premises and Tenant shall, upon notice from Landlord, promptly remove, at its sole cost and expense, such portion or all of Tenant's merchandise, Tenant's Trade Fixtures, equipment and other personal property of Tenant from such portion or all of the Premises as Landlord shall request.

**13.6 Inapplicability of Civil Code Sections.** Tenant's right to terminate this Lease in the event of damage or destruction to the Premises, the building of which the Premises are a part, the Common Areas or the Shopping Center is governed by the terms of this Lease, and therefore, Tenant hereby expressly waives the provisions of any and all laws, whether now or hereafter in force, and whether created by ordinance, statute, judicial decision, administrative rules or regulations, or otherwise, that would cause this Lease to be terminated, or give Tenant a right to terminate this Lease, upon any damage to or destruction of the Premises, the building of which the Premises are a part, the Common Areas or the Shopping Center, including the provisions of California Civil Code Sections 1932(2) and 1933(4), and any successor statutes.

#### SECTION 14. Condemnation.

**14.1 Definitions.** "Condemnation" means (a) the exercise of any governmental power, whether by legal proceedings or otherwise, by a condemnor, and (b) a voluntary sale or transfer by Landlord to any condemnor, either under the threat of condemnation or while legal proceedings for condemnation are pending. The word "Taking" as used herein shall be synonymous with the word "Condemnation" as defined herein.

"Date of Taking" means the date the condemnor has the right to possession of the property being condemned.

"Award" means all compensation, sums, or anything of value awarded, paid or received on a total or partial condemnation.

"Condemnor" means any public or quasi-public authority, or private corporation or individual having the power of condemnation.

**14.2 Effect on Lease.** If there is any Taking of all or more than twenty-five percent (25%) of the Leasable Floor Area of the Neighboring Area, more than twenty-five percent (25%) of Tenant's Control Area, or twenty-five percent (25%) or more of the land area of the Shopping Center, Landlord shall have the election to terminate this Lease effective upon the date of Taking, otherwise this Lease shall remain in full force and effect. If there is a Taking of more than ten percent (10%) of the Leasable Floor Area of the Premises, or more than ten percent (10%) of the Tenant's Control Area (without replacing the same with substantially equivalent areas within a reasonable distance from the Premises on or before twenty (20) days after the Date of Taking), or the primary means of ingress and egress to the Premises off of Pacific Coast Highway or a portion of the Premises such that the remaining part of the Premises is impractical for Tenant's continued use of the Premises, Tenant shall have the election to terminate this Lease upon the date of Taking. The elections to terminate this Lease as provided herein shall be exercised, if at all, within sixty (60) days after the nature and extent of the Taking is determined, otherwise this Lease shall remain in full force and effect. Following any such partial Taking, Landlord shall make all necessary repairs or alterations to the Premises within the scope of Landlord's construction obligations at the beginning of the term of this Lease to make the Premises an architectural whole. Landlord shall restore Tenant's Improvements to the extent that Landlord receives a designated award(s) for such work. Tenant shall promptly with reasonable diligence at its sole cost and expense make all necessary repairs or alterations to the Premises to restore the balance of the Premises and Tenant's Improvements and Tenant's Trade Fixtures to substantially the same condition as they were in immediately before such partial Taking.

**14.3 Award; Distribution.** The award shall belong to and be paid to Landlord, no award for any partial or total Taking shall be apportioned and Tenant hereby assigns its interest in any such award to Landlord; provided, however, that Landlord shall have no interest in any award made to Tenant's loss of business, for the Taking of Tenant's Trade Fixtures and other property or for Tenant's relocation expenses if a separate award for such items is made directly to Tenant. In no event shall Tenant be entitled to any award for the unexpired value of the term of this Lease.

**14.4 Abatement of Rent.** In the event of a partial Taking that does not result in the termination of this Lease, the Minimum Monthly Rent and all other charges shall abate in proportion to the portion of the Premises taken by such Taking. Landlord shall be entitled to retain all of the Security Deposit, if any, until such time as this Lease is terminated as to all of the Premises.

**14.5 Temporary Taking.** If all or any portion of the Premises is taken for a limited period of time, i.e., less than six (6) consecutive months, this Lease shall remain in full force and effect and Tenant shall continue to perform all terms, conditions and covenants of this Lease; provided, however, that the Minimum Monthly Rent and all other charges shall abate during such limited period in proportion to the portion of the Premises that is rendered untenable and unusable as a result of such temporary Taking. Landlord shall be entitled to the entire award made in connection with any such temporary Taking.

**14.6 Waiver.** The rights of Landlord and/or Tenant to terminate this Lease in the event of any Taking of all or any portion of the Premises, the building of which the Premises are a part, the Common Areas, or the Shopping Center is governed by the terms of this Lease, and therefore, Landlord and Tenant hereby expressly waive the provisions of any and all laws, whether now or hereafter in force, and whether created by ordinance, statute, judicial decision, administrative rules or regulations, or otherwise, that would cause this Lease to be terminated, or give Landlord or Tenant a right to terminate this Lease, upon any Taking of all or any portion of the Premises, the building of which the Premises are a part, the Common Areas, or the Shopping Center, including the provisions of California Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease.

## **SECTION 15. Assignment and Subletting.**

### **15.1 Assignment, Subletting and Encumbering.**

(a) Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, subject to the terms and conditions of this Section 15. Tenant shall, in each instance of a proposed assignment or subletting, give notice of its intention to assign or sublet to Landlord at least sixty (60) days before the effective date of any such date thereof, and specifically identifying the proposed assignee or sublessee, and such notice shall be accompanied by copies of the proposed assignment document or sublease, current financial statements of the proposed assignee or subtenant, a written business plan which includes the nature of the proposed assignee's, subtenant's or occupant's business to be carried on in the Premises, and detailed documentation relating to the business experience of the proposed assignee or subtenant. At any time within forty-five (45) days after Landlord's receipt of Tenant's notice of its intention to assign or sublet, Landlord may by notice to Tenant elect to (i) consent to the proposed assignment or sublease; (ii) refuse to consent to the proposed assignment or sublease, with a written statement of reasons for such refusal. Landlord and Tenant agree, by way of example and without limitation, that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist:

- (i) The proposed transferee's use of the Premises conflicts with the Permitted Use stated in Paragraph 7 of the Fundamental Lease Provisions and Section 4 of this Lease, provided Tenant shall have the right to assign or sublet all or part of the Premises for any lawful retail use (provided such use shall be subject to Landlord's reasonable approval) which is not in conflict with any then-existing tenant exclusives within the Shopping Center ;
- (ii) In Landlord's reasonable business judgment, the proposed transferee lacks sufficient business experience to operate (or has an objectionable operating history with respect to) a successful business of the type and quality permitted under the Lease;
- (iii) Tenant is in default beyond any applicable notice and cure period pursuant to this Lease;
- (iv) The assignment would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease or other agreement relating to the Shopping Center; or,
- (v) The proposed transferee's financial condition is less favorable than Tenant's financial condition was as of the Effective Date of this Lease.

If Landlord consents to any proposed assignment or sublease within said forty-five (45) day period, Tenant may enter into such assignment or sublease of the Premises or portion thereof, but only upon the terms and conditions set forth in the agreements and notice furnished by Tenant to Landlord; provided that fifty percent (50%) of all amounts received by Tenant from its subtenants in excess of the rents and other charges payable by Tenant to Landlord under this Lease shall be paid to Landlord, or fifty percent (50%) of any sums to be paid by any assignee to Tenant in consideration of the assignment of this Lease, after deduction of applicable brokerage fees and commissions and tenant improvements and inducement expenses shall be paid to Landlord regardless of how such payments are characterized by Tenant and/or its subtenants, except for the sale of Tenant's personal property and inventory at its then reasonable market value. Any assignment, encumbrance, or sublease without Landlord's consent (except as otherwise expressly permitted under this Lease) shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a waiver of the provisions of this Section 15.

No consent by Landlord to any transfer, assignment or subletting by Tenant shall relieve Tenant or any guarantor of Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, transfer, assignment or subletting, including the payment of Minimum Monthly Rent and all other charges required to be paid by Tenant under this Lease. The consent by Landlord to any transfer, assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express prior written consent to any other transfer, assignment or subletting. The acceptance by Landlord of payment from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any subsequent transfer, assignment or subletting, or to be a release of Tenant or any guarantor of Tenant from any obligation under this Lease.

In the event Tenant requests Landlord to consent to a proposed assignment, subletting, or encumbrance, Tenant shall pay to Landlord, whether or not such consent is ultimately given, a fee of five hundred dollars (\$500.00) for each request for consent, plus Landlord's reasonable attorneys' fees and costs incurred in connection with each such request. Tenant shall pay the administrative fee at the same time that it provides notice to Landlord of Tenant's proposed assignment, subletting or encumbrance.

Tenant hereby irrevocably assigns to Landlord all sums received from any subletting of the Premises, and agrees that Landlord or a receiver for Tenant appointed upon Landlord's application, may collect such rentals and apply the same as provided in Section 16.5 upon Tenant's default beyond any applicable notice and cure period; provided, however, that until the occurrence of any act of default (beyond any applicable notice and cure period) by Tenant, Tenant shall have the right to collect such rental.

If Tenant is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of the partner or partners owning a majority of the partnership interest as of the date of this Lease, or the dissolution of the partnership, shall be deemed an assignment prohibited by this Section unless Landlord's consent is obtained.

If Tenant consists of more than one person (as a result of a future assignment of this Lease), a purported assignment, voluntary, involuntary, or by operation of law, from a majority of such persons to the others shall be deemed an assignment prohibited by this Section unless Landlord's consent is obtained, which consent shall not be unreasonably withheld, conditioned or delayed.

Each assignee, or other transferee, other than Landlord, shall assume, as provided in this paragraph, all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Minimum Monthly Rent and all other charges required to be paid by Tenant under this Lease, and for the performance of all of the terms, covenants, conditions and agreements to be performed by Tenant; provided, however, that the assignee, sublessee or other transferee shall be liable to Landlord for rent only in the amount set forth in the assignment or sublease agreement.

Notwithstanding anything herein contained to the contrary, Landlord's consent shall not be required (but Tenant shall nevertheless provide at least twenty (20) days prior notice to Landlord) for any assignment or subletting involving any of the following persons or entities (collectively "intra-corporate transfers"): (1) any corporation which has the power to direct Tenant's management and operations, or any corporation whose management and operations are controlled by Tenant; (2) any corporation a majority of whose voting stock is owned by Tenant; (3) any corporation or entity holding a majority of the outstanding shares of voting stock in Tenant; (4) any corporation in which or with which Tenant, is corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations, so long as the liabilities of the corporations participating in such merger or consolidation are assumed by the corporation surviving such merger or created by such consolidation; (5) any corporation or entity acquiring all or substantially all of Tenant's assets or shares in Tenant; (6) any corporate successor to a successor corporation of Tenant becoming such by either of the methods described in subsection (4) or (5); or (7) any person or entity with whom Tenant executes a binding franchise agreement for the operation of BevMo! store(s). A change in ownership or change in control of Tenant which results from the public offering of Tenant's equity securities shall not be deemed an assignment and shall not require Landlord's consent or approval. In no event shall any assignment or sublease release Tenant from liability.

Tenant shall not mortgage, pledge, hypothecate or otherwise encumber its interest in this Lease or in the Premises, except to the extent permitted under the provisions of Section 16.12 of this Lease.

**15.2 Involuntary Assignment.** No interest of Tenant in this Lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

(a) If Tenant files or has filed against it a petition under the Bankruptcy Code (as defined below), as may be amended, becomes insolvent, or makes an assignment for the benefit of creditors; or, if Tenant is a partnership, if any partner of the partnership files or has filed against such partner a petition under the Bankruptcy Act, as may be amended, or such partner becomes insolvent, or makes an assignment for the benefit of creditors;

(b) If a writ of attachment or execution is levied on this Lease and is not discharged within ninety (90) days after such levy; and/or

(c) If, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises and such appointment is not revoked within ninety (90) days thereafter.

(d) Notwithstanding the foregoing, in the event this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C §101 *et. seq.* (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord.

(e) Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

The provisions of item (a) of this Section shall be applicable to any guarantor of this Lease.

If an involuntary assignment occurs, Landlord shall have the election to terminate this Lease and this Lease shall not be treated as an asset of Tenant, and Tenant shall have no further rights under this Lease. If an attachment or execution is levied against Tenant, Tenant shall have ninety (90) days in which to cause the attachment or execution to be removed, and if any involuntary proceedings in bankruptcy are brought against Tenant, or if a receiver is appointed, Tenant shall have ninety (90) days in which to have the involuntary proceeding dismissed or the receiver removed before the same shall constitute an involuntary assignment of this Lease.

## **SECTION 16. Defaults and Remedies.**

**16.1 Defaults.** The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant:

(a) A failure by Tenant to pay all or any part of the Rent or any other charges required to be paid by Tenant to Landlord under this Lease, where such failure continues for five (5) days after written notice from Landlord to Tenant that such payment is due and payable;

(b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after the date of notice thereof from Landlord; provided, that if the nature of such default is curable but that the same cannot with due diligence be cured within thirty (30) days, Tenant shall not be deemed to be in default if it shall within such thirty (30) day period commence curing the default and thereafter diligently prosecute the same to completion;

(c) The provisions of Section 15.2 are violated;

(d) Tenant shall do or permit to be done anything which creates a lien upon the Shopping Center or upon the Premises (excluding the lien upon Tenant's personal property as noted in Section 16.12 hereof) which is not removed, or made the subject of a surety bond for the full amount of such lien, within thirty (30) days after recordation of notice thereof; or

(e) The business operated by Tenant in the Premises shall be closed for failure to pay any state sales tax as required.

If a default under Item 16.1(b) is a failure to perform the provisions of Sections 4.5 and/or 6 after written notice from Landlord, and such failure to perform after written notice from Landlord occurs on more than three (3) occasions in any twenty-four (24) consecutive month period, then Tenant shall be in default unless Tenant for the remainder of the term performs such obligations as required by such Sections. To the extent permitted by all applicable Laws, the time periods provided in this Section 16 for the cure of Tenant's failures to perform as and when required under this Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any time periods prescribed by any applicable Laws as a condition precedent to the commencement of any legal action against Tenant for possession of the Premises; provided, however, that to the extent the foregoing is not permitted by any applicable Laws, any notice under this Section 16 shall run concurrently with, and not in addition to, any time periods prescribed by applicable Laws. Any notice given pursuant to this Section 16 is in lieu of any written notice required by any applicable Laws, including, without limitation, any notice required under California Code of Civil Procedure Section 1161, and Tenant hereby waives, to the fullest extent permitted by all applicable Laws, the giving of any notice other than the notice(s) provided for in this Section 16.

**16.2 Termination of Lease and Remedies.** In the event of any default by Tenant, then, in addition to any and all other rights and remedies available to Landlord at law or in equity, Landlord shall have the right to immediately terminate this Lease and all rights of Tenant hereunder by giving notice to Tenant of such election by Landlord, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, 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 reasonable force, if necessary, without being liable for prosecution or any claim of damages therefor. If Landlord shall elect to terminate this Lease, then it may recover the following from Tenant:

(a) The worth at the time of the award of any unpaid rental which had been earned at the time of termination;

(b) The worth at the time of the award of the amount by which the unpaid rental which would have been earned after termination until the time of the award exceeds the amount of the loss of such rental that Tenant proves could have been reasonably avoided;

(c) The worth at the time of the award of the amount by which the unpaid rental for the balance of the term after the time of the award exceeds the amount of the loss of such rental that Tenant proves could have been reasonably avoided;

(d) Any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's default or which in the ordinary course of things would be likely to result therefrom; and

(e) At Landlord's election, such other amount in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law in the state in which the Shopping Center is located.

As used in Subparagraphs 16.2(a) and (b) above, the "Worth at the Time of the Award" is computed by allowing interest at the rate of interest as provided in Section 16.9(b). As used in Subparagraph 16.2(c) above, the "Worth at the Time of the Award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

**16.3 Right of Re-Entry.** In the event of any default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all property and persons therefrom, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, without Landlord being liable for prosecution or any claim of damages therefor.

**16.4 Lease Not Terminated.** If Landlord shall elect to re-enter as above provided, or shall take possession of the Premises pursuant to legal proceedings or pursuant to any notice or other remedy provided by law or in equity, and if Landlord has not elected to terminate this Lease, Landlord may either recover all rental as it becomes due or relet the Premises or any part or parts thereof for such term or terms and upon such provisions as Landlord, in its sole judgment, may deem advisable, and Landlord shall have the right to make repairs to and alterations of the Premises, including altering locks and other security devices. No re-entry or taking possession of the Premises by Landlord under this Section shall be construed as an election to terminate this Lease unless a notice of such termination is given to Tenant or unless the termination thereof be adjudged by a court of competent jurisdiction. No alteration of locks or other security devices and no other lawful removal or other lawful exercise of dominion by Landlord over the property of Tenant or others at the Premises shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any event of default, to the aforesaid exercise of dominion over Tenant's property within the Premises. Tenant hereby waives all claims for damages by reason of such lawful reentry and/or repossession and/or alteration of locks or other security devices, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other legal process. Tenant agrees that any reentry by Landlord may be pursuant to judgement obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise for such reentry.

**16.5 Election to Relet.** If Landlord shall elect to relet the Premises as provided in Section 16.4, then rentals received by Landlord from such reletting shall be applied as follows:

(a) To the payment of any indebtedness other than rental due hereunder from Tenant;

(b) To the payment of all costs and expenses incurred by Landlord in connection with such reletting, including, by way of example and without limitation, the costs of renovating and repairing the Premises, legal fees and brokerage commissions;

(c) To the payment of the costs of any alterations or any repairs to the Premises;

(d) To payment of rental due and unpaid hereunder;

and the residue, if any, shall be held by Landlord and applied in payment of future rental as the same may become due and payable hereunder. In no event shall Tenant be entitled to any excess rental received by Landlord over and above that which Tenant is obligated to pay hereunder. Should that portion of such rentals received from such reletting during any month which is applied to the payment of rental hereunder be less than the rent payable hereunder during that month by Tenant, then Tenant shall pay such deficiency to Landlord immediately upon demand, and such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained and upon demand, all costs and expenses actually incurred by Landlord (consistent with Landlord's commercially reasonable business judgment) in connection with such reletting and in making any such alterations and repairs which are not covered in the rentals received from such reletting. Notwithstanding any reletting without termination by Landlord because of Tenant's default, Landlord may at any time after such reletting elect to terminate this Lease because of such default. If Landlord relets the Premises, Landlord and Tenant agree that Landlord shall only be required to use the same efforts Landlord then uses to lease other properties Landlord owns or manages (or if the Premises is then managed for Landlord, then Landlord will instruct such manager to use the same efforts such manager then uses to lease other space or properties which it owns or manages); provided, however, that Landlord (or its manager) shall not be required to give any preference or priority to the showing or leasing of the Premises over any other space that Landlord (or its manager) may be leasing or have available; provided, further, that Landlord (or its manager) shall not be required to observe any instruction given by Tenant about such reletting or accept any tenant offered by Tenant unless such offered tenant has a credit-worthiness acceptable to Landlord (in the exercise of Landlord's commercially reasonable business judgment), leases the entire Premises, agrees to use the Premises in a manner consistent with the Lease and leases the Premises at the same Rent, for no more than the current term and on the same other terms and conditions as in this Lease without any expenditure by Landlord for alterations or improvements to the Premises or broker commissions. In any such case, Landlord may, but shall not be required, to make repairs, alterations and additions in or to the Premises and redecorate the Premises to the extent Landlord deems necessary or desirable in its commercially reasonable business judgment.

**16.6 Landlord's Right to Cure Tenant's Defaults.** Landlord may at any time after Tenant commits a material breach and default, upon ten (10) days advance written notice, or a shorter period if additional damage may result, cure the breach and default for the account and at the expense of Tenant. If Landlord at any time, by reason of a material breach and default, is compelled to pay, or elects to pay, any sum of money or to do any act that will incur the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees in instituting, prosecuting or defending any actions or proceedings to enforce Landlord's rights under this Lease, the sum or sums paid by Landlord (together with interest accruing until paid at the rate of interest as provided in Section 16.9(b)), costs and damages shall be deemed to be additional rental under this Lease and shall be due from Tenant to Landlord immediately upon receipt of written demand.

**16.7 Nonwaiver.** Nothing contained in this Section 16 shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate damages to it caused by Tenant's default; nor shall anything in this Section 16 adversely affect Landlord's right, as provided in this Lease, to indemnification against liability for damage to persons or property occurring prior to a termination of this Lease.

**16.8 "Rent" Defined.** The term "Rent" and "Rental" as used herein and elsewhere in this Lease shall be deemed to be and mean the Minimum Monthly Rent, Percentage Rent (if any), Tenant's Proportionate Share of Taxes, Tenant's Proportionate Share of Common Area Costs, all additional rents, rental adjustments, and any and all other sums, however designated, required to be paid by Tenant to Landlord hereunder.

**16.9 Late Charges; Interest.**

(a) **Late Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rental will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, personnel costs, and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord on or before the date five (5) days after the same comes due, Tenant shall pay to Landlord a late charge equal to the greater of Fifty Dollars (\$50.00) or five percent (5%) of such overdue amount; provided, however, that with respect to any payment that is not due on a monthly basis, the late charge shall be imposed only if Tenant fails to make such payment within five (5) business days after receipt of written demand therefor from Landlord. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

(b) **Interest.** In addition to the late charges provided in Section 16.9(a), any rental due hereunder not paid when due as provided in this Lease shall bear interest from the date ten (10) days after the date when due at the lesser of fifteen percent (15%) per year or the maximum legal rate of interest allowed by the then usury laws from time to time until paid.

**16.10 Intentionally Omitted.**

**16.11 Property in Premises after Default.** In the event that Landlord shall have taken possession of the Premises pursuant to this Section 16, then Landlord shall have the right to keep in place and use all of the furniture, fixtures, equipment and other property of the Premises, including that which is owned by or leased to Tenant at all times prior to any foreclosure thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to Landlord a copy of any instrument represented to Landlord by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity of said instrument's copy of Tenant's or Tenant's predecessor's signature thereon and without the necessity of Landlord's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Tenant agrees to indemnify, defend and hold Landlord harmless from all costs, expense, liability or claim incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant. The rights of Landlord herein stated shall be in addition to any and all other rights which Landlord has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable.

**16.12 Waiver of Landlord's Lien.** Landlord hereby waives any statutory lien it may have with respect to the personal property (trade fixtures, equipment and merchandise) of Tenant from time to time located within the Premises ("Tenant's Property"). This Lease does not grant a contractual lien or any other security interest to or in favor of Landlord with respect to Tenant's Property. Respecting any lender

having a security interest in Tenant's Property ("Tenant's Lender"), Landlord agrees to permit Tenant's Lender to go upon the Premises for the purpose of removing Tenant's Property anytime within ten (10) business days after the effective date of any termination of this Lease or any repossession of the Premises by Landlord, provided such Lender repairs any damage caused to the Premises by the removal of Tenant's Property.

#### SECTION 17. Subordination and Attornment.

Contemporaneous with, or as soon as reasonably possible after, the Effective Date, Landlord shall obtain from each lender whose loan is secured by a mortgage or deed of trust encumbering the Premises or the Shopping Center (each, "Landlord's Lender") and each lessor whose interest in the Shopping Center is paramount to Landlord's ("Master Landlord") on the Effective Date, or at any time prior to the recordation of the Memorandum of Lease specified in Section 23.23, an executed non-disturbance agreement ("SNDA") substantially in the form attached hereto as Exhibit J(a) or Exhibit J(b), and an executed Recognition and Attornment Agreement (as set forth below) from the Master Landlord (subject to the provisions set forth below), assuring Tenant that, notwithstanding any default by Landlord to Landlord's Lender or Master Landlord or any foreclosure or deed in lieu thereof (or Master Landlord's termination proceedings), Tenant's rights under this Lease shall continue in full force and effect and its possession of the Premises shall remain undisturbed (including, without limitation, permission for insurance proceeds and eminent domain awards to be applied as required hereunder), except as otherwise provided in this Lease, so long as Tenant is not in default under this Lease. Until such time as Landlord has delivered an executed SNDA from each of the Landlord's Lenders, Tenant's obligation to commence payment of Minimum Monthly Rent shall be abated; and when Landlord has delivered both such executed SNDAs, all prior abated payments of Minimum Monthly Rent shall be due and payable by Tenant within five (5) business days thereafter.

This Lease is and shall be prior to any encumbrance recorded after the Effective Date of this Lease affecting all or any part of the Shopping Center. "Encumbrance" is a deed of trust, mortgage, or other security device, and the note or other obligation secured by it. If, however, a lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance, if Landlord first obtains from the lender a written agreement that provides that so long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease.

In addition, this Lease shall be subordinate to any future Declaration of Covenants, Conditions, and Restrictions ("CCRs") affecting all or part of the Shopping Center, and Tenant will subordinate its rights under this Lease to such CCRs, provided that (i) so long as Tenant is not in default of its obligations under this Lease (beyond any applicable notice and cure period), Tenant shall be entitled to retain its possession under this Lease and (ii) such future CCRs shall not materially diminish Tenant's rights, or materially increase Tenant's obligations under, this Lease or materially and adversely affect Tenant's ability to operate its business for the Permitted Use. In addition, this Lease shall be subordinate to all ground leases or underlying leases which may now exist or hereafter be executed affecting all or any part of the Shopping Center, and Tenant will subordinate its rights under this Lease to any such ground or underlying leases, provided that as long as Tenant is not in default (beyond any applicable notice and cure period) its obligations under this Lease, Tenant shall be entitled to retain its possession under this Lease. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinate any such ground leases or underlying leases or any such liens to this Lease.

Tenant, notwithstanding any subordination, shall attorn to and become the tenant of any purchaser at any foreclosure sale, to any grantee or transferee of any deed given in lieu of foreclosure, or any successor of Landlord and/or any tenant of any new ground lease or new underlying lease which is intended to replace the "Master Lease" (as such term is defined in Section 23.24 of this Lease) at the option of such successor in interest or such new tenant.

Tenant and Landlord shall execute all instruments and documents which reasonably are required to accomplish the purposes of this Section.

Landlord shall use reasonable efforts to obtain a Recognition and Attornment Agreement with the Master Landlord (Ground Lessor), the City of Torrance ("City"), on terms similar to those provided in Exhibit K attached hereto, provided that such agreement shall be subject to approval by the City. In the event Landlord has not obtained an executed Recognition and Attornment Agreement, in a form reasonably acceptable to Tenant, from the City on or before the date one hundred (100) days after the Effective Date, Tenant shall have the right, upon thirty (30) days' advance written notice to Landlord, to terminate this Lease; and, unless Landlord shall provide an executed Recognition and Attornment Agreement, this Lease shall terminate at the end of the 30-day period; provided that, if Landlord shall obtain such agreement prior to the expiration of such 30-day period (and provide a copy of same to Tenant), such termination shall be deemed to be void.

#### SECTION 18. Notices.

Except as otherwise specifically stated in this Lease, all notices, requests, demands, consents and other communications required or desired to be given under this Lease shall be in writing and shall be deemed given upon (i) personal delivery to the addressee; (ii) the date signed for or refused by recipient when sent via United States Mail, postage prepaid, certified mail return receipt requested; or (iii) one day after delivery to a receipt issuing overnight delivery service (e.g., FedEx). Until notified of a different address(es), as provided herein, all notices shall be addressed to the parties at the address(es) set forth in Paragraph 11 of the Fundamental Lease Provisions. If more than one person or entity is named as Tenant or Landlord under this Lease, then service of any notice upon any one of said persons or entities of Tenant or Landlord, whichever the case may be, shall be deemed as service upon all such persons or entities.

#### SECTION 19. Waiver.

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver.

The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any default; it shall constitute only a waiver of timely payment for the particular rent payment involved.

No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provisions of the Lease.

#### **SECTION 20. Sale or Transfer of Premises.**

If Landlord sells or transfers all or any portion of the Shopping Center of which the Premises are a part, Landlord, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this Lease and Tenant agrees to look thereafter solely to such successor in interest of Landlord for performance of such obligations. If any security deposit or prepaid rent has been paid by Tenant, Landlord will transfer the security deposit or prepaid rent to Landlord's successor and on such transfer Landlord shall be discharged from any further liability in reference to the security deposit or prepaid rent.

#### **SECTION 21. Attorneys' Fees.**

In the event of any action or proceeding brought by either party against the other under or arising out of this Lease, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. Any such amount owing by Tenant to Landlord under this Section 21 shall be "Rent" within the meaning of Section 16.8. In the event Landlord is made a party to any litigation between Tenant and a third party, then Tenant shall pay all costs and attorneys' fees incurred by or imposed upon Landlord in connection with such litigation; provided, however, if Landlord is ultimately held to be liable, then Landlord shall reimburse Tenant for the cost of any attorney's fees paid by Tenant on behalf of Landlord. In the event Tenant is made a party to any litigation between Landlord and a third party, then Landlord shall pay all costs and attorneys' fees incurred by or imposed upon Tenant in connection with such litigation; provided, however, if Tenant is ultimately held to be liable, then Tenant shall reimburse Landlord for the cost of any attorney's fees paid by Landlord on behalf of Tenant.

#### **SECTION 22. Surrender of Premises; Holding Over.**

**22.1 Surrender of Premises.** On expiration or termination of the term, as the case may be, Tenant shall surrender to Landlord the Premises in good condition (except for ordinary wear and tear), and will have the right to remove only unattached equipment, furniture, merchandise, and Tenant's Trade Fixtures that Tenant installed in the Premises (except, Tenant shall not have the right to remove any lighting fixtures, wall covering or floor covering without Landlord's prior written consent, which may be withheld in Landlord's sole discretion). Tenant shall promptly repair any damage to the Premises resulting from such removal. Any of Tenant's property not removed from the Premises within two (2) days after the expiration of the term shall be deemed abandoned, and, at Landlord's option, either become the property of Landlord or may be removed by Landlord and Tenant shall pay to Landlord the cost of such removal upon demand. Any damage to the Premises resulting from Tenant's occupancy and use of the Premises shall be repaired by Tenant at Tenant's sole expense. As provided in Section 8.3, Landlord shall have the election to require Tenant to restore all or any part of the Premises to the same condition as originally received by Tenant (ordinary wear and tear excepted), in which event Tenant shall do so on or before expiration or termination of the term. Tenant shall perform all restoration made necessary by the removal of any item as allowed or required by this Section.

If Tenant fails to surrender the Premises to Landlord on the expiration of the Lease term as required herein, Tenant shall hold Landlord harmless from all damages (but excluding Landlord's consequential, special or punitive damages or lost profits) resulting from Tenant's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

Tenant shall hold Landlord, Landlord's Investment Manager, Landlord's Property Manager and their respective authorized representatives, shareholders, officers, directors, trustees, employees, individuals, members, and partners harmless from any liability arising as a result of the failure to properly secure the Premises prior to the removal and/or the result of the removal of Tenant's merchandise, Tenant's Trade Fixtures, equipment and other personal property of Tenant.

**22.2 Holding Over.** This Lease shall terminate and shall become null and void without further notice upon the expiration of the term herein specified, and any holding over by Tenant after such expiration shall not constitute a renewal hereof or give Tenant any rights under this Lease, but shall constitute a default by Tenant, and shall entitle Landlord to all of the rights and remedies available to it at law, in equity and as provided by this Lease, including the right to retake possession of the Premises as provided in Section 16 of this Lease. If Tenant shall hold over for any period after the expiration of said term, Landlord may, at its option, exercised by notice to Tenant, treat Tenant as a Tenant from month to month commencing on the first day following the expiration of this Lease subject to the terms and conditions herein contained except that in such case the Minimum Monthly Rent shall be payable at a rental rate in the amount of one hundred fifty percent (150%) of the Minimum Monthly Rent in effect as of the last month of the term hereof, unless Landlord shall specify a lesser amount for rent in its sole discretion.

#### **SECTION 23. Miscellaneous Provisions.**

**23.1 Time of Essence.** Time is of the essence of each provision of this Lease.

**23.2 Consent of Parties.** Except for those Sections of this Lease wherein it states that consent may be withheld by a party in its sole discretion, whenever consent or approval of either party is required, that party shall not unreasonably withhold or delay in giving such consent or approval.

**23.3 Exhibits.** All exhibits referred to in this Lease are attached to it and incorporated by reference.

**23.4 Successors.** This Lease shall be binding on and inure to the benefit of the parties and their successors, subject to the provisions of Section 15.

**23.5 Rent Payable in U.S. Money.** Rent must be paid in lawful money of the United States of America.

**23.6 Status of Parties on Termination of Lease.** Except as provided in Sections 4, 12 and 16, if a party elects to terminate this Lease, on the date the Lease terminates the parties shall be released from further liabilities and obligations (but not as to existing defaults or pre-existing indemnity obligations which shall survive such termination) and Landlord shall return to Tenant any prepaid but unearned Rent, as long as Tenant is not in default (beyond any applicable notice and cure period) on the date the Lease terminates.

**23.7 Interpretation of Lease.**

(a) **Law of the State.** This Lease shall be construed and interpreted in accordance with the laws of the state in which the Shopping Center is located.

(b) **Integrated Agreement; Modification.** This Lease contains all the agreements of the parties and cannot be amended or modified except by written agreement signed by both parties hereto.

(c) **Provisions Are Covenants and Conditions.** Intentionally omitted.

(d) **Use of Definitions.** The definitions in this Lease shall be used to interpret this Lease.

(e) **Definitions.** As used in this Lease, the following words and phrases shall have the following meanings unless otherwise specifically provided to the contrary:

**Alterations --** all additions or changes to, or modifications of the Premises made by and/or on behalf of Tenant during the term, including, without limitation, fixtures, but excluding "Tenant's Trade Fixtures," and "Tenant's Improvements" as defined here.

**Authorized Representatives --** any officer, agent, employee, or independent contractor retained or employed by either party, acting within authority given him or her by that party.

**Good Condition --** the good physical condition of the Premises or the Common Areas, as the case may be, and each portion thereof. "In good condition" means first-class, neat, and clean, and is equivalent to similar phrases referring to physical adequacy in appearance and for use.

**Hold Harmless --** to defend and indemnify from all liability, losses, penalties, damages (but excluding the indemnified party's consequential, special or punitive damages or lost profits), costs, expenses (including, without limitation, attorneys' fees), causes of action, claims, or judgments arising out of or related to any damage, to any person or property; and this definition shall apply in all instances in which the applicable provision requires one party to hold the other party harmless.

**Laws --** all judicial decisions, statutes, constitutions, ordinances, resolutions, regulations, rules, administrative orders, and other requirements of all municipal, county, state, federal, and other governmental agencies and authorities having jurisdiction over the parties or the Premises, or both, in effect either at the Effective Date or at any time during the Lease term, including, without limitation, the regulations or orders of quasi-official entities or bodies (e.g., boards, bureaus and public utilities).

**Maintenance --** repairs, replacements, repainting, lubricating and cleaning.

**Person --** one or more human beings, legal entities, associations, or other artificial persons, including, without limitation, partnerships, corporations, trusts, estates, associations and any combination of human beings and legal entities.

**Provision --** any term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in the Lease that defines or otherwise controls, establishes, or limits that performance required or permitted by either party.

**Successor --** assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of this Lease, to the rights or obligations of either party.

**Tenant's Improvements --** all additions, improvements to, or modifications of the Premises made by Tenant, before, at, or near the commencement of the Lease term, including, without limitation, fixtures (excluding "Tenant's Trade Fixtures", as defined here).

**Tenant's Trade Fixtures --** all property installed in or on the Premises by Tenant for the purpose of trade, manufacture, ornament, or related use.

(f) **Captions.** The captions of this Lease shall have no effect on its interpretation.

(g) **Singular and Plural.** When required by the context of this Lease, the singular shall include the plural and vice-versa.

(h) **Joint and Several Obligations.** "Party" shall mean Landlord or Tenant; and if more than one person or entity is Landlord or Tenant, the obligations imposed on that party shall be joint and several.

(i) **Severability.** The un-enforceability, invalidity, or illegality of any provision of this Lease shall not render any other provisions of this Lease unenforceable, invalid, or illegal.

**23.8 Limitation of Landlord's Liability.** If Landlord is in default of this Lease, and as a consequence Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title, and interest of Landlord in the Shopping Center, and out of rent or other income from the Shopping Center receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title, and interest in the Shopping Center and Tenant waives any and all right to assert any claim against or obtain any damages from, for any reason whatsoever, the directors, trustees, officers, partners employees and representatives of Landlord.

**23.9 Landlord's Financing.** Intentionally omitted.

**23.10 Rules and Regulations.** The rules and regulations, if any, attached to this Lease as Exhibit D are made a part of this Lease, Tenant shall comply with them and Tenant agrees to cause its agents, employees, subtenants and licensees to comply with them provided that the same shall not negate the express provisions of this Lease (and in the event of a conflict between such rules and regulations and the provisions of the text of this Lease, excluding the exhibits thereto, the provisions of the Lease shall control). Landlord shall have the right from time to time to promulgate new and additional rules and regulations, and amendments thereto for the operation, safety, care, cleanliness of the Premises, the Shopping Center, all Common Areas, and/or for the preservation of good order; provided, however, no such new or additional rules or regulations, or amendments thereto shall be binding upon Tenant to the extent the same materially increase Tenant's obligations, or materially diminish Tenant's rights, under this Lease. If there is a conflict between the rules and regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible to Tenant for the failure of any other tenant or occupant of the Shopping Center to comply with the rules and regulations; provided, however, Landlord shall enforce such rules and regulations in a reasonable and non-discriminatory manner as to similarly situated tenants.

**23.11 Real Estate Brokers; Finders.** Tenant represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this Lease in any manner, except the person or entity named in Paragraph 12 of the Fundamental Lease Provisions. Tenant shall hold harmless Landlord from any and all costs, expenses, damages, claims or liabilities, including legal fees and expenses, for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant. Tenant shall pay any commissions or fees that are payable to anyone other than the person or entity named in paragraph 12 of the Fundamental Lease Provisions. Landlord shall pay, and shall indemnify, defend and hold Tenant harmless from and against any commissions or fees payable to the broker(s) named in Paragraph 12 of the Fundamental Lease Provisions by reason of the parties' execution of this Lease.

**23.12 Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required as a result of causes beyond such party's reasonable control, such as, without limitation, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, wars or other reasons of a like nature, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay provided that the party claiming the benefits of this Section shall notify the other party within fifteen (15) days of such force majeure event. The provisions of this Section shall not operate to excuse Tenant from prompt payment of rent.

**23.13 Corporate Warranties by Tenant.** If Tenant is a corporation, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord, that, as of the Effective Date: (a) Tenant is a valid and existing corporation; (b) all things necessary to qualify Tenant to do business in the state in which the Shopping Center is located have been accomplished prior to the date of this Lease; (c) all income tax returns required to be filed by such corporation have been filed; and (d) the individuals executing this Lease have authority to do so as evidenced by a certified copy of a corporate resolution so stating delivered to Landlord concurrently with the execution of this Lease.

**23.14 Non-Discrimination.** There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of sublessees, subtenants or vendees in the Premises herein leased.

**23.15 Party in Interest Provisions.**

A. Tenant and each successor and assignee of Tenant hereunder represents, warrants and covenants to and with Landlord that it is not, and at all times during the term of the Lease it will not be, a "party in interest" as defined in Section 3 (14) of the Employee Retirement Income Security Act of 1974, as amended, or a "disqualified person" as defined in Section 4975 (e) (2) of the Internal Revenue Code of 1986, as amended, with respect to any of the employee benefit plans listed in Exhibit F hereto. Tenant and each successor and assignee of Tenant hereunder agrees to promptly notify Landlord if, at any time during the term of this Lease, it has reason to believe that it is, or is likely to be, a "party in interest" or a "disqualified person".

B. Tenant and each successor and assignee of Tenant hereunder shall keep and hold the identity of the employee benefit plans listed in Exhibit F confidential, and shall not use or disclose such list except to the extent necessary to make the foregoing representations, warranties and covenants.

**23.16 Landlord's Option to Relocate Tenant.** Intentionally omitted.

**23.17 Furnishing of Financial Statements.** Landlord has reviewed financial statements, if so requested, of Tenant and has relied upon the truth and accuracy thereof with Tenant's representation that, to Tenant's actual knowledge, such financial statements are true and accurate and such statements accurately and fairly depict the financial condition of Tenant. Said financial statements are an inducing factor and consideration for the entering into of this Lease by Landlord. Not more than once annually, from time to time within twenty (20) days after Landlord's written request, Tenant shall provide to Landlord a copy of Tenant's most recent audited financial statements, or a document in which Tenant states that its financial statements and records are not audited, and a current unaudited financial statement (current means within ninety (90) days of the anniversary date of this Lease, or the date of Landlord's notice requesting such financial statements, whichever the case may be; provided, however, Landlord must first provide Tenant with a confidentiality agreement in the form of Exhibit M. Any lenders or other parties designated by Landlord as recipients of such information shall also execute such confidentiality agreement (with any modifications as may be approved by Tenant, in its sole and absolute discretion) prior to receiving such information.

**23.18 Examination of Lease.** Submission of this Lease for examination or signature by Tenant does not constitute a reservation or option for lease, and this Lease shall not be effective as a lease or otherwise until it is executed by and delivered to both Landlord and Tenant.

**23.19 Lease is not a Merger.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between parties hereof, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

23.20 **Quiet Possession.** Subject to all of the other provisions of this Lease, upon Tenant paying Rent and observing and performing all of the terms and provisions of this Lease, Tenant shall have quiet possession of the Premises for the entire term of this Lease without hindrance or interruption by Landlord or others claiming by, through, or under Landlord.

23.21 **Liquor Licenses.** Tenant, its directors, partners, principals, employees and agents agree not to object to or oppose in any manner any applications for issuance of liquor licenses to any establishment within the Shopping Center except only in the case of any tenant or occupant who seeks a license to sell alcoholic beverages in violation of Tenant's exclusive use rights set forth in Section 4.8. Landlord, its members, directors, partners, principals, employees and agents agree not to object to or oppose in any manner Tenant's applications for issuance of a CUP and/or liquor license with respect to its operations in the Premises; however, Tenant agrees that any such license shall not be assigned to any entity other than a permitted assignee of Tenant pursuant to the provisions of Section 15.1 of this Lease.

23.22 **Default by Landlord.** Should Landlord (i) fail to perform any of its promises, covenants or agreements herein contained concerning the maintenance or repair of the Premises or (ii) fail to comply with applicable laws or regulations that require improvements or repairs to be made to the Premises which Landlord is responsible to make, for more than thirty (30) days after written notice thereof from Tenant to Landlord specifying the particulars of the default (provided, however, if the default is not reasonably susceptible of being rectified or cured within such thirty (30) day period, the default shall be deemed to be rectified or cured if Landlord, within such thirty (30) day period, shall have commenced to rectify or cure the default and shall thereafter diligently and continuously prosecute same to completion), and should such default result in the threat of bodily harm to Tenant, its agents, employees, contractors or invitees or damage to the property of any such person or entity, then Tenant, in addition to all other remedies and rights provided to Tenant at law of in equity (provided that Tenant shall not be permitted to pursue all such remedies and Tenant shall, by its selection of remedy, be deemed to have made an election of remedies which election shall preclude Tenant from the pursuit of remedies with respect to the asserted default other than the remedy selected), upon written notice to Landlord of Tenant's intention to exercise its self-help remedies described hereafter, and after providing Landlord with an additional 30-day cure period, may incur any reasonable expense necessary to perform the maintenance or repairs or make the required improvements or repairs to comply with applicable laws or regulations, as the case may be, that are specified in such notice and may recover from Landlord all such reasonable costs of cure provided that Landlord either has failed to commence and thereafter pursue such cure or failed to contest the necessity of such cure through judicial proceeding. The foregoing notice and cure period respecting Landlord defaults shall not be applicable to those certain Landlord defaults under provisions in this Lease, if any, wherein Tenant is expressly provided with the right to terminate this Lease as a result thereof. Notwithstanding the foregoing, if in Tenant's reasonable business judgment, an emergency shall exist that threatens imminent harm to person or property at the Premises, and requires immediate attention in order to overcome such threat, Tenant may perform such maintenance or repair obligation upon only reasonable (under the circumstances) notice to Landlord. If Landlord has not reimbursed Tenant within thirty (30) days after receipt of Tenant's invoice, and provided Landlord is not contesting by judicial proceeding its default with Tenant and, further, that non-payment by Landlord continues for another thirty (30) days following notice from Tenant that it will offset Landlord's obligation from rent, then Tenant may deduct all such reasonable costs from the Minimum Monthly Rent next coming due after the expiration of the second 30-day notice period; provided, however, in no event may Tenant offset more than forty percent (40%) of any installment of Minimum Monthly Rent. The self help remedy provided in this Section 23.22 is for the sole benefit of Tenant, and its existence shall not release Landlord from its obligation to perform the covenants and conditions that Landlord is obligated to perform. The notice to Landlord of costs incurred under this Section 23.22 shall include a detailed invoice together with copies of all paid receipts for the work performed.

23.23 **Memorandum of Lease.** This Lease shall not be recorded; however, a memorandum of this Lease in the form attached hereto as Exhibit I shall be executed, in recordable form, by both parties concurrently with their execution of this Lease and recorded by Tenant, at Tenant's expense, with the official charged with recordation duties for the county in which the Premises is located. Notwithstanding any contrary provision set forth in this Lease, Tenant shall not be obligated to commence payment of Minimum Monthly Rent until Landlord has delivered to Tenant the Memorandum of Lease completed and duly executed by Landlord. Tenant agrees at the expiration of the Lease term or the earlier termination of this Lease, upon Landlord's written request, that Tenant will deliver an executed and notarized lease termination agreement, quit claim deed or similar instrument to Landlord so that the memorandum of Lease may be removed as an exception to title for the Shopping Center.

23.24 **Master Lease.**

Landlord and Tenant acknowledge and agree that notwithstanding the designation of this Lease as a "Lease", it is a "Sublease", "Landlord" is a "Sublandlord", and "Tenant" is a "Subtenant".

Landlord is tenant under a lease with the City of Torrance (the "Master Lease"), which Master Lease covers the Premises and other property in the Shopping Center.

This Lease is subject and subordinate to the Master Lease.

Subject to the terms of the Recognition and Attornment Agreement referred to in Section 17 hereof and except as otherwise may be agreed in writing by the City of Torrance, as Master Landlord, in the event for any reason whatsoever the Master Lease is terminated prior to the expiration of the term of this Lease, this Lease shall terminate as of the date the Master Lease is terminated. Notwithstanding the foregoing, and in accordance with the terms of Section 17 of this Lease, this Lease will NOT terminate upon the termination of the Master Lease if the master landlord thereunder enters into a new master lease with any "Approved Leasehold Mortgagee" (as such term is defined in the Master Lease) in accordance with the terms and conditions contained in the Master Lease, and Tenant will attorn to such Approved Leasehold Mortgagee upon the execution of such new master lease.

Tenant covenants and agrees to comply with and shall not violate any of the terms, covenants and conditions of the Master Lease, whether or not a provision exists in this Lease requiring Tenant to so comply except that Tenant's obligations and covenants to pay rent and other charges (and the use of the Premises) shall be governed by this Lease and shall be considered satisfied to the extent and in the amount that rent and other charges are paid hereunder by Tenant to Landlord. Tenant shall defend, indemnify, hold Landlord harmless of and from all liability, judgments, costs, expense, damage, claims and demands (but excluding Landlord's consequential, special or punitive damages or lost profits), including attorneys' fees arising out of any failure by Tenant to perform any of such obligations under the Master Lease and of any failure by Tenant to perform its obligations under this Lease.

23.25 **Option(s).** Tenant shall have the option (s) to extend the term of this Lease for the term(s) (the "Extension Term") set forth in Paragraph 5(d) of the Fundamental Lease Provisions under the following conditions:

(a) That Tenant is conducting business operations in the Premises in accordance with the terms of this Lease and is not then in material default (which has not been cured within the applicable cure period after notice from Landlord), and has not been in such material default (beyond any applicable notice and cure period) on more than four (4) occasions in the 18-month period immediately preceding the date of Tenant's notice to exercise the extension option, under any provision of the Lease. For the purposes hereof, default of monetary provisions of the Lease shall be defined as any delinquency in the payment of any required sum to Landlord which continues for more than ten (10) days after Landlord's notice of such delinquency. Notwithstanding the foregoing, if an event of material breach and default under this Lease is outstanding at the time of Tenant's exercise of an extension option or at any time prior to the first day of an Extension Term, Landlord may elect, by notice to Tenant, to reject Tenant's exercise of such extension option. If Landlord so rejects Tenant's exercise of an extension option, such extension option and any and all subsequent extension options shall be null and void.

(b) That Tenant shall notify Landlord in writing of Tenant's exercise of said extension option not later than nine (9) months preceding the Expiration Date set forth in Section 5(c) of the Fundamental Lease Provisions, or nine (9) months preceding the last day of the current Extension Term, if applicable. Said notice to extend shall, upon delivery to Landlord, be irrevocable and shall bind Tenant to the Extension Term. Tenant's failure to exercise its Extension Option(s) in a timely manner shall not be deemed a waiver unless Landlord has provided Tenant with written notice and Tenant thereafter fails to exercise its Extension Option(s) within five (5) business days after its receipt of Landlord's written notice.

(c) If Tenant elects to exercise an extension option, the Extension Term shall be upon and subject to all of the terms, covenants and conditions of this Lease, except as otherwise set forth below:

(i) The Minimum Monthly Rent for the entire First Extension Term applicable to the Premises shall be adjusted to the Prevailing Market Rate for the Premises, provided that the Minimum Monthly Rent for the entire First Extension Term shall in no event be less than, or greater than one hundred fifteen percent (115%) of, the Minimum Monthly Rent in effect at the end of the initial Lease term. As used herein, the term "Prevailing Market Rate" for the Premises shall mean the rental and all other monetary payments and escalations, including, without limitation, step rent or consumer price indexing, that Landlord could obtain from a third party desiring to lease the Premises for the Extension Term taking into account the size and location of the Premises (and premises that are furnished in a manner similar to the Premises), the services provided under the terms of this Lease, the rental then being obtained for new leases of space comparable to the Premises in the locality of the Shopping Center, and all other factors that would be relevant to a third party desiring to lease the Premises for the Extension Term in determining the rental such party would be willing to pay therefor; provided, however, no allowance for the construction of tenant improvements shall be taken into account in determining Prevailing Market Rate. No later than six (6) months prior to commencement of the First Extension Term, Landlord shall notify Tenant of Landlord's determination of the Prevailing Market Rate to be used to calculate the minimum monthly rent for the First Extension Term. If Tenant wishes to dispute Landlord's determination, Tenant shall give notice to Landlord of Tenant's intent to submit the matter to appraisal within thirty (30) days after receipt of notice of Landlord's determination. If Tenant so elects, then within fifteen (15) days after the date of Tenant's notice of its election to submit the matter to appraisal, each party, at its cost, shall engage a real estate appraiser to act on its behalf in determining the Prevailing Market Rate for the Premises for the Extension Term. The appraisers shall have at least five (5) years' retail appraisal experience in the area of the Shopping Center and shall be persons who would qualify as expert witnesses over objection to give opinion testimony on the issue of the Prevailing Market Rate for the Premises in a court of competent jurisdiction. If a party does not appoint an appraiser within fifteen (15) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the Prevailing Market Rate for the Premises for the First Extension Term. If the two appraisers are appointed by the parties as stated in this Paragraph, such appraisers shall meet promptly and attempt to set the Prevailing Market Rate for the Premises for the First Extension Term. If such appraisers are unable to agree within forty-five (45) days after appointment of the second appraiser, the appraisers shall elect a third appraiser meeting the qualifications stated in this Paragraph within ten (10) days after the last date the two appraisers are given to set the Prevailing Market Rate for the Premises. Each of the parties shall bear one-half (1/2) the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser shall be a person who has not previously acted in any capacity for either party. Within thirty (30) days after the selection of the third appraiser, the majority of the appraisers shall set the Prevailing Market Rate for the Premises for the First Extension Term. If a majority of the appraisers is unable to set the Prevailing Market Rate for the Premises within the stipulated period, each appraiser shall, within fifteen (15) days thereafter, render a separate appraisal. The rental values and terms arrived at by the three appraisers shall be averaged, and the resulting average shall be deemed the Prevailing Market Rate for the Premises for the First Extension Term. However, in the event that the Prevailing Market Rate arrived at in any of the appraisals is more than ten percent (10%) higher or lower than the middle appraised Prevailing Market Rate, the remaining two values shall be averaged, if there are two, or the remaining one appraised value shall be used, if there is one. If either by agreement of the parties or by appraisal the Prevailing Market Rate is not finally determined by the commencement of the Extension Term, Tenant shall pay one hundred ten percent (110%) of the minimum monthly rent in effect for the month immediately prior to the commencement of the First Extension Term until such time as the Prevailing Market Rate is finally determined by agreement of the parties or by an appraiser. If the monthly Prevailing Market Rate as finally determined for the Extension First Term exceeds the monthly amount previously paid by Tenant for the First Extension Term, Tenant shall pay the difference to Landlord for each of the months Tenant paid the lesser amount within thirty (30) days after such determination is made. If the monthly Prevailing Market Rate as finally determined for the First Extension Term is less than the monthly amount previously paid by Tenant for the First Extension Term, Landlord shall credit against the payment(s) of Minimum Monthly Rent next coming due the difference for each of the months Tenant paid the greater amount.

(ii) The Minimum Monthly Rent for the entire Second Extension Term shall be one hundred and ten percent (110%) of the Minimum Monthly Rent in effect on the last day of the First Extension Term.

(iii) The Expiration Date of the term of this Lease, as extended, shall be the expiration date of the applicable Extension Term.

(iv) Upon determination of the Minimum Monthly Rent for the Extension Term(s), Landlord and Tenant shall execute an amendment to this Lease which states the extension of the term of this Lease into the Extension Term(s) and the Minimum Monthly Rent for the Extension Term(s).

23.26 **Shopping Carts.** Subject to required governmental approval, if any, Tenant shall have the right (i) subject to Landlord's prior approval (as to location and size) which shall not be unreasonably withheld, conditioned or delayed, to install at one (1) location in the parking area adjacent to the Premises, as shown on Exhibit A, a collection stand for its shopping carts, and (ii) to store its shopping carts in a cart corral on the sidewalk area immediately in front of the Premises, as shown on Exhibit A, during its normal business hours as well as at all times when Tenant is not open for business. Tenant will be responsible for maintaining, monitoring and policing (no stray carts, overflow, damage, etc.) such shopping carts and collection stands and shall be fully liable for all cleanup, claims, liabilities, costs and

expenses associated with the operation of such cart program, including, without limitation, the obligation to indemnify, defend and hold Landlord harmless from and against all costs, claims and liability associated with or arising from such cart program.

23.27 **Outdoor Promotion.** Subject to required City approval, if any, and restrictions set forth in leases of other occupants of the Shopping Center executed prior to the Effective Date, from time to time but not more than one (1) day per month, Tenant may locate a table on the sidewalk immediately in front of the Premises for the purpose of enrolling persons in Tenant's "ClubBev" loyalty program and/or other promotional programs offered by Tenant. Tenant also may conduct a grand opening celebration in the common area immediately in front of the Premises for a period of up to five (5) days after Tenant opens for business in the Premises; however, the affected area and celebration specifics will be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

23.28 **Tenant Contingencies.** Tenant's obligations under the Lease shall be subject to satisfaction/waiver of each of the following contingencies (all of which contingencies shall be deemed waived or satisfied upon Tenant's opening for business in the Premises):

- i. Prior to the Effective Date, Landlord has provided to Tenant, or has made available at Landlord's office, existing building plans concerning the Premises, including without limitation, floor plan, electrical plan, plumbing plan and mechanical plan (collectively, the "Shell Information"). Within twenty (20) days after the Effective Date, Tenant shall deliver to Landlord its floor plan, front elevation and scope of initial improvement work for the Premises ("Tenant's Preliminary Plans"). Landlord shall have fifteen (15) business days from its receipt of Tenant's Preliminary Plans to approve or disapprove same, in writing, which approval shall not be unreasonably withheld so long as Tenant's Preliminary Plans substantially conform (as modified by space limitations) with the store design of a typical Beverages & More!/BevMo! store. If Landlord fails to respond to any request for consent or approval within the time period set forth herein, then such consent or approval will be deemed to have been granted by Landlord provided that Tenant's request for consent was made in writing, delivered in accordance with the notice provisions hereof, and stated on the face of the request in clear, enlarged or bold type that failure to respond within the applicable time period set forth herein would constitute a consent or approval. If Landlord provides timely notice of disapproval (which notice shall contain a clear statement of all reasons for such disapproval), Tenant shall re-submit its revised Tenant's Preliminary Plans within ten (10) days thereafter; and the process shall be repeated until Tenant's Preliminary Plans have been approved or deemed approved by Landlord.

Within thirty (30) days after Landlord has approved the Preliminary Plans (or such plans are deemed approved), Tenant shall supply Landlord with final plans and specifications for its work in the Premises ("Final Plans"). Final Plans shall be compatible with the Shell Information and comply with all applicable laws and building codes and must be approved by Landlord, in writing, which approval shall not be unreasonably withheld or delayed. Landlord shall have fifteen (15) business days from its receipt of Final Plans to approve or disapprove same, which plans shall be approved so long as they substantially conform to Tenant's Preliminary Plans. If Landlord fails to respond to any request for consent or approval within the time period set forth herein, then Tenant shall provide a further notice to Landlord, containing a bold warning on the cover page, in 16 point or larger type, that Landlord's failure to respond within three (3) business days thereafter shall be construed as, or deemed to be, approval of Tenant's Final Plans. Such notices (initial delivery of Final Plans and further notice, as applicable) shall be sent to the following individuals:

John Mastandrea  
LaCaze Development Company  
2601 Airport Drive, Suite 300  
Torrance, CA 90505

Stacy Fuchs  
Bristol Group, Inc.  
400 Montgomery Street, 4<sup>th</sup> Floor  
San Francisco, CA 94104

Keith Palmer  
Bryant Palmer Soto, Inc.  
2601 Airport Drive, Suite 310  
Torrance, CA 90505

If Landlord fails to respond to such further notice within three (3) business days after Landlord's receipt of same, such consent or approval will be deemed to have been granted by Landlord, provided that each request for consent was made in writing and delivered in accordance with the notice provisions hereof to the individuals listed above. If Landlord provides timely notice of disapproval (which notice shall contain a clear statement of all reasons for such disapproval), Tenant shall re-submit its revised Final Plans within ten (10) days thereafter; and the process shall be repeated until Tenant's Final Plans have been approved or deemed to be approved by Landlord.

Tenant shall apply for all Building Permits (defined below) within five (5) business days after Landlord has approved (or is deemed to have approved) Tenant's Final Plans and shall diligently pursue the obtaining of such Building Permits. Landlord will provide assistance in obtaining the Building Permits but shall incur no costs. Tenant shall have a period of not more than one hundred twenty (120) days from the date Landlord has approved (or is deemed to have approved) Tenant's Final Plans to obtain all required permits (but excluding the Liquor License, defined below) to operate a typical store doing business under the trade name "BevMo!", including building permits for the construction of the initial leasehold improvements and any required CUP for the sale of alcohol for off-Premises consumption, in-Premises tastings of alcoholic beverages and in-Premises wine storage (collectively "Building Permits"). If at the end of such one hundred twenty (120) day period, Tenant has not obtained all Building Permits, it shall have the right, within five (5) days thereafter, to provide notice to Landlord either waiving such contingency or terminating this Lease. If Tenant does not elect to terminate the Lease under this section, Tenant shall be deemed to have waived the condition giving rise to such termination right. If Tenant elects to terminate the Lease under this section, Landlord will have forty five (45) days thereafter to "cure", on behalf of Tenant, i.e., to obtain all Building Permits (or all that have not been obtained previously by Tenant), and if Landlord obtains the necessary Building Permits within such forty-five (45)-day period, Tenant's termination shall be null and void and the Lease shall remain in full force and effect.

- ii. Issuance to Tenant, within thirty (30) days after Tenant's receipt of any required CUP, of all licenses, permits (other than the Building Permits), or other approvals from state and/or local governmental agencies as may be required for the lawful sale of alcoholic beverages for off-Premises consumption, in-Premises tastings of alcoholic beverages and in-Premises wine storage ("Liquor License"). Landlord shall have the same right to cure as in Section 23.28(i) above, and Landlord shall have the same termination rights as afforded to Tenant. Tenant may post its Liquor License application on the Premises; however, Tenant shall notify Landlord before posting. Tenant shall diligently pursue issuance of the Liquor License commencing the earliest time possible after the Effective Date. If Tenant waives its Liquor License contingency (with respect to either the sale of alcoholic beverages for off-Premises consumption or for in-Premises tasting of alcoholic beverages or for in-Premises wine storage), or if Tenant opens for business in the Premises without one or more of such contingencies being satisfied, Tenant shall not thereafter have any right to raise any such contingencies as a condition to the enforceability of this Lease or as cause for termination of this Lease.
- iii. Landlord's delivery of reasonable evidence of good and sufficient title and authority to enter into the Lease within ten (10) days after the parties' execution of the Lease in the form of a Preliminary Title Report concerning the Shopping Center, which Report shall indicate that Landlord's title to the Shopping Center is subject only to the Permitted Exceptions.
- iv. In addition, the Delivery Date under this Lease shall not occur until the satisfaction of the following contingency: Landlord's termination of the lease with the existing tenant in the Premises on terms acceptable to Landlord. Prior to the Effective Date, Landlord entered into an agreement with such existing tenant, which agreement provides that, as a condition(s) to the effectiveness of the termination of such existing lease, all of Tenant's contingencies set forth above must be satisfied or waived.

23.29 **Landlord Contingencies.** Landlord's obligations under the Lease shall be subject to satisfaction/waiver of each of the following contingencies:

- a) Landlord's termination of the lease with the existing tenant in the Premises on terms acceptable to Landlord. Prior to the Effective Date, Landlord entered into an agreement with such existing tenant, which agreement provides that, as a condition(s) to the effectiveness of the termination of such existing lease, all of Tenant's contingencies set forth above must be satisfied or waived.
- b) Approval of this Lease by Landlord's Lender (with respect to the First Deed of Trust on the Shopping Center) within thirty (30) days following the Effective Date of this Lease (the Delivery Date shall not occur until this condition has been satisfied or waived by Landlord); provided, however, that Landlord shall use reasonable efforts to obtain such approval, and that this Lease shall be submitted to Landlord's Lender for its review within two (2) business days after the Effective Date. If at the end of such thirty (30) day period, Landlord has not obtained such approval, it shall have the right, within five (5) days thereafter, to provide notice to Tenant either waiving such contingency or terminating this Lease. If Landlord does not elect to terminate the Lease under this section, Landlord shall be deemed to have waived the condition giving rise to such termination right.

23.30 **Rooftop Rights.** Solely in connection with the Permitted Use, Tenant shall have the right to install one (1) antenna/satellite dish (generally, the "Antenna") on the roof of the Premises for use in connection with its business operations in the Premises and Tenant shall have the right to use reasonable amount of riser space to provide the connections between the rooftop Antenna and the Premises, which right shall be governed by the License Agreement attached hereto as Exhibit L. Tenant's use of the rooftop space for its Antenna shall be without any obligations to pay any additional rent. Such Antenna shall be installed and operated in compliance with all applicable ordinances and regulations, screened and installed in accordance with plans and specifications and in a location approved by Landlord. Such Antenna shall be installed without penetrating the roof. The cost of installation and maintenance thereof, and the cost of any repairs to the roof which are necessitated by the installation, repair and/or removal of such Antenna shall be borne solely by Tenant. Upon the expiration or termination of this Lease, Tenant shall remove such Antenna and repair any damage to the roof occasioned by such removal. Tenant shall indemnify, defend and hold harmless Landlord from and against all cost, loss, expense or liability of any kind whatsoever arising out of the installation, use and/or removal of such Antenna

23.31 **Permitted Exceptions.** As of the Effective Date and to the best of Landlord's actual knowledge, Landlord is the sole owner of a ground lessee's interest in the Premises and the Shopping Center and holds title thereto subject only to those exceptions set forth in Exhibit H and those exceptions or exclusions otherwise disclosed to Tenant in the Preliminary Title Report, Order No. 8101076455-X59, dated February 17, 2009, as issued by Chicago Title Company (and such other matters which would not materially affect Landlord's title) (collectively, the "Permitted Exceptions"). With respect to the agreements referenced in items 27 and 28 of Exhibit H, Landlord represents, to Landlord's actual knowledge, after Landlord's inspection of such agreements and Landlord's records with respect thereto, that such agreements will not materially impair the ability of Tenant to conduct its normal business in the Premises for the Permitted Use in accordance with this Lease.

EXECUTED effective as of the Effective Date stated in the Fundamental Lease Provisions.

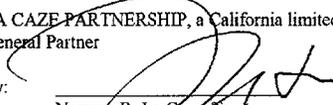
**"LANDLORD"**

ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: ROLLING HILLS PLAZA VENTURE 96, LLC,  
a California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING CENTER,  
a California limited partnership  
Managing Member

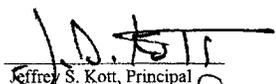
By: LA CAZE PARTNERSHIP, a California limited partnership  
General Partner

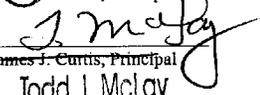
By:   
Norman R. La Caze, Trustee,  
General Partner

By:   
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC, a Delaware limited liability company,  
its member

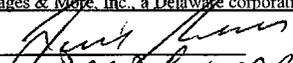
By: BRISTOL GROUP, INC.,  
Its Manager

By:   
Jeffrey S. Kott, Principal

By:   
James J. Curtis, Principal  
Todd J. McLay  
Chief Financial Officer

**"TENANT"**

Beverages & More, Inc., a Delaware corporation

By:   
Name: David Edwards  
Its: E-VP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

NOTE: If Tenant is a corporation, the authorized officer(s) must sign on behalf of the corporation in accordance with the provisions of a certified corporate resolution. If Tenant is a general partnership or a limited partnership, all of the general partners must sign this Lease as shown on the agreement of general or limited partnership.

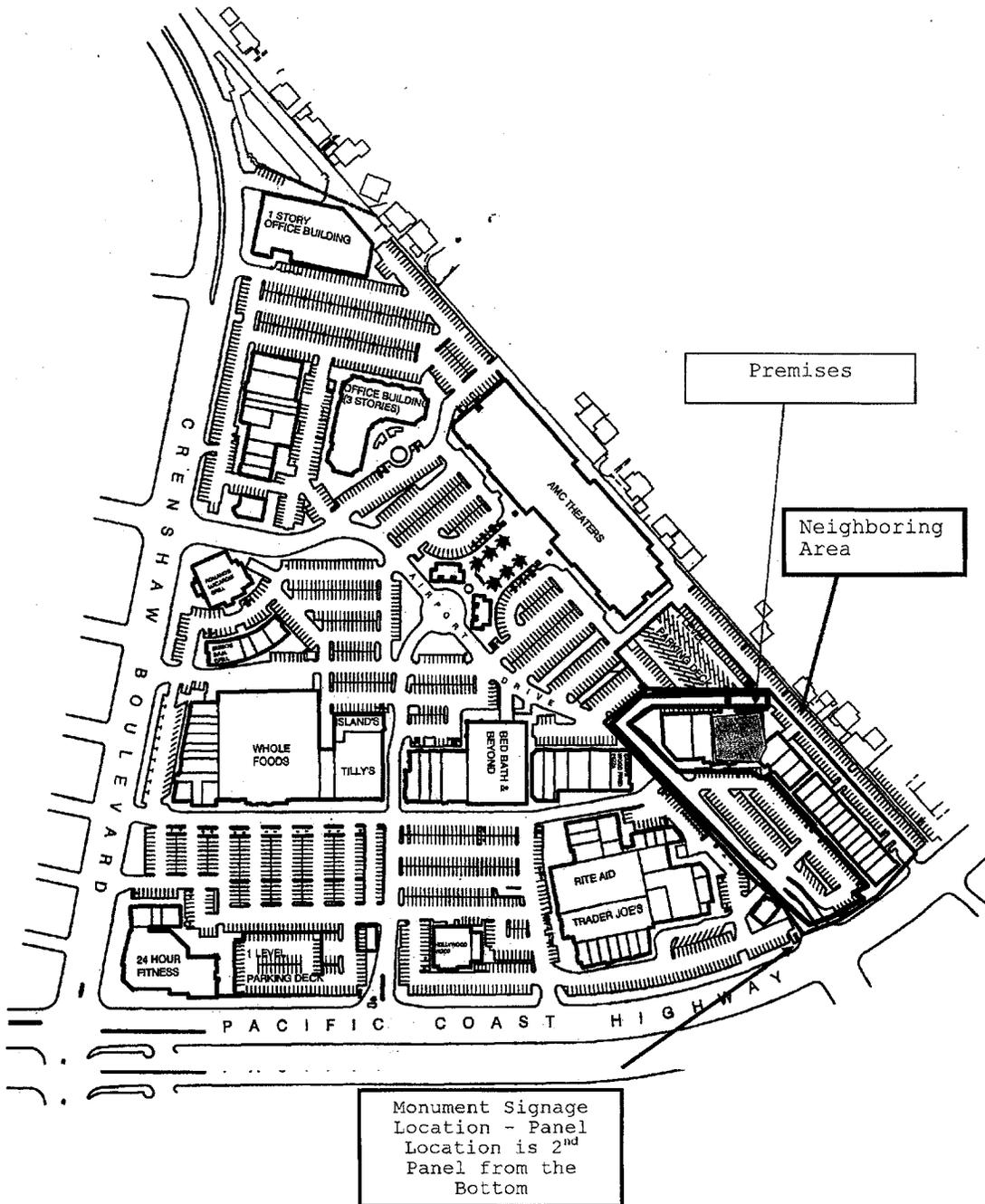
EXHIBIT A  
Site Plan



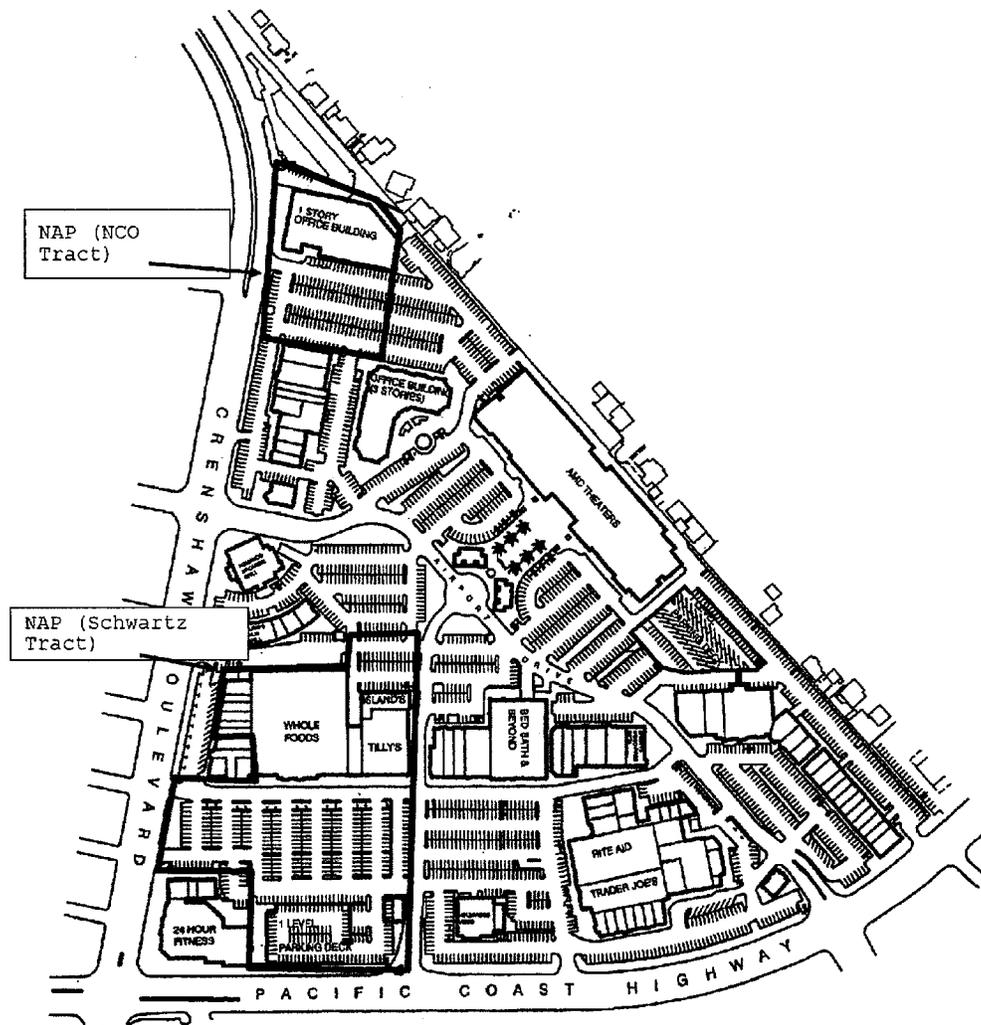
Note that the area outlined on the Site Plan and designated as the "Schwartz Tract" is neither owned nor operated by Landlord, and the area shown as the "NCO Tract" is separately operated, and such tracts are designated as "NAP" areas and do not constitute a part of the Shopping Center for purposes of the Lease. Landlord makes no representations or warranties that the tenants shown herein are either in occupancy or will remain in occupancy during the Term of the Lease. All areas shown on this Exhibit A are only approximate as to location.

**EXHIBIT A**

Site Plan



Note that the area outlined on the Site Plan and designated as the "Schwartz Tract" is neither owned nor operated by Landlord, and the area shown as the "NCO Tract" is separately operated, and such tracts are designated as "NAP" areas and do not constitute a part of the Shopping Center for purposes of the Lease. Landlord makes no representations or warranties that the tenants shown herein are either in occupancy or will remain in occupancy during the Term of the Lease. All areas shown on this Exhibit A are only approximate as to location.



Note that the area outlined on the Site Plan and designated as the "Schwartz Tract" is neither owned nor operated by Landlord, and the area shown as the "NCO Tract" is separately operated, and such tracts are designated as "NAP" areas and do not constitute a part of the Shopping Center for purposes of the Lease. Landlord makes no representations or warranties that the tenants shown herein are either in occupancy or will remain in occupancy during the Term of the Lease. All areas shown on this Exhibit A are only approximate as to location. Note that the parcel/tract lines are only for general representation purposes only and are not to scale.

EXHIBIT ALegal Description of Shopping Center\*ROLLING HILLS TRACT 1PARCEL 1

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 210.00 FEET; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 209.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 188.68 FEET TO THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2 IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 193.04 FEET; THENCE SOUTH 01 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION ALONG PACIFIC COAST HIGHWAY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST, 470.93 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 26 SECONDS WEST, 59.01 FEET TO A POINT OF TANGENCY WITH CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1,828.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 08 MINUTES 54 SECONDS, AN ARC DISTANCE OF 100.45 FEET TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 300.00 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 101 DEGREES 11 MINUTES 01 SECONDS, AN ARC DISTANCE OF 44.15 FEET TO A POINT OF TANGENCY WITH A LINE BEARING NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST, SAID LINE BEING THE SOUTHEASTERLY LINE OF THAT PARCEL OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2, SAID LINE BEING NOW RECOGNIZED AND ACCEPTED AS THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD (100.00 FEET); THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 16.55 FEET; THENCE SOUTH 1 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE POINT OF BEGINNING.

\*Notwithstanding this description, the area designated as "NAP (NCO Tract)" on page A-3 shall not constitute a part of the Shopping Center.

**PARCEL 2**

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 545.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 700.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 125.00 FEET; THENCE SOUTH 41 DEGREES 14 MINUTES 40 SECONDS WEST 74.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 263.58 FEET; THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 138.64 FEET; THENCE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 85.69 FEET; THENCE SOUTH 41 DEGREES 16 MINUTES 35 SECONDS WEST 90.44 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 156.18 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD, 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 932.23 FEET; THENCE SOUTH 37 DEGREES 34 MINUTES 19 SECONDS EAST 246.00 FEET; THENCE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 286.66 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT 1; THENCE ALONG SAID EASTERLY LINE SOUTH 00 DEGREES 11 MINUTES 20 SECONDS WEST 1,671.69 FEET TO THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY; THENCE ALONG SAID NORTHERLY LINE NORTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 26.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1,096.28 FEET, THROUGH A CENTRAL ANGLE OF 41 DEGREES 03 MINUTES 15 SECONDS, A LENGTH OF 785.52 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 349.67 FEET TO THE TRUE POINT OF BEGINNING.

**ROLLING HILLS TRACT 2**

The surface rights only to the certain land situated in the City of Torrance, County of Los Angeles, State of California, described as follows to-wit:

THAT PORTION OF THE RANCHO LOS PALOS VERDES, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2 PAGE 545 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS ALLOTTED TO ORIN S. WESTON BY DECREE OF DISTRIBUTION IN THE ESTATE OF B.S. WESTON RECORDED IN BOOK 2838 PAGE 230 OF DEEDS, RECORDS OF SAID COUNTY, BEING A PORTION OF THAT 20-FOOT STRIP OF LAND CONVEYED TO STANDARD OIL COMPANY IN DEED RECORDED IN BOOK 6265 PAGE 311 OF DEEDS, RECORDS OF SAID COUNTY, BOUNDED SOUTHERLY BY THE NORTH LINE OF PACIFIC COAST HIGHWAY, 100 FEET WIDE, AS DESCRIBED IN DEED RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS OF SAID COUNTY AND BOUNDED NORTHERLY BY A LINE AT RIGHT ANGLES WITH THE WEST LINE OF SAID 20-FOOT STRIP DISTANT NORTHERLY ALONG SAID WEST LINE 1,671.69 FEET FROM SAID NORTH LINE OF SAID PACIFIC COAST HIGHWAY.

**EXHIBIT B****CONSTRUCTION OF IMPROVEMENTS**

Landlord shall at its cost and expense construct the Premises for Tenant's use and occupancy in accordance with plans and specifications prepared by Landlord or Landlord's architect and pursuant to applicable codes, incorporating in such construction all items of work described in this Exhibit B. Any work in addition to the items specifically provided by Landlord in this Exhibit B which Landlord, with the prior written consent of Tenant, installs or constructs in the Premises on Tenant's behalf shall be paid for by Tenant (i) fifty percent (50%) prior to commencement of such additional work by Landlord, and (ii) the balance upon completion of such additional work by Landlord. Said cost will be based on Landlord's cost plus supervision and architectural expense. Such additional work may also require issuance of an additional building permit.

LANDLORD SHALL PROVIDE THE FOLLOWING WORK ("Landlord's Work"):

1. Removal of the Adventure 16 Furniture, Fixture and Equipment.
2. HEATING, VENTILATING & AIR CONDITIONING (HVAC): AS-IS. Prior to the Effective Date, Landlord has provided to Tenant the report dated February 25, 2009 attached hereto as Exhibit O specifying the number of units serving the Premises and tonnage thereof. Landlord, as part of Landlord's Work, shall remove BDP Heat Pump unit #2 (3 ton unit) and BDP Heat Pump unit #3 (3 ton unit) as identified on Exhibit O. If the power supply for AC Unit #4 (which unit services the Premises) is being utilized by another tenant, Landlord will correct this circumstance so as to avoid such power sharing.
3. ELECTRICAL: Existing system will be in good working order. A permanent (not temporary) electrical system with at least 600 amps capacity (which has been confirmed to be in existence by Landlord prior to the Effective Date) and including the main building service entrance equipment as required by the governing code and authority and local utility company to Landlord's electrical room.
4. HAZARDOUS MATERIALS: Upon the Delivery Date, the Premises shall be free from asbestos material and all other Hazardous Materials. Landlord shall provide a copy of the most recent Hazardous Materials survey prepared by its environmental consultant. If Tenant shall encounter any Hazardous Materials in the Premises during the course of performing Tenant's Work, Tenant shall immediately notify Landlord of the circumstances, and Landlord shall, at Landlord's sole expense, investigate the same and take such actions as shall be reasonably required to remedy the same. Tenant shall not be permitted to terminate this Lease on account thereof, and Landlord's sole obligation shall be to remove such Hazardous Materials within thirty (30) days following receipt of Tenant's notice of same (as set forth in Paragraph 6 below) (subject to the termination right of Landlord as set forth in Paragraph 6 below), which period shall be extended if Landlord has commenced such removal within the thirty (30) day period and is diligently pursuing completion of the same. In the event that the performance of Tenant's Work shall be delayed by the performance of such remedial work by Landlord, the Rent Commencement Date shall be delayed day for day by the amount of delay caused by such remediation by Landlord.
5. COMPLIANCE WITH LAWS: Not applicable. Due to the construction/demolition plans of the Premises by Tenant, much of the improvements will be demolished in conjunction with Tenant's build-out.
6. STRUCTURAL ELEMENTS: On the Delivery Date, the floor slab, foundation, load-bearing walls and other elements of the Premises that Landlord is required to maintain, repair and replace during the Lease term shall be in good condition and repair; provided, however, Landlord shall not be required to change the configuration of any of such structural elements, and Tenant shall accept such configuration in the "as is" condition as of the Effective Date. For purposes of the foregoing, "good condition and repair" shall not include the correction of any defects which are minor, cosmetic, or immaterial and which do not materially affect or impair the operation of Tenant's business for the Permitted Use. In addition, to the extent that it is determined (by a third-party arbitrator reasonably selected by the parties) that any of the foregoing structural elements were not in good condition and repair as of the Delivery Date (the foregoing condition being referred to as a "Defect"), Tenant shall not be permitted to terminate this Lease on account thereof, and Landlord's only obligation shall be to repair such Defect upon notice given by Tenant to Landlord during the course of performance of the demolition portion of Tenant's Work, which notice shall be given immediately upon Tenant's discovery of such claimed Defect. Tenant shall only be permitted to provide any such notice on or before the end of its demolition work in the Premises (and prior to Tenant's installation of fixtures, equipment or improvements therein). Tenant shall not raise any claims for repair or remediation by Landlord of any item which is not included on such a permitted notice. Landlord shall not be required to restore the subject item to new or like-new condition, but only to good condition and repair. Upon notice from Tenant of any such claimed Defect, Landlord shall, at Landlord's sole expense, investigate the same and, within thirty (30) days after receipt of Tenant's notice, take such actions as shall be reasonably required to remedy the same (subject to the termination right of Landlord set forth below), which period shall be extended if Landlord has commenced such remedial action within the thirty (30) day period and is diligently pursuing completion of the same. In the event that the estimated cost of any such required removal of Hazardous Materials (under Paragraph 4 above) or such repair of any such Defects (under this Paragraph 6) shall exceed \$125,000 (including all items disclosed on all such notices from Tenant to Landlord) (either separately or in the aggregate), Landlord, in lieu of performing such removal or repair, shall have the right to terminate this Lease upon notice to Tenant given within thirty (30) days after receipt of Tenant's most recent notice of such Hazardous Materials or Defects. In the event of such termination by Landlord, Landlord shall reimburse Tenant, within thirty (30) days after receipt of an invoice and paid receipts from Tenant, for Tenant's actual out-of-pocket costs paid with respect to this Lease for construction activities which occurred after the Effective Date up to and including the date of Tenant's notice regarding the Hazardous Materials or Defect, together with (i) Tenant's out-of-pocket legal expenses for negotiating and preparing this Lease (incurred prior to the Effective Date), (ii) Tenant's out-of-pocket architectural and sign company fees incurred by Tenant prior to the date of Landlord's termination notice and directly related to the improvements to be installed by Tenant in and on the Premises as part of Tenant's Work, and

(iii) out-of-pocket costs incurred by Tenant prior to the date of Landlord's termination notice in connection with Tenant's application for the permits and approvals needed for satisfaction of the contingencies set forth in Sections 23.28 (i) and 23.28 (ii) of this Lease, provided that the total amount of such reimbursement shall not exceed \$125,000. In the event that performance of Tenant's Work shall be delayed by the performance of such Defect repair work by Landlord, the Rent Commencement Date shall be delayed day for day by the amount of delay in Tenant's Work caused by Landlord's performance of such work. Notwithstanding the foregoing, Landlord shall not be responsible for the presence of any Hazardous Materials or Defect upon the Premises which shall be caused by Tenant or its authorized representatives.

**TENANT'S WORK**

1. Subject to plans approved by Landlord, the work to be done by Tenant shall include, but not be limited to, the purchase and/or performance of the following:
  - a) Electrical panel circuit breakers (bolt-on only), fuses, wiring, and fixtures beyond that provided by Landlord;
  - b) Removal of the mezzanine and upstairs restrooms;
  - c) Tenant's interior partitions including finishing, electrical wiring, and connections within the Premises;
  - d) Interior painting;
  - e) Store fixtures and furnishings;
  - f) Plumbing fixtures within the Premises beyond Landlord furnished restroom;
  - g) Fire extinguishers per local fire authority;
  - h) Telephone and CATV service to the Premises;
  - i) Any HVAC equipment beyond that provided by Landlord. Tenant, as part of Tenant's Work, shall remove and replace Armana Gas/Electric unit #1 (5 ton unit) as identified on Exhibit O. Such replacement unit shall have at least the same tonnage/capacity as said unit #1. Upon Tenant's completion of such work, the Tenant Improvement Allowance set forth below shall be increased by Six Thousand and 00/100ths Dollars (\$6,000.00).
  - j) Courier box to be mounted at rear or side exterior of the Premises.
  - k) Lighting.
  
2. Storefront: Tenant shall be responsible for any changes to Landlord furnished storefront, exterior doors and weatherproofing; however, actual work will be performed by Landlord's contractor at Tenant's expense, based on Landlord's approval of Tenant's design.
  
3. Miscellaneous: All work undertaken by Tenant shall be at Tenant's expense and shall not damage the building or any part thereof. Any roof penetration shall be sealed by Landlord's approved roofer and shall be performed only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's Final Plans, including materials acceptable to Landlord and roof top curbs to spread the weight of the equipment being installed in order to prevent damage to the roof. Tenant shall also be responsible for obtaining and paying for professional inspections of any structural work and/or mechanical work (including, without limitation, any roof work or concrete work) as required by Landlord.

All of Tenant's Work to the Premises made by Tenant shall be in good and workmanlike manner, using new materials and shall be in conformity with the applicable building code or other applicable governmental requirements of the city and county in which the Premises are located.

**TENANT IMPROVEMENT ALLOWANCE**

Landlord shall reimburse to Tenant the costs incurred by Tenant in construction of Tenant's Work, up to the amount of One Hundred Forty-Four Thousand, One Hundred Thirty-Five and 00/100ths Dollars (\$144,135) (the "Tenant Improvement Allowance"). Landlord shall pay Tenant the Tenant Improvement Allowance once Tenant completes Tenant's Work to the reasonable satisfaction of Landlord, Tenant has opened for business in the Premises and provides to Landlord reasonable evidence, including without limitation, paid receipts and mechanics' lien waivers (or acceptable bonding with respect to the same), showing (i) the aggregate cost of Tenant's Work and (ii) that all of Tenant's Work has been paid for and is free from any lien or potential lien claims. In the event Landlord fails to pay the full Tenant Improvement Allowance within thirty (30) days after the same becomes due and payable, and provided that Tenant is not in default under this Lease beyond any applicable notice and cure periods, Tenant shall have the right to offset all amounts of the Tenant Improvement Allowance that Landlord has failed to pay against the next payment(s) of Minimum Monthly Rent coming due. In the event that, as of the date that the Tenant Improvement Allowance is due to be paid to Tenant, Tenant shall owe any amount to Landlord pursuant to a separate written agreement with Landlord, then Landlord may offset such amount against the Tenant Improvement Allowance pursuant to the terms of such separate agreement.

**INSURANCE**

Prior to commencing construction of Tenant's Work, Tenant shall furnish Landlord with Tenant's contractor's insurance endorsements and certificates in accordance with the following insurance requirements:

- |    |  |  |
|----|--|--|
| 1. | <b>Workers Compensation</b>  | Statutory Limits   |
| 2. | <b>Employers Liability</b>   | \$1,000,000 Bodily Injury - Each Accident<br>\$1,000,000 Bodily Injury by Disease - Policy Limit<br>\$1,000,000 Bodily Injury by Disease-Each Employee |
| 3. | <b>Commercial General Liability</b>  | \$1,000,000 Each Occurrence  |
|    | Insuring against Bodily Injury, Property Damage, Personal Injury, and Advertising Injury | \$2,000,000 General Aggregate<br>\$1,000,000 Products/Completed Operations Aggregate   |
| 4. | <b>Business Auto Liability</b>   | \$1,000,000 Combined Single Limit (Bodily Injury/Property Damage)<br>Coverage shall apply to "any auto"  |

5. **Umbrella Liability** \$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

All Tenant's contractors' or vendors' liability insurance (except employers liability and errors and omissions) shall name Landlord and Tenant as Additional Insured and Certificate Holder, furnishing a copy of certification to Landlord's notice address, as well as to the local Landlord property management office, and to Tenant.



EXHIBIT C**TENANT SIGN CRITERIA**

The criteria set forth in this Exhibit C have been established for the purpose of assuring a coordinated sign program for the mutual benefit of all tenants and to facilitate the submission of signs for Landlord's written approval as set forth in Section 6 of the Lease Agreement to which this Exhibit C is attached. Nothing in this Exhibit C shall limit or restrict in any manner whatsoever either the obligations of Tenant, or the rights of Landlord. Landlord may, at the sole discretion of Landlord, add, delete or change this Exhibit C provided, however, that no such addition, deletion or change shall affect any written approval of Landlord delivered to Tenant prior to the effective date of the revision.

1. Signs shall conform to criteria set forth herein. The use of all sign shapes, colors, details and materials will be subject to Landlord's approval.
2. Landlord's approval of sign contractor shall constitute approval for purposes of this Exhibit C only, and shall not be deemed approval for compliance with applicable laws, or for any other purpose whatsoever.
3. All permits for signs and their installation shall be obtained by Tenant or its representatives and comply with all applicable governmental requirements.
4. Tenant shall be responsible for the fulfillment of all requirements and specifications.
5. All signs shall be constructed and installed, including electrical connections, at Tenant's sole expense. Tenant shall cause it sign to be installed no later than fifteen (15) days after Tenant opens for business to the public in the Premises.
6. All signs shall be internally illuminated individual letter type signs.
7. All letters shall be constructed of 22-gauge Paint-Loc sheet metal, and shall have five inch returns, painted glossy Frazee AC093N Alligator Green. All signs shall have white trim. No exposed lamps, tubing or raceways will be permitted. Letter fastening and clips are to be concealed and of galvanized, stainless, aluminum or other rust proof material.
8. All sign lettering shall be internally illuminated using neon or LED using transformers with adequate power to fully and uniformly illuminate all parts of the letters and the sign with no bright spots, dark spots or shadows. No blinking, flashing or animated sign letters are permitted. All mounting connections and electrical connections shall be kept to a minimum and, if the sign is mounted on a brick or concrete block fascia, placed within the mortar joints to the highest degree possible. All illuminated signs shall be controlled by a photo cell and an automatic timer and be illuminated, at a minimum, from dusk until 11:00 pm. All signs must be U.L. listed and bear a U.L. label.
9. All penetrations of the building structure required for the installation of any sign shall be sealed in a watertight condition and, if applicable, shall be painted to match the surrounding surfaces.
10. Tenant's sign contractor must repair any damage it causes to the Premises or the building of which the Premises are a part at its own expense. Alternatively Landlord will have repairs made and charge back to the tenant.
11. No label or other identification of the sign manufacturer or installer shall be permitted to be visible on the exterior of any sign.
12. Tenant shall remove all of its signs at the expiration or other termination of this Lease. When any sign is removed, for any reason, Tenant shall fill and repair any holes caused by the installation and removal of such sign so that the surface area where the hole was matches the adjacent material. If the work is not done to the satisfaction of the Landlord, Landlord's representative will complete work and tenant will be billed.

**SIGN STANDARDS FOR ROLLING HILLS TENANTS**

~~Font - Swiss 721 DD BT - All CAPS - NO EXCEPTIONS~~

~~12" tall letters with 5" returns painted to match Frazee AC093N - Alligator~~

~~Internally illuminated with white 6500 neon~~

~~White faces with white trim caps for all letters~~

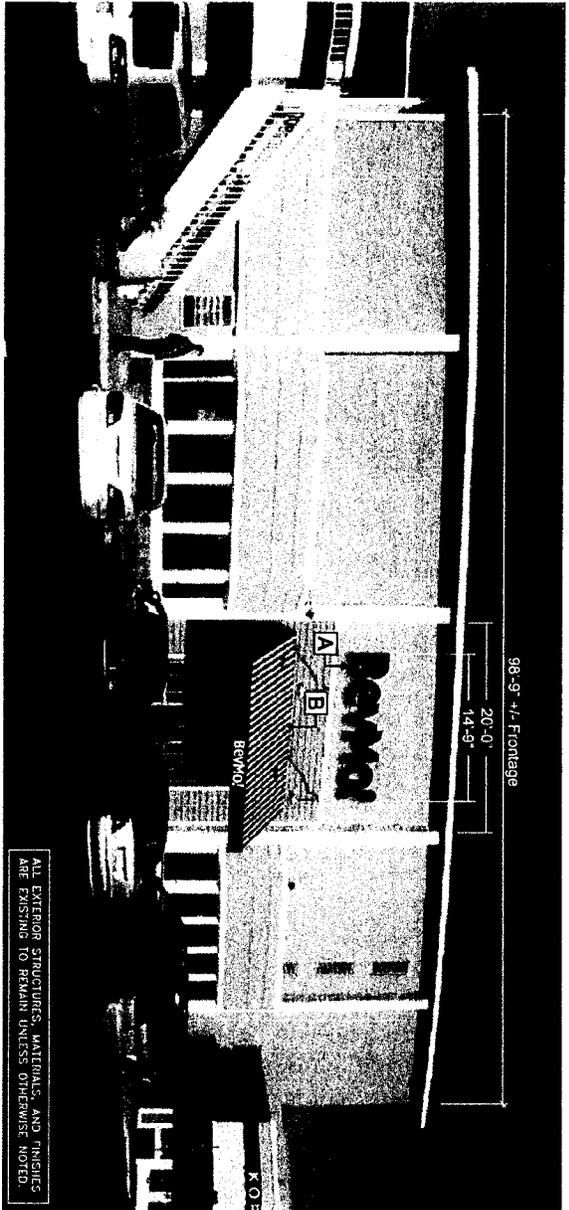
All designs must be signed off by Landlord or Landlord's authorized representative prior to production.

**TENANT'S EXTERIOR SIGNAGE**

**TO BE ATTACHED**

A handwritten signature in black ink, appearing to be a stylized 'R' or similar character, located in the bottom right corner of the page.

53  
Exhibit C  
Signage



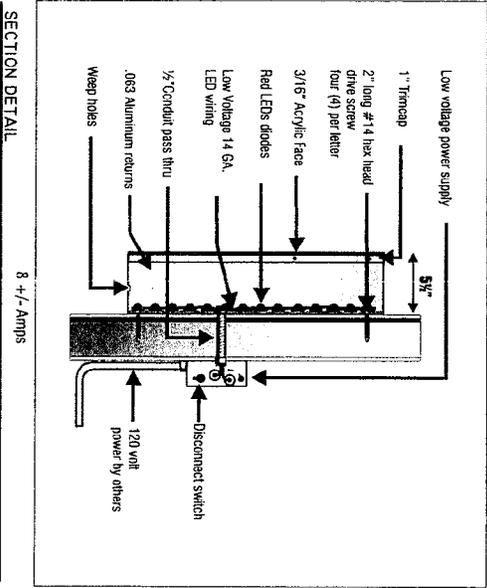
SOUTH ELEVATION  
NOTE: To be determined if awning will be a part of Ad Art's work scope.

SCALE: 3/32" = 1'-0"

**A** PAN CHANNEL LETTER SPECIFICATIONS  
Description: Manufacture and install one (1) set of 3'-6" OAH internally-illuminated "Bevmo!" Channel letters.  
SCALE: 3/8" = 1'-0"

Component	Type	Manufacturer	Color / Finish
Faces	3/16" Acrylic	R & H	Red #2283-CP
Trincaps	1" Trincap	Javelite	Red
Returns	.063 Aluminum	Matthews Acrylic Polyurethane	Red to match faces / Satin
Illumination	LED		LED / Red

3'-6"  
**BEVMO!**  
14'-9"



SECTION DETAIL

SCALE: NTS

29332 A Pacific Coast Highway  
Torrance, Ca 90505

# BEVMO!

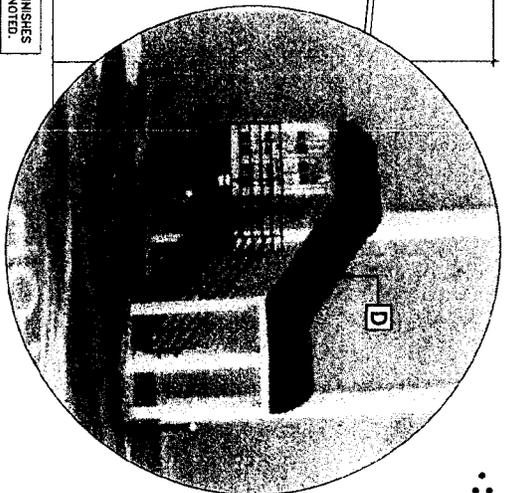
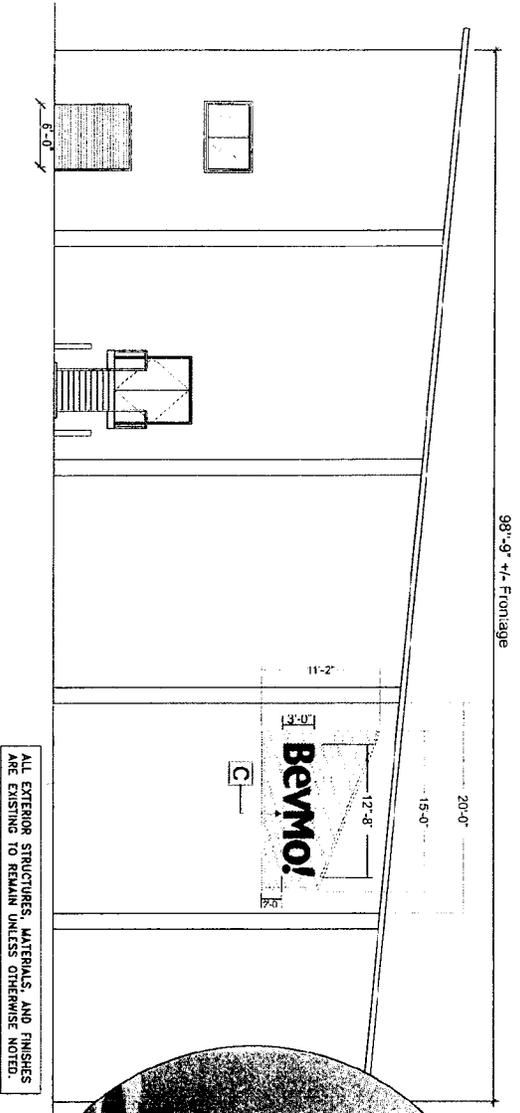
**ADPART**  
SIGN COMPANY

SA, ES, Bob Kienitzky  
DRAWING #: 7486  
DATE: 2-23-09  
DRAWN BY: James Francis  
SCALE: NTS  
SHEET: 1 of 6

Revision	Date	Description
1	3-11-08	Change entrance elevation
2	3-15-08	Add awnings
3	3-11-08	Change awning B
4	3-17-08	Remove copy of entrance showing same as existing showing same as existing
5	4-1-09	Revise entrance awning

SALES APPROVAL \_\_\_\_\_  
CUSTOMER APPROVAL \_\_\_\_\_  
LANDLORD APPROVAL \_\_\_\_\_

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ALL EXTERIOR STRUCTURES, MATERIALS, AND FINISHES ARE EXISTING TO REMAIN UNLESS OTHERWISE NOTED.

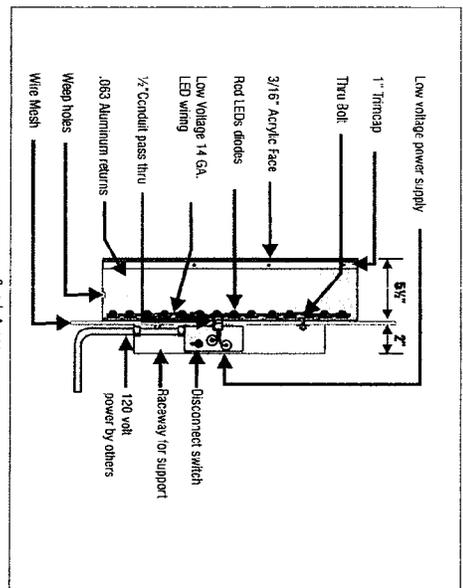
SCALE: 3/32" = 1'-0"



**PAN CHANNEL LETTER SPECIFICATIONS**

Description: Manufacture and install one (1) set of 3'-0" OAH internally-illuminated "Bevmo!" Channel letters.

Component	Type	Manufacturer	Color / Finish
Faces	3/16" Acrylic	R & H	Red #2283-GP
Trinacaps	1" Trinacap	Jewette	Red
Returns	.063 Aluminum	Matthews Acrylic Polyurethane	Red to match faces / Satin
Illumination	LED		LED / Red
Raceway	Fabricated Aluminum	Painted (satin)	Match existing mesh background



SECTION DETAIL SCALE: NTS

**ADART SIGN COMPANY**

2000 W. SISKIYOU AVE., SUITE 102  
 TONNANTE, CA 94020  
 TEL: 415.452.1111  
 FAX: 415.452.1112  
 WWW.ADARTSIGN.COM

2005 A Pacific Coast Highway  
 Tonnante, CA 94025

**BEVMO!**

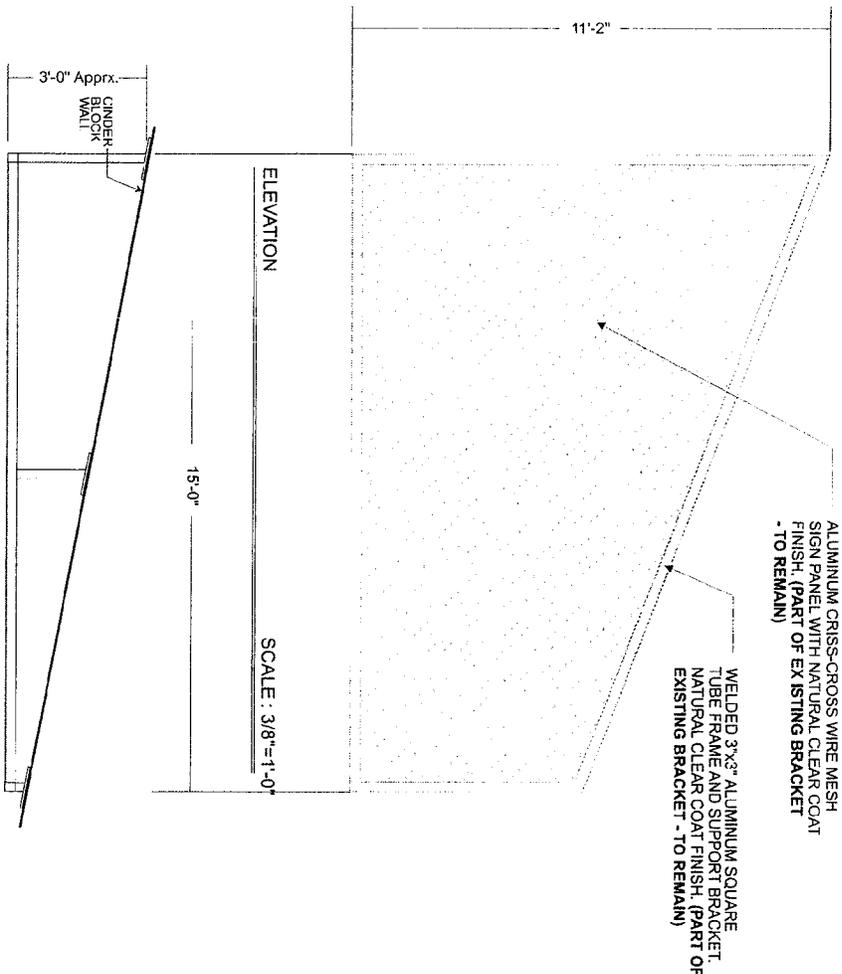
SALES: Bob Kulegoyx  
 DRAWINGS: 7488  
 DATE: 2-28-09  
 DRAWN BY: Sameer Franke  
 SCALE: NTS  
 SHEET: 2 of 6

Revision	Date	Description
1	3-16-08	Change entrance elevation
2	3-18-08	Add awnings
3	3-17-08	Change awning B
4	3-17-09	Remove copr. on entrance elev. awning. Fresh air awning same as existing
5	4-1-09	Revise entrance awning

SALES APPROVAL \_\_\_\_\_  
 CUSTOMER APPROVAL \_\_\_\_\_  
 LAND/OBO APPROVAL \_\_\_\_\_

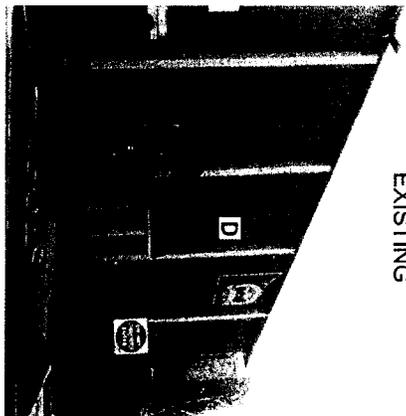
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 Dimensions are approximate & may change due to  
 field conditions. All dimensions are shown in feet &  
 inches unless otherwise specified. Colors  
 shown are as close as printing will allow. Always  
 follow written specifications.  
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 for you in connection with a project being planned for  
 you by ADART. It may not be shown to anyone outside  
 in any manner without prior consent.

REAR BUILDING STRUCTURE DETAILS  
AS PROVIDED BY LANDLORD /  
LANDLORD'S REPRESENTATIVE

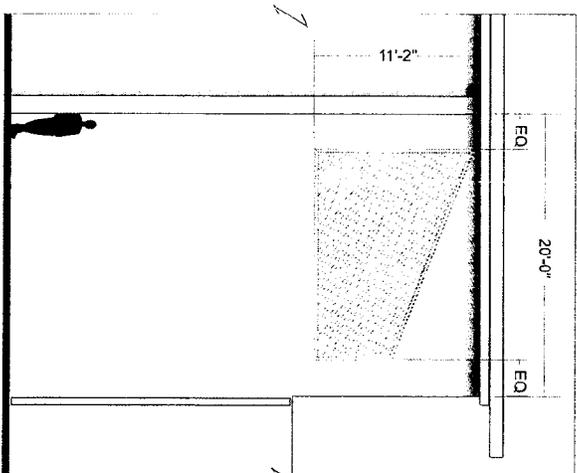


PLAN VIEW

SCALE : 3/8"=1'-0"



EXISTING



PARTIAL REAR STORE ELEVATION

SCALE : 1/8"=1'-0"



2000 A Pacific Coast Highway  
Suite 100  
Torrance, CA 90505  
Tel: 310.209.1111  
Fax: 310.209.1112



2930 A Pacific Coast Highway  
Torrance, CA 90505

SALES: Bob Kierczyk  
DRAWING #: 7498  
DRAWN BY: James Franks  
SCALE: NTS  
SHEET: 3 of 6

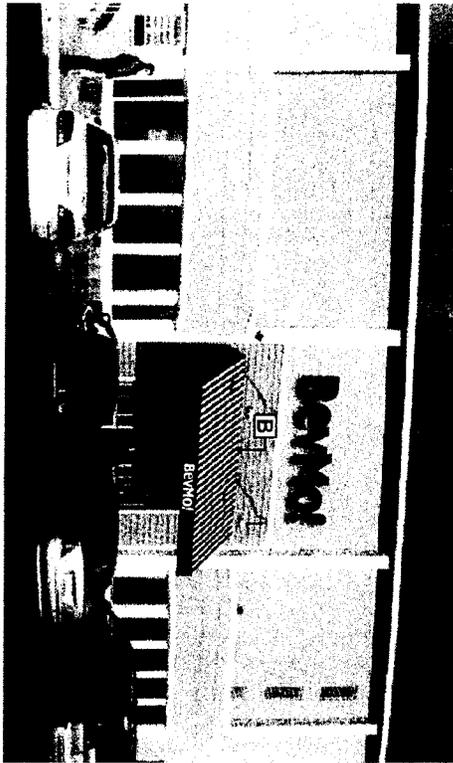
Revision	Date	Description
1	3-10-09	Change entrance elevation
2	3-16-09	Add awning
3	3-17-09	Change awning B
4	3-17-09	Remove copy on entrance elev awning (taken over awning same as existing)
5	4-1-09	Revise entrance awning

SALES APPROVAL

CUSTOMER APPROVAL

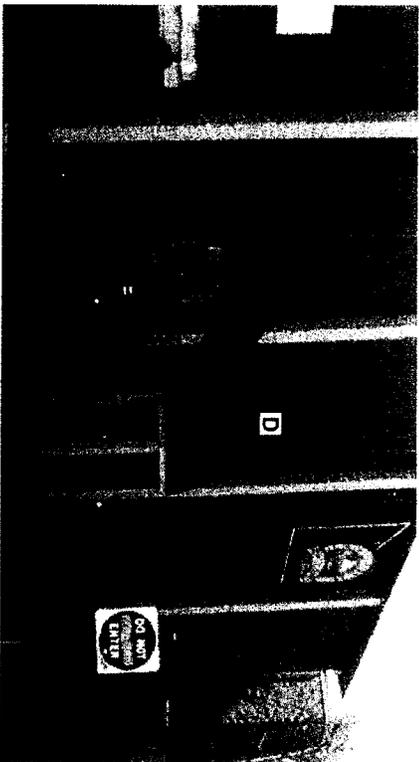
LANDLORD APPROVAL

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**ALL RIGHTS RESERVED.** This design has been created for you in connection with a project being planned for you by ADPART. It may not be shown to anyone outside in any manner without prior consent.



**B** Manufacture and install new awning frame and canvas to replace existing. Canvas to be Sunbrella Fresist Forest Green #9637 With stripes and copy to be vinyl 3M White #7725-10.

NOTE: To be determined if awning will be a part of Ad Art's work scope.



**D** Reskin existing awning frame with like colored material - TBD.

NOTE: To be determined if awning reskin will be a part of Ad Art's work scope.

**ADART®**  
SIGN COMPANY

2533 A Pacific Coast Highway  
Torrance, CA 90505  
Tel: 310.572.2222  
Fax: 310.572.2223  
www.adart.com



SAL ES: Bob Kureczyk  
DRAWING #: 749E  
DATE: 2/23/09  
DRAWN BY: James Franks  
SCALE: NTS  
SHEET: 1 of 6

Revision	Date	Description
1	3-10-09	Change entrance elevation
2	3-16-09	Add awnings
3	3-17-09	Change awning B
4	3-17-09	Remove copy on entrance del. awning Reskin near awning frame as existing
5	4-1-09	Revise entrance awning

SAL ES APPROVAL \_\_\_\_\_  
CUSTOMER APPROVAL \_\_\_\_\_  
LANDLORD APPROVAL \_\_\_\_\_

**CONCEPTUAL DRAWING ONLY.**  
Dimensions are approximate & may change due to construction factors or exact field conditions. Colors shown are as close as printing will allow. Always refer to the actual drawing for color and material specifications.  
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Pylon (side "A") elevation - Scale: NTS



**E** PANEL SPECIFICATIONS

Description: Manufacture and install two (2) panels for one (1) existing double face internally illuminated pylon sign.

Component	Type	Specifications	Color / Finish
Panel	Lexan	Vinyl applied 1st surface	Red 3M 3630-73
Copy	Show thru	N/A	White

**ADART**  
SIGN COMPANY



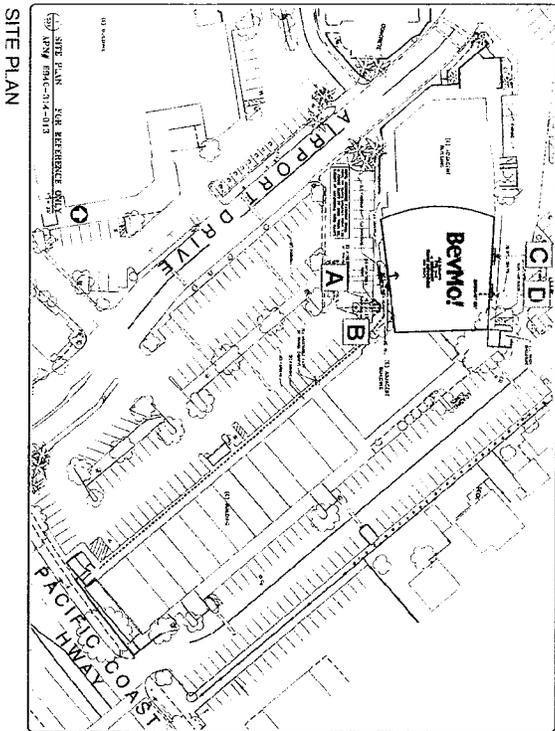
SALES: Bob Kierczyk  
DRAWING #: 7188  
DATE: 2-23-09  
DRAWN BY: James Farris  
CHECKED BY: James Farris  
SHEET: 4 of 6

Revision	Date	Description
1	3-10-08	Change entrance elevation.
2	3-14-08	Add awnings
3	3-17-08	Change awning B
4	3-17-08	Remove copy of entrance awning Add awning Besign set Change entrance awning
5	4-17-09	Revise entrance awning

SALES APPROVAL \_\_\_\_\_  
CUSTOMER APPROVAL \_\_\_\_\_  
LANDLORD APPROVAL \_\_\_\_\_

**CONCEPTUAL DRAWING ONLY.**  
Dimensions are approximate & may change due to production tolerances or other field conditions. Colors may vary from those shown in this drawing and shall follow within specifications.  
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SITE PLAN



FREESTANDING SIGN



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SALES: Bob Konecznyk  
DRAWING #: 7498  
DATE: 4/23/09  
DRAWN BY: James Franks  
SCALE: NTS  
SHEET: 3 of 6

Revision	Date	Description
1	3-1-09	Change entrance elevation
2	3-15-09	Add awnings
3	3-17-09	Change awning B
4	3-17-09	Remove copy of entrance awning Reskin roof
5	4-1-09	Remove entrance awning

SALES APPROVAL \_\_\_\_\_  
CUSTOMER APPROVAL \_\_\_\_\_  
LANDLORD APPROVAL \_\_\_\_\_

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*[Handwritten signature]*

**EXHIBIT D****RULES AND REGULATIONS**

**A. Rules and Regulations Applicable to the Premises.** The following rules and regulations apply to Tenant, its authorized representatives and invitees for the use of the Premises:

(1) Except as otherwise expressly provided in the Lease, no aerial or dish antenna shall be erected on the roof or exterior walls of the Premises or on the grounds nor shall any penetration be made in the roof or exterior walls of the Premises without, in each instance, the written consent of Landlord. Any aerial or dish antenna so installed without such written consent shall be subject to removal without notice at any time at the sole cost of Tenant.

(2) The plumbing facilities shall not be used for any other purpose than that for which they are constructed, no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by the tenant who shall, or whose employees, agents or invitees shall, have caused it.

(3) Tenant shall not burn any trash or garbage of any kind in or about the Premises or the Shopping Center.

(4) Except as otherwise expressly provided in the Lease, all loading and unloading of goods shall be done only at such times, in the areas, and through the entrances reasonably designated for such purposes by Landlord.

(5) The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such reasonable rules and regulations as in the judgement of Landlord are necessary for the proper operation of the Premises and/or the Shopping Center.

(6) The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord and, except as otherwise expressly provided in the Lease, Tenant shall not place or permit any obstructions, merchandise or conduct any sales in such areas.

(7) Tenant shall use such pest extermination as necessary to keep the Premises free of pests and vermin.

(8) All public entrances and exits to the Premises shall be kept unobstructed and open to the public at all times during normal business hours.

(9) Tenant shall not cause or permit any obnoxious or foul odors that disturb the public or other tenants. Should such odors be evident, Tenant shall be required to take immediate steps to remedy same upon notice from Landlord.



**B. Rules and Regulations Applicable to the Common Areas.** The following rules and regulations apply to Tenant, its employees and authorized representatives for the use of the common areas in the Shopping Center.

(1) No person shall use any roadway or walkway, except as a means of egress from or ingress to the retail and other establishments in the Shopping Center and automobile parking areas within the Shopping Center, or adjacent public streets. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways shall not be used at a speed in excess of 15 miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkway shall be used for other than pedestrian travel.

(2) No person shall use any automobile parking areas except for the parking of motor vehicles during the period of time such person or the occupants of such vehicle are customers or business invitees of the retail and other establishments in the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.

(3) Except as otherwise expressly provided in the Lease, no person, without the written consent of Landlord, shall do or allow to be done any or all of the following:

- a. Vend, peddle, or solicit orders for sale or distribution of any merchandise (except during Shopping Center sponsored sidewalk sales), device, service, periodical, book, pamphlet, or other matter whatsoever;
- b. Exhibit any sign, placard, banner, notice, or other written material which does not comply with Section 6 of the Lease;
- c. Distribute any circular, booklet, handbill, placard, or other material;
- d. Solicit membership in any organization, group, or association or contribution for any purpose;
- e. Parade, rally, patrol, picket, demonstrate, or engage in any other type or types of conduct that might tend to interfere with or impede the use of any of the common area by any other tenant or occupant, create a disturbance, attract attention, or harass, annoy, disparage, or be detrimental to the interest of any of the retail and other establishments within the Shopping Center;
- f. Throw, discard, or deposit any paper, glass, or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind;
- g. Use any sound making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to others; and/or
- h. Deface, damage or demolish any sign, light standard, or fixture, landscaping material or other improvement within the Shopping Center, or the property of customers, business invitees, or employees situated within the Shopping Center.

The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the common area solely as a means of access and convenience in shopping at the retail and other establishments in the Shopping Center is limited and controlled.

Landlord shall have the right to remove, exclude from, or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Shopping Center or any portion thereof, and to prohibit, abate, and recover damages arising from any unauthorized act, whether or not such act is in express violation of the rules and regulations set forth above.

**EXHIBIT E**

**MEMORANDUM CONFIRMING TERM**

THIS MEMORANDUM is made on \_\_\_\_\_, 2009, between Rolling Hills Plaza LLC ("Landlord"), and Beverages & More, Inc. ("Tenant"), who entered into a lease dated for reference purposes as of \_\_\_\_\_, 2009, covering certain premises (the "Premises") located at \_\_\_\_\_ which is a part of the shopping center commonly known as Rolling Hills Plaza, as more particularly described in the Lease.

1. The parties to this Memorandum hereby agree to confirm that the Leasable Floor Area of the Premises contains approximately \_\_\_\_ square feet.

2. The parties to this Memorandum hereby agree to confirm the establishment of the Commencement and Expiration Dates of the term, and the Rental Commencement Date as follows:

- (a) The date of \_\_\_\_\_, 20\_\_\_\_, is the "Commencement Date" of the term referred to in the Lease;
- (b) The date of \_\_\_\_\_, 20\_\_\_\_, is the "Expiration Date" of the term referred to in the Lease; and
- (c) The date of \_\_\_\_\_, 20\_\_\_\_, is the "Rental Commencement Date" referred to in the Lease.

3. Tenant hereby confirms that the schedule of Minimum Monthly Rent is as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Tenant hereby confirms the following:

- (a) That it has accepted possession of the Premises pursuant to the terms of the Lease;
- (b) That the improvements and space required to be furnished according to the Lease by Landlord have been furnished;
- (c) That Landlord has fulfilled all of its duties of an inducement nature;
- (d) That the Lease has not been modified, altered or amended, except as follows:

\_\_\_\_\_  
\_\_\_\_\_

(e) That there are no offsets or credits against rental, nor has any security deposit been paid except as provided by the Lease terms;

(f) That Tenant has no notice of a prior assignment, hypothecation or pledge of rents or of the Lease; and

(g) That the Lease is in full force and effect.



5. This Memorandum, and each and all of the provisions hereof, shall inure to the benefit of, or bind, as the case may require, the parties hereto, and their respective heirs, successors, and assigns subject to the restrictions upon assignment and subletting contained in the Lease.

**"LANDLORD"**

ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: ROLLING HILLS PLAZA VENTURE 96, LLC,  
a California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING CENTER,  
a California limited partnership  
Managing Member

By: LA CAZE PARTNERSHIP, a California limited partnership  
General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

By: \_\_\_\_\_  
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC, a Delaware limited liability company,  
Its member

By: BRISTOL GROUP, INC.,  
Its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

**"TENANT"**

Beverages & More, Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT F

## HONEYWELL INTERNATIONAL INC. PENSION PLANS IN THE MASTER PENSION TRUST

1. Allied-Signal Inc. Retirement Program
2. Allied Corporation Hourly Employees' Pension Plan
3. Norplex Retirement Plan for LaCrosse, Wisconsin Bargaining Unit Employees
4. Pension Plan of Allied Corporation and Affiliated Companies
5. Pension Plan for Salaried Employees of King Radio Corporation
6. Pension Plan for Employees of the Endeveco Unit of Allied Corporation
7. Salaried Employees Pension Plan of Allied Corporation
8. The Allied-Signal Inc. Pension Plan for Hourly Employees
9. Kansas City Division Hourly Employees' Pension Plan
10. The Allied-Signal Inc. Defined Benefit Pension Plan for Hourly Employees - Autolite Division, Elberton, Georgia
11. Salaried Employees Pension Plan of Allied Corporation for Allied-Bendix Aerospace Employees at the Kansas City Division
12. Allied-Signal Inc. Pension Plan for Hourly Employees of the Galactic Division
13. Allied-Signal Inc. Retirement Growth Program



**EXHIBIT G**

## USE RESTRICTIONS

## ROLLING HILLS PLAZA

Landlord has entered into leases of space within the Shopping Center or properties adjacent to the Shopping Center which place restrictions on the uses to which the Shopping Center can be put. Landlord desires to memorialize said use restrictions and cause them to be senior to any other interest in the Shopping Center.

NOW, THEREFORE, Landlord hereby declares that the Shopping Center or any portion thereof shall be subject to and burdened by the use restrictions specified below and Tenant hereby agrees that it shall not use the Premises or permit the Premises to be used in any manner which violates the use restrictions specified below:

- A. That Lease, dated April 4, 2003, as amended, by and between Rolling Hills Plaza, LLC as "Landlord" and Trina Nguyen, dba Elite Nails as "Tenant" which states in part the following:

"Landlord covenants that during the Term it shall not lease space in the "Exclusive Area" of the Project specified in Exhibit "A" of this Lease to any tenant whose primary business is the operation of a skin care salon." The Exclusive Area applies to a portion of Area 1 as defined on Exhibit G-1.

- B. That Shopping Center Lease, dated January 10, 2003, by and between Rolling Hills Plaza, LLC, as "Landlord" and Starbucks Corporation, a Washington corporation as "Tenant" which states in part the following:

"Landlord covenants that during the Term, and any extensions thereof, Landlord shall not sell or permit under a lease or license agreement any party, other than Tenant, to sell within the area crosshatched on Exhibit A, (a) whole or freshly ground coffee beans, (b) espresso, espresso-based coffee drinks or coffee-based drinks, or (c) gourmet brand-identified brewed coffee. Full service sit-down restaurants may sell brewed coffee and hot espresso drinks for on-premises consumption only, except that such restaurants may sell brewed coffee and hot espresso drinks for off-premises consumption as an incidental "to go" order or as "leftover carry-out." The Exclusive Area applies to a portion of Area 1 as defined on Exhibit G-1.

- C. That Shopping Center Lease, dated October 22, 1990, by and between Rolling Hills Plaza, as "Landlord" and Robert Lewis Shapiro and Linda Shapiro, as "Tenant" which states in part the following:

"Landlord agrees that Landlord will not lease space within buildings EX9, EX10, EX12, N6, N7 and N8 ... for any purpose which will include the practice of optometry for the sale or dispensing of eyeglasses." The exclusive applies to a portion of Areas 2 and 3 as defined on Exhibit G-1.

- D. That Shopping Center Lease, dated January 2, 1996, by and between Rolling Hills Plaza Shopping Center, a California Limited Partnership, as "Landlord" and Rubio's Restaurants, Inc., a California corporation, as "Tenant" which states in part the following:

"Landlord agrees not to lease space to another tenant whose primary business is the sale of Mexican Food (Quick Service/Fast Food) within the area designated 'Restricted Area' on Exhibit 'B'. This limited exclusive shall not apply to any existing tenants, or any existing tenants who may be relocated or any tenants greater than two thousand (2,000) square feet in the area marked Area 1 and any tenants greater than three thousand (3,000) square feet in the area marked Area 2 or any tenants marked Major on Exhibit 'B'. The foregoing restriction shall not restrict another tenant from selling Mexican Food as an incidental part of its business". The Exclusive Area applies to portions of Areas 1, 2 and 5 as defined on Exhibit G-1.

- E. That Shopping Center Lease, dated April 17, 1996, by and between Rolling Hills Plaza Venture 96, LLC, a California Limited Liability Company, as "Landlord" and Brinker Restaurant Corporation, a Delaware corporation, as "Tenant" which states in part the following:

"Landlord agrees not to lease space or sell any outparcel or other portion of the Center to any other party whose primary business would be the sale of gourmet pizzas and pasta. For purposes of interpretation of this paragraph, the phrase "primary business" shall mean that eighty percent (80%) or more of all the gross food sales of such business are derived from the sale of gourmet pizzas and pasta. Nothing herein shall preclude any tenant in the Center from the incidental sale (not to exceed twenty percent (20%) of all the gross food sales of such business) of gourmet pizzas and pasta. Notwithstanding the foregoing, however, this restriction shall not apply to (i) any existing Tenant as set forth on Exhibit G attached hereto, their respective successors, subtenants or assigns, occupying spaces under leases in existing as of the date hereof, which permit, or do not otherwise prohibit such use, (ii) the Occupants of Buildings X, Y and Z respectively, as shown on Exhibit B, their respective successors, subtenants or assigns; (iii) any tenant occupying less than 2,500 square feet in the area designated "Crenshaw" on Exhibit G-1; or (iv) any tenant occupying less than 4,500 square feet in the area designated as "Pacific Coast Highway" on Exhibit G-2". The Exclusive Area applies to portions of areas 1, 2, 3, 4 and 5 as defined on Exhibit G-1.

- F. That Shopping Center Lease, dated January 31, 2001, by and between Rolling Hills Plaza, LLC, a California Limited Liability Company, as "Landlord" and Bed Bath & Beyond, Inc., a New York corporation, as "Tenant" which states in part the following:

"Landlord will not hereafter lease, rent or occupy or knowingly permit any other premises on Landlord's Parcel to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, either singly or in any combination, of items contain in any of the following respective categories of items: (A) linens and domestics; and/or (B) bathroom items (which items, either singly or in any combination, are hereinafter referred to as the "Exclusive Items"). Notwithstanding the foregoing or any other provision of this Lease to

the contrary, any tenant, subtenant, assignee or other occupant on Landlord's Parcel shall have the right to utilize its respective premises for the sale, rental and/or distribution of Exclusive Items (either singly or in any combination) within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed an aggregate of ten percent (10%) of the first five thousand (5,000) square feet and five (5%) of the square footage over five thousand square feet of Floor Area of such tenant's or subtenant's premises"

- G. That Shopping Center Lease, dated January 31, 1997, by and between Rolling Hills Plaza Venture 96, LLC, a California Limited Liability company, as "Landlord" and Hollywood Entertainment Corporation, an Oregon corporation, as "Tenant" which states in part the following:

"Tenant shall have the exclusive right in the Shopping Center to sell, rent, and/or distribute pre-recorded video cassettes, tapes and discs, video software, and video merchandise, including the sale and/or rental of any substitutes for, or items which are a technological revolution of, any of the items contained in the exclusivity provision set forth in this Section 5.4. Provided, however, nothing herein shall prevent Landlord from leasing space within the Shopping Center to tenants whose primary business is (i) the sale of computer hardware and software; (ii) the sale of books, including the sale and/or rental of audio and video books; (iii) the sale of electronic appliances such as VCR's, TV's, stereo's and other related items sold in electronics stores; and (iv) the sale of music cassettes, CD's and non-entertainment related videos and audios. Nothing contain herein shall (i) limit or restrict any tenant, existing or future, from selling blank or unrecorded video cassettes, selling instructional and promotional video cassettes or incidental sales of items restricted by this exclusivity provision; (ii) apply to any tenant in the Shopping Center pursuant to a lease or occupancy agreement in existence as of the date hereof, if and to the extent such lease does not expressly prohibit such use or shall it apply to their assignees or subtenants (provided that any such assignment or subletting does not require Landlord's prior consent to change the use from that which such existing tenant operated); (iii) apply to incidental sales or rentals of all items restricted by this exclusivity provision by Long's Drug Store, or any drug store of similar quality, size, character and regional stature; and (iv) limit Toys R US from sales of items restricted by this exclusivity provision. For purposes of (i) incidental sales shall mean sale of all items restricted by this exclusivity provision form an area not to exceed ten percent (10%) of a tenant's floor area or two hundred fifty (250) square feet whichever is less. For purposes of (iii) incidental sales shall mean sale or rental of items restricted by this exclusivity provision from an area not to exceed five hundred (500) square feet.

- H. That Shopping Center Lease, dated November 8, 1993, by and between Rolling Hills Plaza, a California limited partnership, as "Landlord" and Family Fitness Center (130), Inc., as "Tenant" which states in part the following:

"Landlord shall not lease to another fitness center or similar fitness type business in this center. Notwithstanding the above, Landlord shall have the right to lease to a vitamin store, fitness wear store, and a weight store where all the primary products offered are for retail sale. Landlord shall also have the right to lease to a tanning salon"

- I. That Shopping Center Lease, dated June 1, 1984, by and between Rolling Hills Plaza Shopping Center, limited partnership, as "Landlord" and American Multi-Cinema, Inc., as "Tenant" which states in part the following:

Landlord shall not allow "... at any time during the term hereof, a movie theatre, other than the one operated in Tenant's building, ... within the Entire Premises or on premises which are owned or controlled (directly or indirectly) by Landlord."

"Landlord will not sell or permit to be sold candy, popcorn or other refreshments generally sold in theater concession stands in or from any premises located within 100 feet from any wall of Tenant's Building or in or from any part of the parking area or other Common Facilities ..."

- J. That Shopping Center Lease, dated July 14, 2004, by and between Rolling Hills Plaza, LLC, as "Landlord" and CALIFORNIA PIZZA KITCHEN, INC., a California corporation as "Tenant" which states in part the following:

"Landlord covenants that during the Term, and any extensions thereof, it shall not sell or lease space in that portion of the Center owned by it to another full service, sit-down restaurant over three thousand (3,000) square feet primarily serving open flame, baked and/or specialty pizzas and pastas without Tenants approval; provided, however, that the foregoing shall not apply to any operation existing in the Center as of the Commencement Date or to any replacement of the existing Sammy's and Romano's restaurants with comparable operations."

- K. That Shopping Center Lease, dated August 24, 2004, by and between Rolling Hills Plaza, L.L.C, as "Landlord" and Jos. A. Bank Clothiers, Inc., a Delaware Corp as "Tenant" which states in part the following:

"Landlord covenants that during the Term, and any extensions thereof, it shall not lease premises in excess of two thousand (2,000) square feet in the Exclusive Area as shown on Exhibit A hereto, to any tenant whose primary business is the retail sale of men's fine apparel, but other tenants in the Exclusive Area shall be permitted to sell men's fine apparel as an incidental part of their respective business." The Exclusive Area applies to a portion of Area 3 as defined on Exhibit G-1.

- L. That Shopping Center Lease, dated March 20, 1995, by and between Rolling Hills Plaza, LLC, as "Landlord" and Hiroshi Yamauchi and Mihoko Yamauchi, dba Koraku as "Tenant" which states in part the following:

"Landlord agrees not to lease space to any future restaurant within 150 feet of the premises whose primary (greater than 50% of sales) business is the sale of Ramen Noodle Soup." The Exclusive Area applies to a portion of Area 4 as defined on Exhibit G-1.

- M. That Shopping Center Lease, dated March 1, 2005 by and between Rolling Hills Plaza, LLC, as "Landlord" and IndyMac Bank, F.S.B., as "Tenant" which states in part the following:

"Landlord covenants that during the Term, and any extensions thereof, it shall not lease space in the Exclusive Area, as shown on Exhibit "A" hereto, to any tenant whose primary business is as a financial institution providing retail banking services." The Exclusive Area applies to Area 3 and 4 as defined on Exhibit G-1.

- N That Shopping Center Lease, dated June 13, 1996 by and between Rolling Hills Plaza Venture 96, LLC, as "Landlord" and Fili Enterprises, a California corporation, as "Tenant" which states in part the following:

"Landlord shall not lease space in the area designated as "Exclusive Area" less than one thousand four hundred square feet in the shopping center to any Tenant whose primary business (greater than fifty percent of entrée items) is the sale of kabobs, gyros and Greek salads. This limited exclusive shall not preclude any tenant from serving gyros, kabob, or greek salads on an incidental basis." The Exclusive Area applies to Area 2 as defined on Exhibit G-1.

- O. That Shopping Center Lease, dated October 5, 2006 by and between Rolling Hills Plaza, LLC, as "Landlord" and Wachovia Bank, National Association, a national banking association, as "Tenant" which states in part the following:

"Landlord covenants that during the Term, and any extensions thereof, it shall not lease space in the Exclusive Area, as shown on Exhibit A hereto, to any tenant whose primary business is as a financial institution providing retail banking services; provided, however, that the foregoing shall not prohibit Landlord from leasing premises to stock or bond brokerage companies or personal finance companies." The Exclusive Area applies to Area 2 and 3 as defined on Exhibit G-1.

- P. That Shopping Center Lease dated November 3, 2005 by an between Rolling Hills Plaza, LLC and Herman's Party Supplies, Inc., a California Corporation which states in part the following:

"Landlord covenants that during the Term it shall not lease space in the "Exclusive Area" of the Project specified in Exhibit "A" of this Lease to any tenant whose primary business is the sale of party supplies and personalized cards and invitations, whereas primary business is defined as fifty percent (50%) or more of Tenant's gross floor area come from the sale of said items" The Exclusive Area applies to Area 4 as defined on Exhibit G-1.

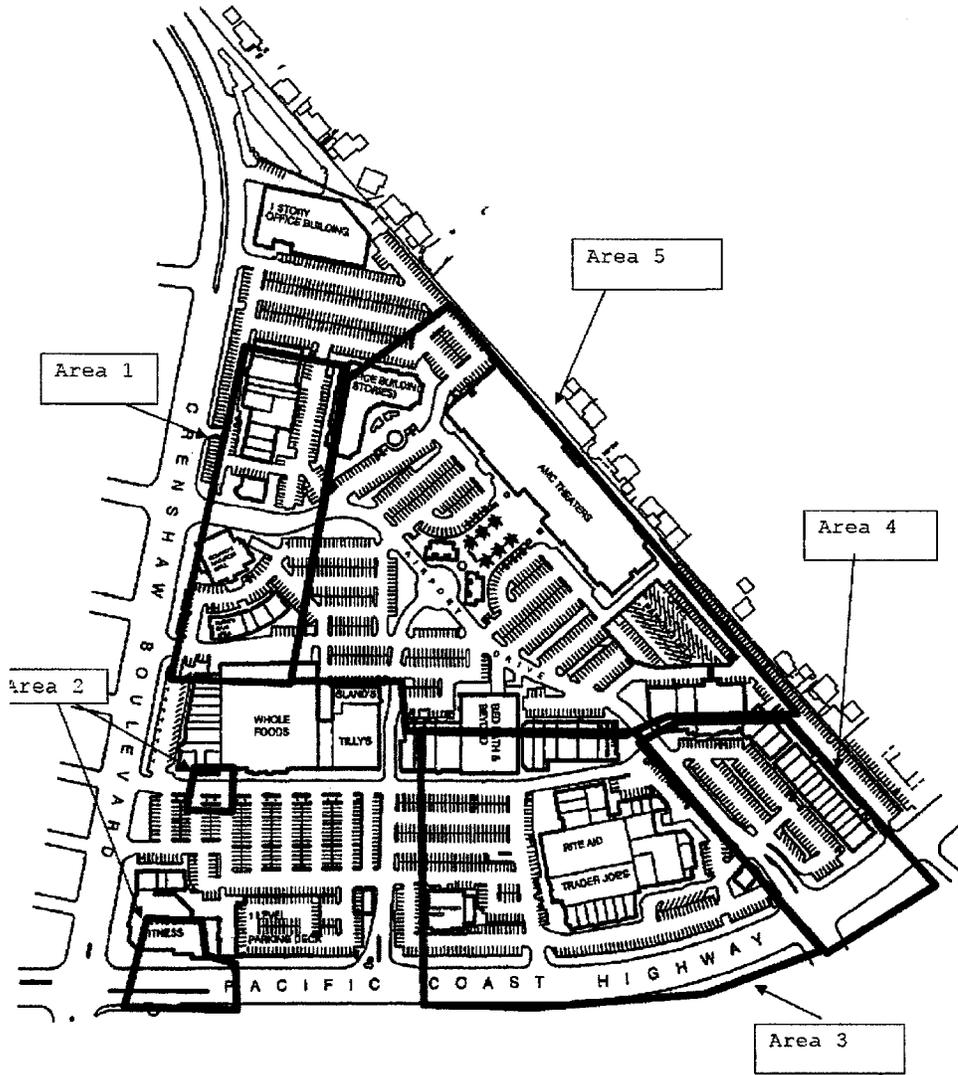
Additional use restrictions not under direct leases include the following:

- A. That certain Agreement, dated July 1996 by and between Rolling Hills Plaza Venture 96, LLC, Schwartz Investment Company and Island's Restaurant, LP, as "Tenant" which states in part the following:

"Rolling Hills Plaza Venture 96, LLC [Landlord], agrees not to lease space or sell any outparcel or other portion of the Center to any other tenant whose premises exceeds two thousand five hundred (2,500) square feet whose primary business would be the sale of hamburgers. For purposes of this paragraph, the phrase 'primary business' shall mean that fifty-one percent (51%) or more of all food sales from such business are derived from the sale of hamburgers."



EXHIBIT G-1



**EXHIBIT H****PERMITTED EXCEPTIONS**

As of the Effective Date of this Lease, items to be considered as exceptions to Landlord's title shall be as follows:

1. A ground leasehold estate, as to Parcels 1 and 2, as created by that certain lease dated October 21, 1987 between the City of Torrance, a municipal corporation, as lessor (the "City"), and Rolling Hills Plaza Shopping Center, a California limited partnership, as lessee ("RHPSC"), a memorandum of which was recorded on November 3, 1987 in the Official Records of Los Angeles County, State of California (the "Records"), as Instrument No. 87-1761480, upon and subject to all of the terms and provisions therein contained, as amended by: (i) that certain Amendment No. 1 to Lease dated as of August 28, 1990; (ii) that certain Second Amendment to Lease dated January 23, 1996; (iii) that certain Third Amendment to Lease dated as of July 15, 1997; (iv) that certain Consent to Encumbrance of Leasehold Estate (City of Torrance) dated July 15, 1997, which was recorded on July 28, 1997 in the records as Instrument No. 97-1145912 and (v) that certain Ground Lessor's Estoppel and Agreement and Consent to Encumbrance of Leasehold Estate (City of Torrance) dated March 31, 1999, which was recorded on April 15, 1999 in the records as Instrument No. 99-0646801 (as amended, referred to herein as the "Rolling Hills Ground Lease"), as such Rolling Hills ground lease has been assigned by RHPSC to Rolling Hills Plaza Venture 96, LLC, a California limited liability company ("RHPV96") by that certain assignment of City of Torrance ground lease dated February 7, 1996, which was recorded on February 29, 1996 in the records as Instrument No. 96-324123, and as such Rolling Hills ground lease was further assigned by RHPV96 to Rolling Hills Plaza LLC, a California limited liability company, by that certain assignment and assumption of ground lease dated April 5, 1999, which was recorded on April 15, 1999 in the records as Instrument No. 99-0646800.

EXCEPT FROM THE LAND SUBJECT TO SUCH GROUND LEASE ALL URANIUM, THORIUM AND ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (60 STAT. 761) TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIAL CONTAINED IN WHATEVER CONCENTRATION IN DEPOSITS IN SAID LANDS, TOGETHER WITH THE RIGHT AT ANY TIME TO ENTER UPON SAID LAND AND PROSPECT FOR, MINE AND REMOVE THE SAME, AS RESERVED IN THE DEED FROM THE UNITED STATES OF AMERICA, RECORDED ON MAY 13, 1948 IN BOOK 27145 PAGE 362, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OTHER THAN THOSE ABOVE MENTIONED, AND ALL PETROLEUM IN SAID LAND, TOGETHER WITH THE EXCLUSIVE RIGHT AT ANY AND ALL TIMES TO ENTER UPON THE LANDS AND PROSPECT FOR, MINERAL FOR, AND REMOVE SUCH MINERALS OR PETROLEUM, WITH ALL NECESSARY AND CONVENIENT MEANS OF WORKING AND TRANSPORTING MATERIALS AND SUPPLIES, AS RESERVED IN THE ABOVE MENTIONED DEED.

ALL RIGHTS OF ENTRY UPON THE SURFACE OF SAID LAND TO PROSPECT FOR, MINE OR REMOVE MINERALS OR PETROLEUM FROM SAID LAND, OR IN ANYWISE MAKE USE OF THE SURFACE OF SAID LAND FOR WORKING, REMOVING OR TRANSPORTATION OF MATERIALS AND SUPPLIES IN CONNECTION WITH SUCH MINING OPERATIONS, AS RESERVED IN THE ABOVE MENTIONED DEED, WERE QUITCLAIMED BY THE UNITED STATES OF AMERICA ACTING BY AND THROUGH THE ADMINISTRATOR OF GENERAL SERVICES, TO THE CITY OF TORRANCE, A MUNICIPAL CORPORATION, BY DEED RECORDED AUGUST 29, 1955 IN BOOK 48802 PAGE 55, OFFICIAL RECORDS.

2. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Part 0.5, Chapter 3.5 or Part 2, Chapter 3, Articles 3 and 4 respectively (commencing with Section 75) of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A; or as a result of changes in ownership or new construction occurring prior to date of policy.

3. The privilege and right to extend and maintain drainage structures, excavations and embankment slopes and incidents thereto, beyond the limits of the 100 foot strip for highway and road purposes, as described in and granted to State of California, by deed recorded in Book 12743 Page 23, Official Records.

Affects: Parcels 1, 2, 3 and 4

4. The following provisions as set forth in the quitclaim deed from the United States of America to the City of Torrance, recorded May 13, 1948, as instrument no. 2108 in book 27145, page 362, Official Records:

(1) Covenants, Conditions, Restrictions and Reservations contained in the instruments dated September 3, 1957, executed by United States of America, acting through and by the Administrator of Civil Aeronautics, recorded September 25, 1957 as instrument no. 997 in book 55694 page 387, Official Records and October 10, 1957 as instrument no. 4629 in book 55815 page 171, Official Records, as follows:

(A) That nothing herein contained shall release the City of Torrance, grantees named in said quitclaim deed, its successors or assigns, from complying with the height limitations for the erection of any structures thereon which would be an airport hazard within the standards established under technical standard TSO-N18 issued under date of April 26, 1950, as amended July 30, 1952 by the Administrator of Civil Aeronautics; and

(B) This release is made pursuant to the agreement that the City of Torrance covenants and agrees for itself, its successors and assigns that it will not permit the use of the said property in any manner which would constitute a hazard to the landing or taking-off of aircraft or interfere with the operation, maintenance and development of the Torrance Municipal Airport lying westerly of Crenshaw Boulevard, Torrance, California; and

(C) The City of Torrance further covenants and agrees for itself, its successors and assigns, to reserve a right of flight over and across the said property for the use and benefit of the flying public at such varying heights as will not interfere with the use and enjoyment of present or future building and improvements erected and constructed on said property in keeping with the provisions of technical standard TSO-N18, dated April 26, 1950 as amended July 30, 1952. Said instruments of release further provide that in the event of the breach by the City of Torrance or its successors and assigns of any of the aforesaid covenants or conditions that the right of redress by the grantor shall be by injunctive relief and for damages.

Said instruments dated September 3, 1957 above mentioned also provide as follows:

This release shall not be deemed to relinquish or be construed as relinquishing any rights reserved to the united states by virtue of the aforementioned instrument in accordance with Executive Order 9908 approved December 5, 1947 (12 F.R. 8223) which order reserved to the United States all uranium, thorium and all other material determined pursuant to section 5 (B) (1) of the Atomic Energy Act of 1946 (60 stat. 761) to be particularly essential to the production of fissionable materials.

(2) The exclusive right at any time to drill from adjacent lands into and through the subsurface of said land and other land in order to recover, remove and transport therefrom any minerals or petroleum, as reserved in the deed above mentioned.

All right, title and interest in and to all minerals or petroleum in or under said land to a depth of 500 feet below the surface thereof, together with the right to enter upon said property to prospect for, mine for, or remove such minerals and petroleum, and together with the right to drill from lands on the Torrance Municipal Airport, or from adjacent premises, into and through the subsurface to a depth of 500 feet below the surface of said property, were quitclaimed by United States of America, acting by and through the Administrator of General Services, to City of Torrance, a municipal corporation, by quitclaim deed recorded May 31, 1961 as instrument no. 2843, subject to the terms and conditions of the quitclaim deed from the United States of America to Consolidated Royalties, Inc., recorded June 6, 1958 as instrument no. 3082, Official Records

5. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Edison Company

Purpose: poles

Recorded: October 13, 1950 as Instrument No. 3310 in Book 34550 Page 66, of Official Records

Affects: That portion of said land as described in the document attached hereto.

Affects: Parcels 2 and 3

6. An easement to construct, place, operate, inspect, maintain, repair, replace and remove such aerial and underground telephone, telegraph and communication structures consisting of poles, anchors, wires, cables, conduits, manholes, markers and incidental purposes, as granted by the City of Torrance to the Pacific Telephone and Telegraph Company, a corporation, by an unrecorded deed dated October 28, 1952, which was attached to Resolution No. 2338 of the City of Torrance dated October 28, 1952, as disclosed to this company in writing.

Affects: Parcel 2

7. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Edison Company

Purpose: overhead electric line

Recorded: November 12, 1958 as Instrument No. 2432, of Official Records

Affects: That portion of said land as described in the document attached hereto.

Affects: Parcel 2

8. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: The Pacific Telephone and Telegraph Company

Purpose: aerial and underground telephone lines

Recorded: March 14, 1961 as Instrument No. 2984 in Book D-1154 Page 743, of Official Records

Affects: That portion of said land as described in the document attached hereto.

Affects: Parcels 2 and 3

9. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Gas Company, a corporation

Purpose: pipe lines

Recorded: June 23, 1961 as Instrument No. 4106, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcels 2 and 3

10. A party wall agreement relating to a party wall on the east line of said land, executed by Citizens National Bank, a national banking association, and Schwartz Torrance Investment Corporation, a California corporation, dated May 4, 1962, recorded May 8, 1962 as instrument no. 4416 in book M-1008 page 400, Official Records.

Affects: Parcels 2 and 3

11. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Gas Company

Purpose: pipe lines

Recorded: June 28, 1963 as Instrument No. 8107 in Book D-2085 Page 253, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcel 2

12. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Edison Company

Purpose: overhead electric pole line

Recorded: April 27, 1964 as Instrument No. 4939 in Book D-2449 Page 425, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcels 2 and 5

13. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Los Angeles County Flood Control District

Purpose: covered storm drain

Recorded: July 3, 1964 as Instrument No. 6178 in Book D-2537 Page 41, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcels 2 and 5

14. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: City of Torrance

Purpose: traffic control

Recorded: November 12, 1974 as Instrument No. 3614, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcel 2

16. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: City of Torrance, a municipal corporation

Purpose: water main

Recorded: February 5, 1976 as Instrument No. 3303, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcels 2 and 3

17. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: The Pacific Telephone and Telegraph Company

Purpose: public utilities

Recorded: June 24, 1976 as Instrument No. 941, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcel 1

18. Notice of Consent to use land executed by and between the City of Torrance as owner of the real property and Rolling Hills Plaza Company, a partnership as lessee, recorded May 16, 1978 as instrument no. 78-521203, Official Records which, among other things, provides:

Gives notice as follows:

The right of the public or of any person to make any use whatsoever of the property described in exhibit "A" hereto, or of any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission of the above described owner and lessee and is subject to the control of the above described lessee or of its successors and assigns, all in accordance with Section 813 of the California Civil Code.

19. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Pacific Bell

Purpose: public utilities

Recorded: February 10, 1986 as Instrument No. 86-176844, of Official Records

Affects: That portion of said land as described in the document attached hereto.

Affects: Parcel 2

20. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Edison Company

Purpose: public utilities

Recorded: April 3, 1986 as Instrument No. 86-414308, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcel 1

21. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Edison Company, a corporation

Purpose: underground electrical supply systems and communication systems

Recorded: October 8, 1987 as Instrument No. 87-1622102, of Official Records

Affects: That portion of said land as described in the document attached hereto.

Affects: Parcels 2, 3 and 5

22. Covenants, conditions and restrictions (but omitting any covenant or restrictions, if any, based upon on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law) as set forth in the document referred to in the numbered item last above shown.

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

23. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Los Angeles County Flood Control District, a body corporate and politic

Purpose: to lay, construct, maintain, operate, repair, renew from time to time change the size of facilities for 1958 storm drain bond issue, Project No. 540, south Torrance

Recorded: March 22, 1965 as Instrument No. 3591, of Official Records

Affects: That portion of said land as described in the document.

Affects: Parcels 2 and 4

24. The rights of parties other than Rolling Hills Plaza Venture 96, LLC, a California limited liability company, and the covenants, conditions, restrictions, duties and obligations of Rolling Hills Plaza Shopping Center, a California limited partnership, contained in a document entitled, "Operation and Easement Agreement of Rolling Hills Plaza," dated October 5, 1990, by and between Rolling Hills Plaza Shopping Center, a California limited partnership, and Schwartz Investment Company, a California limited partnership, which among other things provides for easements for the passage and parking of vehicles, ingress and egress, utilities, and maintenance of existing foundations and footings, as set out in article ii of said document, recorded October 30, 1990 as instrument no. 90-1831780, Official Records.

All right, title and interest of Rolling Hills Plaza Venture 96, LLC, a California limited partnership under said agreement was assigned to Rolling Hills Plaza LLC, a California limited liability company, by a document entitled "Assignment of Operation and Easement Agreement", recorded April 15, 1999 as instrument no. 99-646803, Official Records

25. A document entitled "Recognition and Attornment Agreement", dated March 11, 1996 executed by City of Torrance, a municipal corporation, Rolling Hills Plaza Shopping Center, a California limited partnership and American Multi-Cinema, Inc., a Missouri corporation, subject to all the terms, provisions and conditions therein contained, recorded April 24, 1996 as instrument no. 96-641815, Official Records

26. An unrecorded lease with certain terms, covenants, conditions and provisions as set forth therein as disclosed by a document.

Lessor: Rolling Hills Plaza Venture 96, LLC, a California limited liability company  
 Lessee: Brinker Restaurant Corporation, a Delaware corporation  
 Disclosed By Memorandum of Lease  
 Recorded: August 30, 1996 as Instrument No. 96-1440410, of Official Records

27. A document entitled "Memorandum of Agreement", dated August 12, 1996 executed by Schwartz Investment Company, a California limited partnership and Rolling Hills Plaza Venture 96 LLC, a California limited liability company, subject to all the terms, provisions and conditions therein contained, recorded September 20, 1996 as instrument no. 96-1552086, Official Records

Affects: Parcels 1 and 2

28. A document entitled "Memorandum of Agreement", dated December \_\_, 1996 executed by Rolling Hills Plaza Venture 96, LLC, and Islands Restaurants, L.P., a Delaware limited partnership, subject to all the terms, provisions and conditions therein contained, recorded February 26, 1997 as instrument no. 97-289888, Official Records

Among other things, said document provides:

Non-exclusive easement rights, exclusive use rights and other rights with respect to said land.

Affects: Parcels 1, 2, 3 and 4

29. A document entitled "Reciprocal Easement and Parking Agreement", dated July 15, 1997 executed by Rolling Hills Plaza Venture 96, LLC, a California limited liability company and Daniel F. Selleck, dba S & S Auto Center, subject to all the terms, provisions and conditions therein contained, recorded July 29, 1997 as instrument no. 97-1152729, Official Records

As amended by that certain Amendment No. 1 to Reciprocal Easement and Parking Agreement dated as of June 23, 1999, which was recorded July 26, 1999 as Instrument No. 99-1388451, of Official Records.

As further amended by that Certain Amendment No. 2 to Reciprocal Easement and Parking Agreement, dated as of October 3, 2007, and Recorded October 22, 2007 as Instrument No. 07-2390127, of Official Records

Affects: Parcels 2 and 5

30. Any rights, interests or claims which may exist or arise by reason of the following facts shown on a survey prepared by Bryant-Palmer-Soto, Inc. dated June 4, 2002, designated 13-0025:041:

A. The building located on Parcel 2, designated as "2601 Pacific Coast Highway", extends into the easement area described in the instrument recorded February 10, 1986 as instrument no. 86-176844, Official Records.

B. The building located on Parcel 2, designated as "2601 Pacific Coast Highway", extends into the easement areas described in the instrument recorded April 27, 1964, as Instrument No. 4939, in book D-2449 page 425, Official Records, and the instrument recorded February 10, 1986 as Instrument No. 86-176844, Official Records.

C. The building located on Parcel 2, designated as "2533 A-C Pacific Coast Highway" extends into the easement area described in the instrument recorded June 23, 1961 as Instrument No. 4106 in book D-1264 page 372, Official Records.

D. The building located on Parcel 2, designated as "2533-D Pacific Coast Highway" extends into the easement areas described in the instruments recorded June 23, 1961 as Instrument No. 4106 in Book D-1264 Page 372, Official Records, and the instrument recorded June 28, 1963 as instrument no. 8107, in Book D-2085 Page 253, Official Records, and the instrument recorded February 5, 1976 as Instrument No. 3303, Official Records.

E. The buildings located on Parcel 2, designated as "2537-2573 and 2535 Pacific Coast Highway" extend into the easement area described in the instrument recorded February 5, 1976 as Instrument No. 3303, Official Records.

F. Two vaults are located within Parcel 4, near the south end thereof.

G. The building located on Parcel 1 extends onto the easements recorded June 24, 1976 as instrument no. 941 and April 3, 1986 as Instrument No. 86-414308, Official Records

H. Portions of the buildings located on Parcel 3, including roof overhang, loading dock and exit stairs, extend into portions of Parcel 2.

I. A building designated "2591 Pacific Coast Highway" and located on the east portion of Parcel 2 extends onto the easement recorded July 3, 1964 as Instrument No. 6178, Official Records

J. A building situated on Parcel 2 and designated "25360 - 25366 Crenshaw Boulevard", extends onto easements recorded November 12, 1958 as Instrument No. 2432 in book D-272 page 471, Official Records, February 5, 1976 as Instrument No. 3303, and October 8, 1987 as Instrument No. 87-1622102, Official Records

K. Asphalt concrete parking area and concrete curbing located along the most northwest line of Parcel 2 extend onto Crenshaw Boulevard.

L. The building designated "25304 - 25348 Crenshaw Boulevard" on Parcel 2 extends onto land adjacent thereto on the northeast.

M. An overhang of the building designated "2667 Pacific Coast Highway" on Parcel 2 extends into Parcel 3.

N. A tower extends onto Parcel 2 near the southeasterly line of Parcel 3.

O. A transformer is situated on the most southerly southwest corner portion of Parcel 2.

P. The parking structure under construction situated on Parcel 3 extends onto the easement recorded October 13, 1950 as Instrument No. 3310, Official Records.

Q. The building under construction situated on Parcel 2 extends onto the easements recorded June 23, 1961 as Instrument No. 4106, February 5, 1976 as instrument no. 3303 and October 8, 1987 as Instrument No. 87-1622102, Official Records.

R. The parking structure under construction situated on Parcel 2 extends onto the easements recorded March 14, 1961 as instrument no. 2984 and October 8, 1987 as Instrument No. 87-1622102, Official Records.

S. The open area under construction situated on Parcel 2 extends onto the unrecorded easement to the Pacific Telephone and Telegraph Company, dated October 28, 1952.

31. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

In Favor of: Southern California Edison Company

Purpose: underground electrical supply systems and communication systems

Recorded: June 5, 2002 as Instrument No. 02-1291855, of Official Records

Affects: That portion of said land as described in the document.

Among other things, said document provides:

It is understood and agreed that the above description are approximate only, it being the intention of the grantor to grant an easement for said systems as constructed. The centerlines of the easement shall be coincidental with the centerlines of said systems as constructed in, on, over, under, across and along the grantor's property.

Restrictions on the use, by the owners of said land, of the easement area as set forth in the easement shown above.

32. A Deed of Trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$45,000,000.00 in the aggregate

Dated: June 25, 2002

Trustor: Rolling Hills Plaza LLC, a California limited liability company

Trustee: Chicago Title Company

Beneficiary: The Variable Annuity Life Insurance Company, a Texas corporation, in the amount of \$20,025,000.00 and American General Life and Accident Insurance Company, a Tennessee corporation, in the amount of \$24,975,000.00

Loan No.: not shown

Recorded: June 28, 2002 as Instrument No. 02-1467742, of Official Records.

An agreement to modify the terms and provisions of said deed of trust as therein provided.

Recorded: October 22, 2007 as Instrument No. 20072390129, of Official Records

33. A financing statement filed with the office of the county recorder, showing

Debtor: Rolling Hills Plaza, LLC

Secured Party: The Variable Annuity Life Insurance Company and American General Life and Accident Insurance Company

Recorded: June 28, 2002 as Instrument No. 02-1467743, of Official Records

34. A document entitled "Landlord Estoppel Certificate and Agreement (Rolling Hills Plaza Parcels)", dated June 11, 2002 executed by the City of Torrance, a municipal corporation for the benefit of the Variable Annuity Life Insurance Company, and American General Life and Accident Insurance Company, subject to all the terms, provisions and conditions therein contained, recorded June 28, 2002 as instrument no. 02-1467745, Official Records

35. A Deed of Trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$15,000,000.00  
 Dated: April 5, 1999  
 Trustor: Rolling Hills Plaza LLC, a California limited liability company  
 Trustee: Chicago Title Insurance Company  
 Beneficiary: Northern RHP LLC, a Delaware limited liability company  
 Loan No.: not shown  
 Recorded: April 15, 1999 as Instrument No. 99-646807, of Official Records.

An agreement to modify the terms and provisions of said deed of trust as therein provided.

Recorded: June 28, 2002 as Instrument No. 02-1467746, of Official Records

A document entitled "Intercreditor and Subordination Agreement", dated June 25, 2002, subject to all the terms, provisions and conditions therein contained, recorded June 28, 2002 as instrument no. 02-1467748, Official Records

36. An assignment

Recorded: April 15, 1999 as Instrument No. 99-646808, of Official Records

Of certain of the lessor's interests under leases referred therein, which assignment recites, among other things, that it is given as additional security for the Deed of Trust

Recorded: April 15, 1999 as Instrument No. 99-646807, of Official Records

An amendment to said assignment recorded June 28, 2002 as instrument no. 02-1467747 which states that it is subordinate to the deed of trust recorded June 28, 2002 as instrument no. 02-1467742.

37. An unrecorded lease with certain terms, covenants, conditions and provisions as set forth therein as disclosed by a document.

Lessor: Rolling Hills Plaza LLC, a California limited liability company  
 Lessee: Bed Bath & Beyond Inc., a New York corporation  
 Disclosed By Memorandum of Lease  
 Recorded: February 23, 2001 as Instrument No. 01-0307486, of Official Records

An agreement, which states that said lease is subordinate to the Deed of Trust, recorded: June 28, 2002 as Instrument No. 02-1467742, Official Records by an agreement:

Recorded: July 12, 2002 as Instrument No. 02-1615519, of Official Records

38. An unrecorded lease with certain terms, covenants, conditions and provisions as set forth therein as disclosed by a document.

Lessor: Rolling Hills Plaza LLC, a California limited liability company  
 Lessee: American Multi-Cinema, Inc., a Missouri corporation  
 Disclosed By Subordination, Non-Disturbance and Attornment Agreement  
 Recorded: July 12, 2002 as Instrument No. 02-1615517, of Official Records

Said Agreement states that said lease is subordinate to the Deed of Trust recorded June 28, 2002 as Instrument No. 02-1467742, Official Records.

39. An unrecorded lease, affecting the premises herein described, executed by and between the parties herein named, for the term and upon the terms and provisions therein set forth.

Type of Lease: Commercial  
 Lessor: Rolling Hills Plaza, LLC  
 Lessee: Trina Ngyuen, dba Elite Nails Spa  
 Disclosed By: Notice of Non-Responsibility  
 Recorded: September 15, 2003 as Instrument No. 03-2704447, of Official Records

40. An unrecorded lease, affecting the premises herein described, executed by and between the parties herein named, for the term and upon the terms and provisions therein set forth.

Type of Lease: Commercial  
 Lessor: Rolling Hills Plaza, LLC  
 Lessee: Kaiser Foundation Health Plan, Inc.  
 Disclosed By: Notice of Non-Responsibility  
 Recorded: December 13, 2004 as Instrument No. 04-3212802, of Official Records

41. A financing statement filed with the office of the county recorder, showing

Debtor: Rolling Hills Plaza, LLC  
 Secured Party: American General Life and Accident Insurance Company  
 Recorded: December 4, 2007 as Instrument No. 20072657241, of Official Records  
 Recorded: February 26, 2008 as Instrument No. 20080325824, of Official Records

42. An operation and easement agreement, dated October 5, 1990, between Rolling Hills Plaza Shopping Center and Schwartz Investment Company, recorded as instrument no. 90-183780 (LA County Records), as the same may be amended or restated from time to time.
43. The effect of any failure to comply with the terms, covenants, conditions and provisions of the lease described or referred to in Paragraph 1 above.
44. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by making inquiry of the lessors and their successors in interest, in the lease described or referred to in Paragraph 1 above.
45. Water rights, claims or title to water, whether or not disclosed by the public records.
46. Matters which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said land, and/or by inquiry of the parties in possession thereof.
47. Any rights of parties in possession of said land, based on any unrecorded lease, or leases.

**EXHIBIT I****MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE ("Memorandum") made as of the \_\_\_ day of \_\_\_\_\_, 2008 ("Effective Date") by and between Beverages & More, Inc., a Delaware corporation ("Tenant"), and Rolling Hills Plaza LLC, a California limited liability company ("Landlord").

**WITNESSETH:**

1. **Premises.** Landlord hereby leases to Tenant and Tenant hereby takes from Landlord that certain real property and improvements containing approximately Ten Thousand Five Hundred (10,500) square feet of Leasable Floor Area, commonly known as 2533-A Pacific Coast Highway, Torrance, CA ("Premises"). This Lease is on the terms and conditions of that unrecorded Lease entered into ("Lease") dated \_\_\_\_\_, 2009, the terms and conditions of which are incorporated herein by this reference.

The Premises are part of a shopping center known as "Rolling Hills Plaza," which shopping center is located on that certain real property situated in the City of Torrance, County of Los Angeles, State of California, more particularly described on EXHIBIT A attached hereto and made a part hereof ("Shopping Center").

The boundaries and location of the Premises are shown on the diagram of the Shopping Center attached hereto and made a part hereof as EXHIBIT B ("Site Plan").

2. **Term and Renewal Options.** The Lease has an initial Term of ten (10) years, subject to extension (at Tenant's option) for two (2) successive additional periods of five (5) years each.

3. **Certain Restrictions:** The Lease contains the following provisions:

A. "Subject to (i) all existing leases and agreements with other tenants and occupants of the Shopping Center (collectively, "existing tenants") which have been executed, and (ii) all Permitted Exceptions (defined below) which have been recorded, prior to the Effective Date of this Lease), and only as long as Tenant is operating in the Premises in compliance with the Permitted Use specified in this Lease, Tenant shall have the exclusive right within the Shopping Center to sell alcoholic beverages for off-premises consumption. Tenant's exclusive shall not apply to (A) any existing tenant(s), as of the Effective Date, who currently sell such products (or who are permitted to sell the same without Landlord's consent), (B) any assignees/sublessees of any existing tenant(s) if, under the existing tenant's occupancy agreement, Landlord's consent to such assignment or sublease or similar transfer or to any change in use is not required (and, in such event, Landlord shall not be required to modify such existing tenant's occupancy agreement in conjunction with the assignment or subletting or similar transfer), or (C) any renewal, relocation or term extension of the lease for any such existing tenant. Nothing contained herein shall restrict any tenant in the Shopping Center from selling alcoholic beverages for off-premises consumption on an incidental basis, which for the purposes of this Section 4.8, shall be defined as the sale, display or distribution of alcoholic beverages for off-premises consumption in an area within such tenant's premises which shall not exceed the lesser of (a) ten percent (10%) of such tenant's Leasable Floor Area or (b) one thousand (1,000) square feet of Leasable Floor Area. The provisions of this paragraph shall not apply to the operation of a business in the Shopping Center which is owned in whole or in part by, or operated by, Tenant or by any licensee, franchisee, assignee or sublessee under this Lease. This exclusive right shall not create any liability from Landlord to Tenant for a breach of this provision in the event that a court order specifically allows for or causes the breach of such exclusive provision in connection with the assignment and assumption of another occupant's lease. Landlord's agreement under this paragraph shall become null and void and of no further force and effect immediately upon a finding or judgment of any Federal court or agency or State court or agency that the provisions of this subsection, are unenforceable, invalid or illegal."

B. The Lease also contains certain restrictions on any alterations, use and occupancy to that portion of the common area designated as the "Tenant Control Area," which is depicted on Exhibit A to the Lease, and attached hereto, and which restrictions constitute covenants running with the Shopping Center.

C. The use prohibitions set forth in A, above are subject to the leases of the other tenants of the Shopping Center existing as of the Effective Date of the Lease.

4. **Incorporation of Lease.** This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Lease, the terms of which are incorporated herein by reference. This instrument is merely a memorandum of the Lease and is subject to all of the terms, provisions and conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this memorandum, the terms of the Lease shall prevail.

5. **Binding Effect.** The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the Effective Date.

“LANDLORD”

ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: ROLLING HILLS PLAZA VENTURE 96, LLC,  
a California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING CENTER,  
a California limited partnership  
Managing Member

By: LA CAZE PARTNERSHIP, a California limited partnership  
General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

By: \_\_\_\_\_  
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC, a Delaware limited liability company,  
Its member

By: BRISTOL GROUP, INC.,  
Its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

TENANT

BEVERAGES & MORE, INC.  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**EXHIBIT J(a)****SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement") is made as of [\_\_\_\_\_, 2009, by and among THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, a Texas corporation ("VALIC") and AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY, a Tennessee corporation ("AGLA" and, together with VALIC, collectively referred to as "Lender"), having an address at 1999 Ave. of the Stars, 38<sup>th</sup> Floor, Century City, Los Angeles, California 90067-6022, Attention: VP, Servicing - Commercial Mortgage Lending, BEVERAGES & MORE, INC., a Delaware corporation, having an address at 1470 Enea Circle, Suite 1600, Concord, California 94520, Attn.: Real Estate Department ("Tenant") and ROLLING HILLS PLAZA LLC, a California limited liability company, having an address at c/o La Caze Development Company, 2601 Airport Drive, Suite 300, Torrance, CA 90505 ("Landlord").

**RECITALS:**

A. Landlord is or will be the owner of a leasehold interest in the land legally described in Exhibit A attached hereto and made a part hereof and the buildings and other improvements located on such land (such land, buildings and improvements being referred to herein as the "Property")

B. Lender has made or has agreed to make a loan (the "Loan") to Landlord in connection with Landlord's financing of the Property.

C. Tenant is the lessee under that certain Lease Agreement dated [\_\_\_\_\_, 2009 (as modified, amended or supplemented through the date hereof, the "Original Lease") relating to a portion of the Property (the "Premises") commonly referred to as 2533-A Pacific Coast Highway, Torrance, California 90505. The Original Lease, as hereafter modified, amended or supplemented from time to time, is referred to hereinafter as the "Lease."

D. The Loan has been or will be evidenced by a certain promissory note (the "Note") and secured by, among other things, a first-lien Mortgage, Deed of Trust, Deed to Secure Debt or similar security instrument encumbering the Property (such instrument, as amended, increased, renewed, modified, consolidated, replaced, combined, substituted, severed, split, spread or extended from time to time, being herein referred to as the "Security Instrument").

E. The Lease has been or may be assigned by Landlord to Lender as further security for the Note.

F. Landlord and Tenant's agreement that the Security Instrument shall unconditionally be and remain at all times a lien or charge upon the Premises prior and superior to the Lease is a condition to Lender's agreement to make the Loan and enter into this Agreement.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and understanding that Lender will rely on Tenant's covenants and certifications, as set forth herein, in entering into this Agreement, the parties hereto agree and certify as follows:

1. Tenant represents and warrants to Lender that the Original Lease has been duly authorized, executed and delivered by Tenant. Landlord and Tenant each represent and warrant to Lender that (a) the Original Lease is in full force and effect, (b) except as expressly set forth in Recital C hereof, the Original Lease has not been modified or amended in any way, and (c) to the actual knowledge of Landlord and Tenant, no party to the Original Lease is in default with respect to such party's obligations under the Original Lease as of the date of this Agreement.

2. The Security Instrument and any and all terms, conditions and provisions thereof, all advances made or to be made thereunder, and any other amendments, modifications, renewals, extensions, alterations or replacements thereof are and shall unconditionally be and remain at all times a lien or charge upon the Premises senior, prior and superior to the Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other lessee thereunder in or to the Premises or in or to the Property. The Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other lessee thereunder in or to the Premises or in or to the Property are hereby unconditionally subjected and made subordinate to, and Tenant hereby subordinates the leasehold estate created by the Lease, and all of Tenant's right, title, and interest under the Lease and in and to the Premises and in or to the Property to, the lien or charge of the Security Instrument and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any amendments, modifications, renewals, extensions, alterations or replacements thereof.

3. As long as Tenant is in compliance with the terms of this Agreement and is not in default in the performance of its obligations under the Lease, which default has continued beyond any cure periods provided in the Lease or at law, Tenant shall not be named as a party defendant in any action for foreclosure, trustee's sale or other enforcement of the Security Instrument (unless required by law), nor shall the Lease be terminated in connection with, or by reason of, foreclosure, trustee's sale or other proceedings for the enforcement of the Security Instrument, or by reason of a transfer of the landlord's interest under the Lease pursuant to the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure, nor shall Tenant's use or possession of the Premises be interfered with, and the rights of Tenant under the Lease shall remain in full force and effect, except that the person acquiring or succeeding to the interests of Landlord as the result of any such action or proceeding and such person's successors and assigns (any of the foregoing being hereinafter referred to as "Successor") shall not be:

(a) bound by any prepayment of rent paid more than one (1) month in advance of the due date or for any security deposit unless actually received by Successor and then limited to the amount of such security deposit actually received subject to all rights, privileges and benefits of Landlord set forth in the Lease with respect thereto;

(b) liable for any act or omission of any prior landlord (including, without limitation, Landlord) or for any claim for damages against any such prior landlord (including, without limitation, Landlord);

(c) subject to any offsets, defenses or counterclaims which Tenant may have against any prior landlord (including, without limitation, Landlord); or

(d) bound by any amendment, modification or termination of the Original Lease made without the written consent of Lender.

4. If the interest of Landlord under the Lease shall be transferred by reason of any foreclosure, trustee's sale or other proceedings for enforcement of the Security Instrument or the obligations which it secures or pursuant to a taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure thereof, then Tenant shall be bound to Successor and, so long as Tenant is not in default under the Lease, which default has continued beyond any applicable cure periods provided in the Lease or at law, Successor shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the unexpired balance of the term thereof remaining (and any extensions, if exercised), with the same force and effect as if Successor were Landlord, and Tenant does hereby (a) agree to attorn to Successor, including Lender if it be Successor, as its landlord, (b) affirm its obligations under the Lease, and (c) agree to make payments of all sums due under the Lease to Successor, said attornment, affirmation and agreement to be effective and self-operative without the execution of any further instruments, upon Successor succeeding to the interest of Landlord under the Lease. To the extent permitted by applicable law, Tenant waives the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or obligation to terminate or otherwise adversely affect the Lease or the obligations of Tenant thereunder by reason of any foreclosure, trustee's sale or other proceedings for enforcement of the Security Instrument or the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure. Tenant agrees to provide Successor a written confirmation of its attornment to Successor within ten (10) days after receipt of a written request therefor from Successor, but failure to receive such written confirmation from Tenant shall not derogate from Tenant's obligations to Successor hereunder.

5. Upon the written request of either Tenant (provided that Tenant is then in compliance with the terms of this Agreement and is not in default in the performance of its obligations under the Lease, which default has continued beyond any applicable cure periods provided in the Lease or at law) or Successor to the other given at the time of foreclosure, trustee's sale or other proceeding for enforcement of the Security Instrument or by deed in lieu thereof, the parties shall execute a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which Lease shall cover any unexpired balance of the term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu thereof.

6. Notwithstanding anything to the contrary in the Lease, Tenant shall not terminate or cancel the Lease or the term thereof by reason of a default or breach by Landlord thereunder and Tenant shall not commence any action against Landlord or otherwise pursue any right or remedy against Landlord in consequence of a default by Landlord under the terms and provisions of the Lease unless written notice by Tenant specifying such default is mailed to Lender at its address set forth above. Tenant further agrees that Lender shall have the right, but shall not be obligated, to cure such default on behalf of Landlord within thirty (30) days after receipt of such notice, or if such default cannot reasonably be cured in such 30-day period, Lender shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Tenant further agrees not to invoke any of its remedies either express or implied, under the Lease (except in the case of emergency repairs) unless such default shall remain uncured at the expiration of the 30-day period after receipt of such notice of default, or if such default cannot reasonably be cured by Lender in such 30-day period, unless the cure of such default shall not be commenced within such 30-day period and thereafter prosecuted diligently to completion.

7. Tenant agrees that neither this Agreement nor the Security Instrument shall, prior to Lender's succession to Landlord's interest in the Premises, through any foreclosure, trustee sale, deed or assignment in lieu of foreclosure, or a possessory action, operate to place responsibility for the control, care, management or repair of the Premises upon Lender, or impose responsibility for the carrying out of the terms and conditions of the Lease, nor shall Lender be responsible for or liable for any waste committed on the Premises by any party whatsoever or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in any damage to property or in any loss or injury or death to any person.

8. In the event that Lender notifies Tenant of any default under the Security Instrument and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant (waiving any proof of the occurrence of such event of default other than receipt of Lender's notice) shall pay rent and all other sums due under the Lease directly to Lender. Any payments made to Lender by Tenant shall not affect or impair the other rights and remedies of Lender under the Security Instrument or otherwise against Landlord. Any and all payments made to Lender by Tenant pursuant to the foregoing shall be credited against Tenant's rental obligations under the Lease regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may hereafter be made by Landlord.

9. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Security Instrument in favor of Lender, and shall supersede and cancel, but only insofar as would affect the priority of the Lease as to such subjection or subordination, all other subjection or subordination agreements including, but not limited to, those provisions, if any, contained in the Lease which provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages.

10. This Agreement may not be modified except by an agreement in writing signed by the parties. All references to Lender in this Agreement shall be deemed to refer to Lender, its participants, and their respective successors and assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

11. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein. Successor's liability under the Lease shall be limited to Successor's interest in and to the Property.

12. Tenant acknowledges that this Agreement satisfies any condition or requirement in the Original Lease relating to the granting of a non-disturbance agreement with respect to the Security Instrument. In the event there is any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease dealing with non-disturbance, the terms and provisions hereof shall be controlling.

13. All notices, demands or requests made pursuant to, under or by virtue of this Agreement shall be in writing and delivered by hand, sent by an overnight courier service providing dated evidence of delivery or mailed by certified or registered mail, return receipt requested, to the person to whom the notice, demand or request is being made at its address set forth herein. Such notices shall be deemed to have been promptly given and received for all purposes (a) if hand delivered, effective upon delivery; (b) if mailed, by United States registered or certified mail, postage prepaid, return receipt requested, effective on the date shown on the return receipt; or (c) if sent by Federal Express or other reliable express courier, effective on the next business day after delivery to such express courier service. Any person may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement. "Business day" shall mean any day, except Saturday, Sunday and any day which, in the State in which the Property is located, is a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

14. This Agreement shall be governed by the laws of the State in which the Property is located. If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

16. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement.

17. Tenant understands, acknowledges and agrees that Lender in entering into this Agreement and third parties who are interested in the matters covered by this Agreement are relying on the representations contained herein, including without limitation purchasers, transferees, assignees, servicers, participants, investors, and their respective successors and assigns, and credit rating agencies in connection with the Loan.

[Signature Pages Follow]

IN WITNESS WHEREOF, Tenant, Lender and Landlord have hereunto caused this Agreement to be duly executed as of the day and year first above written.

"TENANT"

BEVERAGES & MORE, INC., a Delaware corporation

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

Witness my hand and official seal.



Signature \_\_\_\_\_

(Seal)

A handwritten signature in black ink, appearing to be the initials 'R' or 'A' with a horizontal line underneath.

"LENDER"

THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, a Texas corporation

By: AIG GLOBAL INVESTMENT CORP., a New Jersey corporation, its investment advisor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY, a Tennessee corporation

By: AIG GLOBAL INVESTMENT CORP., a New Jersey corporation, its investment advisor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Signature \_\_\_\_\_ (Seal)

"LANDLORD"

ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: Rolling Hills Plaza Venture 96, LLC,  
a California limited liability company, its Member

By: Rolling Hills Plaza Shopping Center,  
a California limited partnership, its Managing Member

By: La Caze Partnership, a California limited  
partnership, its General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

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



Carole J. La Caze, Trustee,  
General Partner

By: Northern RHP LLC,  
a Delaware limited liability company  
its Member

By: Bristol Group, Inc., its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

Witness my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

Witness my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

Witness my hand and official seal.



Signature \_\_\_\_\_

(Seal)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

Witness my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**EXHIBIT A****THE PROPERTY****ROLLING HILLS TRACT 1****PARCEL 1**

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 210.00 FEET; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 209.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 188.68 FEET TO THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2 IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 193.04 FEET; THENCE SOUTH 01 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION ALONG PACIFIC COAST HIGHWAY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST, 470.93 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 26 SECONDS WEST, 59.01 FEET TO A POINT OF TANGENCY WITH CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1,828.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 08 MINUTES 54 SECONDS, AN ARC DISTANCE OF 100.45 FEET TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 300.00 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 101 DEGREES 11 MINUTES 01 SECONDS, AN ARC DISTANCE OF 44.15 FEET TO A POINT OF TANGENCY WITH A LINE BEARING NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST, SAID LINE BEING THE SOUTHEASTERLY LINE OF THAT PARCEL OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40,9-2, SAID LINE BEING NOW RECOGNIZED AND ACCEPTED AS THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD (100.00 FEET); THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 16.55 FEET; THENCE SOUTH 1 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE POINT OF BEGINNING.

PARCEL 2

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 545.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 700.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 125.00 FEET; THENCE SOUTH 41 DEGREES 14 MINUTES 40 SECONDS WEST 74.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 263.58 FEET; THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 138.64 FEET; THENCE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 85.69 FEET; THENCE SOUTH 41 DEGREES 16 MINUTES 35 SECONDS WEST 90.44 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 156.18 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD, 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 932.23 FEET; THENCE SOUTH 37 DEGREES 34 MINUTES 19 SECONDS EAST 246.00 FEET; THENCE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 286.66 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT 1; THENCE ALONG SAID EASTERLY LINE SOUTH 00 DEGREES 11 MINUTES 20 SECONDS WEST 1,671.69 FEET TO THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY; THENCE ALONG SAID NORTHERLY LINE NORTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 26.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1,096.28 FEET, THROUGH A CENTRAL ANGLE OF 41 DEGREES 03 MINUTES 15 SECONDS, A LENGTH OF 785.52 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 349.67 FEET TO THE TRUE POINT OF BEGINNING.

ROLLING HILLS TRACT 2

The surface rights only to the certain land situated in the City of Torrance, County of Los Angeles, State of California, described as follows to-wit:

THAT PORTION OF THE RANCHO LOS PALOS VERDES, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2 PAGE 545 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS ALLOTTED TO ORIN S. WESTON BY DECREE OF DISTRIBUTION IN THE ESTATE OF B.S. WESTON RECORDED IN BOOK 2838 PAGE 230 OF DEEDS, RECORDS OF SAID COUNTY, BEING A PORTION OF THAT 20-FOOT STRIP OF LAND CONVEYED TO STANDARD OIL COMPANY IN DEED RECORDED IN BOOK 6265 PAGE 311 OF DEEDS, RECORDS OF SAID COUNTY, BOUNDED SOUTHERLY BY THE NORTH LINE OF PACIFIC COAST HIGHWAY, 100 FEET WIDE, AS DESCRIBED IN DEED RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS OF SAID COUNTY AND BOUNDED NORTHERLY BY A LINE AT RIGHT ANGLES WITH THE WEST LINE OF SAID 20-FOOT STRIP DISTANT NORTHERLY ALONG SAID WEST LINE 1,671.69 FEET FROM SAID NORTH LINE OF SAID PACIFIC COAST HIGHWAY.

**EXHIBIT J(b)****SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2009, by and among Beverages & More, Inc., a Delaware corporation, ("Tenant"), whose address is 1470 Enea Circle, Suite 1600, Concord, California 94520, ROLLING HILLS PLAZA LLC, a California limited liability company, ("Landlord"), whose address is c/o La Caze Development Company, 2601 Airport Drive, Suite 300, Torrance, California 90505, and NORTHERN RHP LLC, a Delaware limited liability company (together with its successors and assigns, "Lender"), whose address c/o Bristol Group, Inc., 400 Montgomery Street, 4th Floor, San Francisco, CA 94104.

**RECITALS:**

- A. Landlord is the owner of a leasehold interest in certain real property known as Rolling Hills Plaza, as more particularly described on Exhibit A-1 attached hereto, together with the improvements thereon (the "Property");
- B. Lender has made or has agreed to make a loan (the "Loan") to Landlord in connection with Landlord's financing of the Property.
- C. Tenant is the lessee under that certain Lease Agreement dated [\_\_\_\_\_], 2009 (as modified, amended or supplemented through the date hereof, the "Original Lease") relating to a portion of the Property (the "Premises") commonly referred to as 2533-A Pacific Coast Highway, Torrance, California 90505. The Original Lease, as hereafter modified, amended or supplemented from time to time, is referred to hereinafter as the "Lease."
- D. The Loan has been or will be evidenced by a certain promissory note (the "Note") and secured by, among other things, a first-lien Mortgage, Deed of Trust, Deed to Secure Debt or similar security instrument encumbering the Property (such instrument, as amended, increased, renewed, modified, consolidated, replaced, combined, substituted, severed, split, spread or extended from time to time, being herein referred to as the "Security Instrument").
- E. The Lease has been or may be assigned by Landlord to Lender as further security for the Note.
- F. Landlord and Tenant's agreement that the Security Instrument shall unconditionally be and remain at all times a lien or charge upon the Premises prior and superior to the Lease is a condition to Lender's agreement to make the Loan and enter into this Agreement.
- G. Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and understanding that Lender will rely on Tenant's covenants and certifications, as set forth herein, in entering into this Agreement, the parties hereto agree and certify as follows:

1. Tenant represents and warrants to Lender that the Original Lease has been duly authorized, executed and delivered by Tenant. Landlord and Tenant each represent and warrant to Lender that (a) the Original Lease is in full force and effect, (b) except as expressly set forth in Recital C hereof, the Original Lease has not been modified or amended in any way, and (c) to the actual knowledge of Landlord and Tenant, no party to the Original Lease is in default with respect to such party's obligations under the Original Lease as of the date of this Agreement.
2. The Security Instrument and any and all terms, conditions and provisions thereof, all advances made or to be made thereunder, and any other amendments, modifications, renewals, extensions, alterations or replacements thereof are and shall unconditionally be and remain at all times a lien or charge upon the Premises senior, prior and superior to the Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other lessee thereunder in or to the Premises or in or to the Property. The Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other lessee thereunder in or to the Premises or in or to the Property are hereby unconditionally subjected and made subordinate to, and Tenant hereby subordinates the leasehold estate created by the Lease, and all of Tenant's right, title, and interest under the Lease and in and to the Premises and in or to the Property to, the lien or charge of the Security Instrument and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any amendments, modifications, renewals, extensions, alterations or replacements thereof.
3. As long as Tenant is in compliance with the terms of this Agreement and is not in default in the performance of its obligations under the Lease, which default has continued beyond any cure periods provided in the Lease or at law, Tenant shall not be named as a party defendant in any action for foreclosure, trustee's sale or other enforcement of the Security Instrument (unless required by law), nor shall the Lease be terminated in connection with, or by reason of, foreclosure, trustee's sale or other proceedings for the enforcement of the Security Instrument, or by reason of a transfer of the landlord's interest under the Lease pursuant to the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure, nor shall Tenant's use or possession of the Premises be interfered with, and the rights of Tenant under the Lease shall remain in full force and effect, except that the person acquiring or succeeding to the interests of Landlord as the result of



any such action or proceeding and such person's successors and assigns (any of the foregoing being hereinafter referred to as "Successor") shall not be:

- (a) bound by any prepayment of rent paid more than one (1) month in advance of the due date or for any security deposit unless actually received by Successor and then limited to the amount of such security deposit actually received subject to all rights, privileges and benefits of Landlord set forth in the Lease with respect thereto;
- (b) liable for any act or omission of any prior landlord (including, without limitation, Landlord) or for any claim for damages against any such prior landlord (including, without limitation, Landlord);
- (c) subject to any offsets, defenses or counterclaims which Tenant may have against any prior landlord (including, without limitation, Landlord); or
- (d) bound by any amendment, modification or termination of the Original Lease made without the written consent of Lender.

4. If the interest of Landlord under the Lease shall be transferred by reason of any foreclosure, trustee's sale or other proceedings for enforcement of the Security Instrument or the obligations which it secures or pursuant to a taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure thereof, then Tenant shall be bound to Successor and, so long as Tenant is not in default under the Lease, which default has continued beyond any applicable cure periods provided in the Lease or at law, Successor shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the unexpired balance of the term thereof remaining (and any extensions, if exercised), with the same force and effect as if Successor were Landlord, and Tenant does hereby (a) agree to attorn to Successor, including Lender if it be Successor, as its landlord, (b) affirm its obligations under the Lease, and (c) agree to make payments of all sums due under the Lease to Successor, said attornment, affirmation and agreement to be effective and self-operative without the execution of any further instruments, upon Successor succeeding to the interest of Landlord under the Lease. To the extent permitted by applicable law, Tenant waives the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or obligation to terminate or otherwise adversely affect the Lease or the obligations of Tenant thereunder by reason of any foreclosure, trustee's sale or other proceedings for enforcement of the Security Instrument or the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure. Tenant agrees to provide Successor a written confirmation of its attornment to Successor within ten (10) days after receipt of a written request therefor from Successor, but failure to receive such written confirmation from Tenant shall not derogate from Tenant's obligations to Successor hereunder.

5. Upon the written request of either Tenant (provided that Tenant is then in compliance with the terms of this Agreement and is not in default in the performance of its obligations under the Lease, which default has continued beyond any applicable cure periods provided in the Lease or at law) or Successor to the other given at the time of foreclosure, trustee's sale or other proceeding for enforcement of the Security Instrument or by deed in lieu thereof, the parties shall execute a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which Lease shall cover any unexpired balance of the term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu thereof.

6. Notwithstanding anything to the contrary in the Lease, Tenant shall not terminate or cancel the Lease or the term thereof by reason of a default or breach by Landlord thereunder and Tenant shall not commence any action against Landlord or otherwise pursue any right or remedy against Landlord in consequence of a default by Landlord under the terms and provisions of the Lease unless written notice by Tenant specifying such default is mailed to Lender at its address set forth above. Tenant further agrees that Lender shall have the right, but shall not be obligated, to cure such default on behalf of Landlord within thirty (30) days after receipt of such notice, or if such default cannot reasonably be cured in such 30-day period, Lender shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Tenant further agrees not to invoke any of its remedies either express or implied, under the Lease (except in the case of emergency repairs) unless such default shall remain uncured at the expiration of the 30-day period after receipt of such notice of default, or if such default cannot reasonably be cured by Lender in such 30-day period, unless the cure of such default shall not be commenced within such 30-day period and thereafter prosecuted diligently to completion.

7. Tenant agrees that neither this Agreement nor the Security Instrument shall, prior to Lender's succession to Landlord's interest in the Premises, through any foreclosure, trustee sale, deed or assignment in lieu of foreclosure, or a possessory action, operate to place responsibility for the control, care, management or repair of the Premises upon Lender, or impose responsibility for the carrying out of the terms and conditions of the Lease, nor shall Lender be responsible for or liable for any waste committed on the Premises by any party whatsoever or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in any damage to property or in any loss or injury or death to any person.

8. In the event that Lender notifies Tenant of any default under the Security Instrument and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant (waiving any proof of the occurrence of such event of default other than receipt of Lender's notice) shall pay rent and all other sums due under the Lease directly to Lender. Any payments made to Lender by Tenant shall not affect or impair the other rights and remedies of Lender under the Security Instrument or otherwise against Landlord. Any and all payments made to Lender by Tenant pursuant to the foregoing shall be credited against Tenant's rental obligations under the Lease regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may hereafter be made by Landlord.

9. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Security Instrument in favor of Lender, and shall supersede and cancel, but only insofar as would affect the priority of the Lease as to such subjection or subordination, all other subjection or subordination agreements including, but not limited to, those provisions, if any, contained in the Lease which provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages.

10. This Agreement may not be modified except by an agreement in writing signed by the parties. All references to Lender in this Agreement shall be deemed to refer to Lender, its participants, and their respective successors and

assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

11. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein. Successor's liability under the Lease shall be limited to Successor's interest in and to the Property.

12. Tenant acknowledges that this Agreement satisfies any condition or requirement in the Original Lease relating to the granting of a non-disturbance agreement with respect to the Security Instrument. In the event there is any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease dealing with non-disturbance, the terms and provisions hereof shall be controlling.

13. All notices, demands or requests made pursuant to, under or by virtue of this Agreement shall be in writing and delivered by hand, sent by an overnight courier service providing dated evidence of delivery or mailed by certified or registered mail, return receipt requested, to the person to whom the notice, demand or request is being made at its address set forth herein. Such notices shall be deemed to have been promptly given and received for all purposes (a) if hand delivered, effective upon delivery; (b) if mailed, by United States registered or certified mail, postage prepaid, return receipt requested, effective on the date shown on the return receipt; or (c) if sent by Federal Express or other reliable express courier, effective on the next business day after delivery to such express courier service. Any person may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement. "Business day" shall mean any day, except Saturday, Sunday and any day which, in the State in which the Property is located, is a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

14. This Agreement shall be governed by the laws of the State in which the Property is located. If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

16. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement.

17. Tenant understands, acknowledges and agrees that Lender in entering into this Agreement and third parties who are interested in the matters covered by this Agreement are relying on the representations contained herein, including without limitation purchasers, transferees, assignees, servicers, participants, investors, and their respective successors and assigns, and credit rating agencies in connection with the Loan.

IN WITNESS WHEREOF, Tenant, Lender and Landlord have hereunto caused this Agreement to be duly executed as of the day and year first above written.

Date: \_\_\_\_\_, 2009

TENANT:  
  
BEVERAGES & MORE, INC.,  
a Delaware corporation  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of BEVERAGES & MORE, INC., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
[notarial seal]



Date: \_\_\_\_\_, 2009

**LANDLORD:**

**ROLLING HILLS PLAZA LLC.,**  
a California limited liability company

By: ROLLING HILLS PLAZA VENTURE 96, LLC, a  
California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING  
CENTER, a California limited partnership  
Managing Member

By: LA CAZE PARTNERSHIP, a  
California limited partnership  
General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

By: \_\_\_\_\_  
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC,  
a Delaware limited liability company  
Its Member

By: BRISTOL GROUP, INC.,  
Its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

STATE OF \_\_\_\_\_ )  
) SS:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and  
correct. WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF \_\_\_\_\_ )  
) SS:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and  
correct. WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)





**EXHIBIT A-1****THE PROPERTY****ROLLING HILLS TRACT 1****PARCEL 1**

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 210.00 FEET; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 209.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 188.68 FEET TO THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2 IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 193.04 FEET; THENCE SOUTH 01 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION ALONG PACIFIC COAST HIGHWAY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST, 470.93 FEET; THENCE NORTH 45 DEGREES 36 MINUTES 26 SECONDS WEST, 59.01 FEET TO A POINT OF TANGENCY WITH CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1,828.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 08 MINUTES 54 SECONDS, AN ARC DISTANCE OF 100.45 FEET TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 300.00 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 101 DEGREES 11 MINUTES 01 SECONDS, AN ARC DISTANCE OF 44.15 FEET TO A POINT OF TANGENCY WITH A LINE BEARING NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST, SAID LINE BEING THE SOUTHEASTERLY LINE OF THAT PARCEL OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40,9-2, SAID LINE BEING NOW RECOGNIZED AND ACCEPTED AS THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD (100.00 FEET); THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 16.55 FEET; THENCE SOUTH 1 DEGREES 50 MINUTES 10 SECONDS WEST 25.39 FEET TO THE POINT OF BEGINNING.

**PARCEL 2**

THAT PORTION OF LOT 1, TRACT NO. 9765, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 170 PAGES 10, 11 AND 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL "D" UNDER PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID NORTHERLY LINE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 545.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 41 DEGREES 14 MINUTES 40 SECONDS EAST 700.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 125.00 FEET; THENCE SOUTH 41 DEGREES 14 MINUTES 40 SECONDS WEST 74.00 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 263.58 FEET; THENCE SOUTH 52 DEGREES 25 MINUTES 41 SECONDS WEST 138.64 FEET; THENCE SOUTH 48 DEGREES 45 MINUTES 20 SECONDS EAST 85.69 FEET; THENCE SOUTH 41 DEGREES 16 MINUTES 35 SECONDS WEST 90.44 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 156.18 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF CRENSHAW BOULEVARD, 100.00 FEET WIDE, SAID STRIP OF LAND DESCRIBED AS PARCEL "A" UNDER SAID PARCELS 8-40, 9-2, IN COMPLAINT IN CASE NO. 572730 OF THE SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 932.23 FEET; THENCE SOUTH 37 DEGREES 34 MINUTES 19 SECONDS EAST 246.00 FEET; THENCE NORTH 52 DEGREES 25 MINUTES 41 SECONDS EAST 286.66 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT 1; THENCE ALONG SAID EASTERLY LINE SOUTH 00 DEGREES 11 MINUTES 20 SECONDS WEST 1,671.69 FEET TO THE NORTHERLY LINE OF PACIFIC COAST HIGHWAY; THENCE ALONG SAID NORTHERLY LINE NORTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 26.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1,096.28 FEET, THROUGH A CENTRAL ANGLE OF 41 DEGREES 03 MINUTES 15 SECONDS, A LENGTH OF 785.52 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 20 SECONDS WEST 349.67 FEET TO THE TRUE POINT OF BEGINNING.

**ROLLING HILLS TRACT 2**

The surface rights only to the certain land situated in the City of Torrance, County of Los Angeles, State of California, described as follows to-wit:

THAT PORTION OF THE RANCHO LOS PALOS VERDES, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2 PAGE 545 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS ALLOTTED TO ORIN S. WESTON BY DECREE OF DISTRIBUTION IN THE ESTATE OF B.S. WESTON RECORDED IN BOOK 2838 PAGE 230 OF DEEDS, RECORDS OF SAID COUNTY, BEING A PORTION OF THAT 20-FOOT STRIP OF LAND CONVEYED TO STANDARD OIL COMPANY IN DEED RECORDED IN BOOK 6265 PAGE 311 OF DEEDS, RECORDS OF SAID COUNTY, BOUNDED SOUTHERLY BY THE NORTH LINE OF PACIFIC COAST HIGHWAY, 100 FEET WIDE, AS DESCRIBED IN DEED RECORDED IN BOOK 12743 PAGE 23 OF OFFICIAL RECORDS OF SAID COUNTY AND BOUNDED NORTHERLY BY A LINE AT RIGHT ANGLES WITH THE WEST LINE OF SAID 20-FOOT STRIP DISTANT NORTHERLY ALONG SAID WEST LINE 1,671.69 FEET FROM SAID NORTH LINE OF SAID PACIFIC COAST HIGHWAY.

**EXHIBIT K****RECOGNITION AND ATTORNMENT AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and among the CITY OF TORRANCE, a municipal corporation, having an office at 3031 Torrance Blvd., Torrance, California 90503 (hereinafter called "Owner"), Rolling Hills Plaza LLC, a California limited liability company, having an office at the offices of LaCaze Development Company, 2601 Airport Drive, Suite 300, Torrance, California 90505, and at the offices of Bristol Group, Inc., 400 Montgomery Street, 4<sup>th</sup> Floor, San Francisco, California 94104 (hereinafter called "Lessee") and Beverages & More, Inc., a Delaware corporation, having an office at 1470 Enea Circle, Suite 1600, Concord, California 94520 (hereinafter called "Sublessee").

**WITNESSETH:**

A. Owner is the owner in fee of the parcel of land more particularly described on Exhibit "A" attached hereto and made a part hereof, lying and being in the City of Torrance, Los Angeles County, California (hereinafter referred to as the "Shopping Center Land").

B. On or about October 21, 1987, Owner and Lessee entered into that certain Lease dated October 21, 1987 (the "Original Lease"), which was amended by (i) that certain Amendment No. 1 to Lease dated August 28, 1990 (the "First Amendment"); (ii) that certain Second Amendment to Lease dated January 23, 1996 (the "Second Amendment"); and (iii) that certain Third Amendment to Lease dated July 15, 1997 (the "Third Amendment") (the Original Lease, as amended by the First, Second, and Third Amendments is herein referred to as the "Ground Lease").

C. Lessee proposes to sublease, or has subleased to Sublessee certain premises (the "Premises") on a portion of the Shopping Center Land, together with improvements which are to be (or have been) constructed thereon by Lessor pursuant to a certain lease dated \_\_\_\_\_, 2009 between Lessee and Sublessee (the "Occupancy Lease").

NOW, THEREFORE, in consideration of the premises and to induce Lessee and Sublessee to enter into the Occupancy Lease, the parties hereto mutually covenant and agree as follows:

1. Owner warrants and represents that (a) Owner is the owner in fee of the Shopping Center Land and of the Lessor's interest in the Ground Lease; (b) Owner has full right and lawful authority to execute and deliver this Agreement; (c) the Ground Lease is in full force and effect and has not been amended, and no default exists thereunder either in payment of rent or in the performance of any other covenant of the Lessee thereunder and that all conditions precedent to the commencement of the term of the Ground Lease have been satisfied; (d) the execution and delivery by Lessee of the Occupancy Lease will not constitute a violation of any term, covenant or condition of the Ground Lease; (e) Owner has a copy of the Occupancy Lease and has reviewed and approved such Lease; and (f) the Ground Lease expires not sooner than March 15, 2049 and that Owner will not enter into any agreement or take any action that will cause the Ground Lease to expire earlier than March 15, 2049.

2. Lessee warrants and represents (a) that it is the owner of the Lessee's interest under the Ground Lease; (b) it has full right and lawful authority to execute the Occupancy Lease and this Agreement; and (c) the Ground Lease expires not sooner than March 15, 2049 and that Lessee shall not enter into any agreement or take any action that will cause the Ground Lease to expire sooner than March 15, 2049.

3. Owner hereby approves the Occupancy Lease. Owner acknowledges that Lessee has the full right and power to enter into the Occupancy Lease upon the terms, covenants and conditions set forth therein, it being agreed by Owner and Lessee that if the Sublessee shall execute the Occupancy Lease, the Ground Lease shall (notwithstanding anything to the contrary therein contained) be deemed amended to the extent, if any, required to permit the Lessee to assume the obligations and to grant to the Sublessee the rights, powers, privileges and immunities provided for in the Occupancy Lease.

4. Owner agrees that, so long as the Ground Lease has not expired, terminated or been canceled, Owner shall do nothing to disturb or otherwise affect in any manner the quiet possession of the Sublessee under the Occupancy Lease. Owner further agrees that Lessee and the Sublessee shall have the right to amend the Occupancy Lease from time to time.

5. Owner agrees with Sublessee that in the event, for any reason whatsoever, the Ground Lease terminates or is canceled during the term of the Occupancy Lease, including any extension thereof, whether as the result of a default by the Lessee thereunder, notice by Lessee of cancellation thereof or otherwise:

(a) The Occupancy Lease shall continue for the duration of its terms and any extensions thereof (subject, however, to the rights of the Landlord and Tenant under the Occupancy Lease to terminate the Occupancy Lease as therein set forth) as a direct lease between Owner and Sublessee with the same force and effect as if Owner had originally entered into such Occupancy Lease as Landlord thereunder;

(b) Sublessee shall not be named or joined in any action or proceeding by Owner under the Ground Lease to recover possession of the Shopping Center Land or any part thereof or for any other relief from Lessee;

(c) Sublessee shall perform all the covenants and agreements of the Occupancy Lease on its part to be performed for the direct benefit of Owner and Owner shall perform all the covenants and agreements of the Occupancy Lease to be performed on the part of the Landlord thereunder for the direct benefit of the Sublessee;

(d) Owner shall give Sublessee prompt notice in writing of such event (together with essential details and dates); and

(e) From and after receipt by Sublessee of such notice, the payment by Sublessee to Owner of rentals and other payments then due or thereafter becoming due to Lessee under the Occupancy Lease shall constitute full performance of all obligations with respect to such payments actually made by Sublessee but, prior to the receipt of such notice, Sublessee shall have no obligation to make any payment to Owner and shall be deemed to have fully performed in respect of any sums theretofore paid to Lessee in accordance with the provisions of the Occupancy Lease.

6. Owner and Lessee covenant and agree that the Ground Lease will not be modified or amended in any manner affecting Sublessee without the prior written consent of Sublessee.

7. Owner hereby waives any and all liens, claims, demands or rights including, but not limited to, rights of levy, execution, sale and distraint for unpaid rent, or any other rent, interest or lien which Owner now has or may hereafter acquire in any and all trade fixtures and equipment, signs, appliances, furniture and other personalty installed at any time by Sublessee on the Premises leased by Sublessee pursuant to the Occupancy Lease including, without limitation, lighting fixtures, projection and sound equipment and seats (all of the foregoing being collectively referred to as "Sublessee's Property"). In connection with the financing by Sublessee of "Sublessee's Property" (by granting a security interest therein or entering into an equipment lease therefore), Owner agrees to execute and deliver to Sublessee an Owner's waiver and all other documents reasonably required by such lessor or the holder of a security interest in Sublessee's Property.

8. Owner hereby acknowledges and agrees that it will not cause or suffer the creation of a mortgage or other security interest affecting the Shopping Center Land (and any attempt to do so shall be deemed null and void) unless the rights and interests acquired under such mortgage or security interest ("Owner Mortgage") by the holder thereof is subject and subordinate to the rights and interests of the Lessee under the Ground Lease and the rights and interest of Sublessee pursuant to the Occupancy Lease and this Agreement; provided, however, an Owner Mortgage may be superior to the Ground Lease and Occupancy Lease if there shall be recorded in the appropriate real property records of Los Angeles County, California, an agreement, in form and substance reasonably satisfactory to Lessee and Sublessee, whereby the holder of the Owner Mortgage, its successors and assigns, agrees that the foreclosure of the Owner Mortgage shall not affect the right to possession of the Shopping Center Land of Lessee and Sublessee pursuant to the Ground Lease and Occupancy Lease, respectively, nor any of the rights, privileges, interests or easements granted to them under the Ground Lease, the Occupancy Lease and this Agreement.

9. Any notice or demand provided for in this Agreement shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid to a party at its address first hereinabove given or to such other address as any such party may designate by notice to the other parties. Any such notice shall be deemed given on the third business day following the day on which the same is deposited in a regularly maintained post office box or Post Office of the United States Postal Service.

10. All parties to this Agreement agree to execute such further instruments as may be reasonably requested by another party hereto in order to carry out this Agreement in accordance with the tenor and purpose hereof.

11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or partners and their seals to be affixed and attested as of the day and year first above written.

"OWNER"

CITY OF TORRANCE, a municipal corporation

ATTEST

\_\_\_\_\_  
CITY CLERK

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

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

APPROVED AS TO FORM

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

\_\_\_\_\_  
CITY ATTORNEY

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

Print: \_\_\_\_\_

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

[signatures continue on next page]



“LESSEE”

ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: ROLLING HILLS PLAZA VENTURE 96, LLC,  
a California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING CENTER,  
a California limited partnership  
Managing Member

By: LA CAZE PARTNERSHIP, a California limited partnership  
General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

By: \_\_\_\_\_  
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC, a Delaware limited liability company,  
Its member

By: BRISTOL GROUP, INC.,  
Its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

“SUBLESSEE”

Beverages & More, Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT L****TELECOMMUNICATIONS LICENSE AGREEMENT**

This Agreement made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ ("Licensor") and \_\_\_\_\_ ("Licensee").

RECITALS

A. Licensor, as Landlord, and Licensee, as Tenant, have entered into a lease agreement dated \_\_\_\_\_ (the "Lease") for certain premises (the "Premises") described as \_\_\_\_\_ which are part of the building (the "Building") described as \_\_\_\_\_.

B. At Licensee's request, Licensor is granting to Licensee a license to install, maintain, operate and remove, upon and subject to the terms set forth below, certain telecommunications equipment and the related conduit facilities connecting this equipment to the Licensee's distribution network.

NOW, THEREFORE, Licensee and Licensor agree as follows:

1. A. Licensor hereby grants permission (the "License") to Licensee to install, maintain, operate and remove, at its sole expense and risk, the communications equipment and appurtenances described herein on and in the Building and/or Equipment Space and the related conduit facilities connecting Licensee's equipment in the Building to Licensee's distribution network (as the same may be designated or redesignated by Licensor).

B. The License granted herein is not exclusive. Licensor hereby reserves the right to grant, renew or extend similar licenses to others on and in the Building.

C. Nothing contained herein shall be construed as granting to Licensee any property or ownership rights in the Building or to create a partnership or joint venture between Licensor and Licensee.

D. The equipment to be installed, maintained, operated and removed by Licensee, in and from the Building ("Licensee's Equipment") is described in Exhibit A attached hereto. Licensor shall not be liable for damage to Licensee's Equipment or theft, misappropriation or loss thereof except to the extent the same are caused by the gross negligence or willful misconduct of Licensor, its agents, employees or contractors.

E. Licensor shall have the absolute right to limit the type, size and location of Licensee's Equipment located on or in the Building, and may, at Licensee's sole expense, request Licensee to relocate Licensee's Equipment in the Building, at Licensor's reasonable discretion; provided, however, any such relocation shall be to another location on the Building in close proximity to the Premises. Such request(s) may be made at any time during the Lease term. Licensor shall provide a reasonable amount of space on Landlord's risers (the "Equipment Space") in the location designated on the plan annexed hereto as Exhibit B. The Equipment Space will be used by Licensee as the Building service site. Licensor shall have the right to permit other occupants of the Building to locate telecommunications equipment in the Equipment Space. Licensor makes no warranty or representation that the Equipment Space or the Building are suitable for the Licensee's use, it being assumed that Licensee has satisfied itself thereof. Licensee has inspected the Equipment Space and the Building and accepts them in their existing "as is" condition and agrees that Licensor is under no obligation to perform any work or provide any materials to prepare the Equipment Space or the Building for Licensee's use.

2. Licensor agrees that Licensee's authorized representatives shall have access to the Equipment Space and the Building for the purposes of installing, maintaining, operating and removing Licensee's Equipment, and Licensor further agrees to give Licensee ingress and egress to the Building during the continuation of this Agreement. It is agreed, however, that only authorized engineers, employees or properly authorized contractors, sub-contractors and agents of Licensee, Federal Communications Commission ("F.C.C.") inspectors, or persons under their direct supervision and control will be permitted to enter the Building for the foregoing purposes, and only upon conditions set forth herein. Prior to any entry upon the Building, Licensee shall submit a written request to Licensor substantially in the form attached hereto as Exhibit C stating the name and company of the person(s) who will enter the Building and the reason for the entry. Permission for all entries upon the Building (including entries for maintenance and/or installation) must be received from Licensor in advance, unless such permission cannot be obtained in a timely fashion due to emergency situations. Licensee agrees to be responsible for any damage caused to the Building, and/or any other property owned by Licensor or any lessee or licensee of Licensor which may be caused by Licensee or any of its agents or representatives. Licensee further agrees to exercise firm control over the people requiring access to the Licensee's Equipment and/or the Equipment Space in order to keep to a minimum the number of people visiting this installation and the frequency of the visits.

3. It is further understood and agreed that Licensee's Equipment and appurtenances thereto, and the installation, maintenance and operation thereof, will in no way damage the Building. If such damage shall occur, Licensor shall give Licensee written notice thereof and Licensee shall correct the same promptly.

4. Licensee agrees that Licensee's Equipment will not cause material interference to Licensor or other tenants or licensees of the Licensor or to public facilities in the vicinity of the Building (including, without limitation, the airport). In the event Licensee's Equipment causes such material interference, Licensee will take all steps necessary to correct and eliminate the material interference. If said interference cannot be eliminated within three (3) business days hours after receipt of written notice from Licensor to Licensee, Licensee shall temporarily disconnect the electric power and shut down Licensee's Equipment, except for intermittent operation for the purpose of testing, after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference. If such interference is not corrected within

sixty (60) days after receipt of said written notice, Licensee agrees to establish alternative facilities and to remove Licensee's Equipment from the Building, and this Agreement shall terminate without further obligation on either party except as may be specifically set forth herein.

5. Licensee agrees to maintain Licensee's Equipment in proper operating condition and to maintain same in satisfactory condition as to safety. Cost of maintenance and repair to Licensor's equipment room and other portions of the Building shall be borne by Licensor unless damage thereto is caused by the active negligence or willful misconduct of Licensee, its agents, employees or contractors, in which case Licensor shall repair such damage and Licensee shall reimburse Licensor for all reasonable costs and expenses incurred in such repair.

6. All installations and operation in connection with this Agreement by Licensee shall meet with all applicable Rules and Regulations of the F.C.C. and applicable codes and regulations of the city, county and state pertaining to the installation and operation of Licensee's Equipment. The Licensor assumes no responsibility for the licensing, operation and/or maintenance of Licensee's Equipment. Licensee has the responsibility of carrying out all of the terms of its F.C.C. License, if any, and Licensee covenants and agrees as follows:

(a) Licensee shall not install any equipment other than Licensee's Equipment specified in Exhibit A, and Licensee shall not install Licensee's Equipment in any manner other than in accordance with the manner of installation specified in Exhibit A.

(b) Licensee shall comply with any conditions which the F.C.C. may impose with respect to the installation, maintenance and/or operation of Licensee's Equipment, or any other equipment which Licensee may install in or on the Building pursuant to this Agreement and shall pay for all legal, engineering and other expenses incident thereto;

(c) Licensee shall, at its cost and expense, prepare and deliver to Licensor working drawings, plans and specifications (the "Plans"), detailing the location and size of the Licensee's Equipment and/or the Equipment Space specifically describing the proposed construction work. No work shall commence until Licensor has approved the Plans in writing. Licensee agrees that the installation will be done in a neat, responsible and workmanlike manner;

(d) Licensee shall make available to Licensor a copy of its F.C.C. construction permit, if required, and any other required federal, state and municipal permits, licenses and approvals prior to commencement of installation of Licensee's Equipment;

(e) All costs for the installation and maintenance of Licensee's Equipment in and on the Building shall be borne solely by Licensee. Installations or substitutes shall be made by Licensee using suitable rust-proof devices of the highest quality commonly used in the industry, capable of bearing the stress and strain of the installation without impairing the use and occupancy of the Building by Licensor or other lessees or licensees of Licensor and without material adverse cosmetic impact upon any portion of the Building. Licensee shall perform such installation and work in such a way as to reasonably minimize interference with the operation of the Building;

(f) Licensee shall be responsible for all electrical and HVAC costs attributable solely to Licensee's Equipment, which costs may be reasonably estimated by Licensor; and

(g) At the conclusion of Licensee's initial installation of Licensee's Equipment, Licensee agrees, if requested by Licensor, to refinish any damaged surface of the Building that may be involved in any or all parts of the installation of the facilities proposed hereunder which have been damaged by Licensee or any of its agents, representatives, employees, contractors, subcontractors, or invitees, excepting damage caused by ordinary wear and tear and damage by the elements or casualty.

7. Licensee agrees to ensure that the comprehensive public liability and property damage insurance which Licensor is required to maintain under the Lease includes coverage for use and operation of the Licensee's Equipment in and on the Building. In addition, Licensee shall require its contractors and subcontractors to procure and maintain for their employees, before commencing an installation and/or maintenance work of the Licensee's Equipment on the Building, Worker's Compensation Insurance in a responsible insurance company reasonably acceptable to Licensor, providing for the payment of compensation in accordance with the laws of the state in which the Building is located, for all workmen employed by or on behalf of such contractors and subcontractors, and further insuring Licensor against any and all liability for personal injury (including death) of such workmen and/or employees. Licensee shall, prior to the commencement of any installation and/or maintenance of the Licensee's Equipment under this Agreement, and thereafter so long as this Agreement shall remain in force, provide Licensor with current certificates of insurance evidencing that such insurance is in full force and effect and that such insurance shall not be canceled without first giving at least fifteen (15) days written notice to Licensor. Such certificates of insurance shall name Licensor, Property Manager and Bristol Group, Inc. as additional insureds.

8. Licensee hereby agrees to indemnify, defend and save harmless Licensor and its licensees and lessees from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith, made, brought or obtained on account of the loss of life, property, or injury or damage to the person or property of any person or persons whomsoever connected or not connected with the parties hereto, which loss of life or property, or injury or damage to persons or property, shall be due to or arise out of, result from, or be in any way connected with Licensee's use, enjoyment, installation, maintenance or removal of the Licensee's Equipment in or on the Building and entries thereupon by any agent, representative, employee, contractor, subcontractor of Licensee with respect to Licensee's Equipment. This indemnification shall not apply if such loss of life, property or injury or damage is attributable to the gross negligence or willful misconduct of Licensor, its agents, representatives, employees, contractors, subcontractors or invitees. The provisions of this Paragraph 8 shall survive the termination of this Agreement.

9. Licensee shall not assign this Agreement, or any interest therein, and shall not sublet the Equipment Space or any part thereof, and shall not permit any third party use of Licensee's Equipment, without the written consent of Licensor

first had and obtained, which consent shall be subject to the same conditions in the Lease as are applicable to Licensee's assignment of the Lease. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto as well as the parties themselves.

10. The subordination by Licensor of any breach of any term, covenant or condition herein contained shall not be deemed to be a subordination of such terms, covenant, or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.

11. A. The term of this Agreement shall be for a maximum period equal to the maximum term of the Lease (the "Term"). In the event that the Lease expires or is terminated in accordance with its terms or applicable law, the Term of this Agreement also shall be terminated contemporaneously with such expiration or termination.

12. There shall be no separate fee, rent or other consideration payable by Licensee as consideration for the rights contained herein.

13. Licensee shall be responsible for the satisfaction or payment of any liens associated with the installation, repair, maintenance or removal of the Licensee's Equipment asserted by any provider of work, labor, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Licensor against any such liens, including the reasonable fees of Licensor's attorneys. Such liens shall be discharged by Licensee within thirty (30) days after notice of filing thereof by bonding, payment or otherwise, provided that Licensee may contest, in good faith and by appropriate proceedings any such liens.

14. Any and all notices or demands by or from Licensor to Licensee, or Licensee to Licensor, shall be in writing and shall be deemed given upon (a) two (2) business days after deposit into United States mail, postage prepaid, certified mail return receipt requested, or (b) one (1) business day after delivery to United States Postal Service Express Mail or similar nationally-recognized overnight delivery service, e.g., FedEx. Until notified of a different address, as provided herein, all notices shall be addressed to the parties as follows:

LICENSEE: Beverages & More, Inc.  
1470 Enea Circle, Suite 1600  
Concord, California 94520  
Attn: Real Estate Department

LICENSOR: Rolling Hills Plaza LLC  
c/o Bristol Group, Inc.  
400 Montgomery Street, Suite 400  
San Francisco, CA. 94104  
Attention: Jeffrey S. Kott

With a copy to:

La Caze Development Company  
2601 Airport Drive, Suite 300  
Torrance, CA 90505  
Attention: Norman R. La Caze

15. In the event of Licensee's failure to comply with any provision of this Agreement, where such failure has continued for a period of twenty (20) days after written notice from Licensor specifying the exact nature of such failure, Licensor may, at its option, terminate this Agreement without affecting its right to sue for any other damages to which Licensor may be entitled at law or in equity. In the event legal action, suit or any proceeding is commenced between the parties regarding their respective rights and obligations under this Agreement, the prevailing party shall be entitled to recover, in addition to damages or other relief, reasonable costs and expenses, reasonable attorneys' fees and court costs. As used herein, the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

16. A. In the event of any physical calamity or physical damage to the Building, which make it impossible for Licensee to carry out the purposes for its installation, maintenance and operation of the Licensee's Equipment in or on the Building, Licensor, at its sole option and expense, may attempt to remedy such a problem within sixty (60) days after such occurrence. In the event Licensor either (a) elects not to attempt to cure or remedy such damage, or (b) fails to correct such damage within such sixty (60) day period, Licensee may, at its option, terminate this Agreement upon thirty (30) days' prior written notice to Licensor.

B. This Agreement may be terminated at the option of Licensee by reason of any law or governmental prohibition making it impossible to Licensee to carry out the purposes for its installation, maintenance and operation of the Licensee's Equipment in or on the Building upon thirty (30) days' prior written notice to Licensor.

C. Upon such termination pursuant to subparagraph 16.A. or 16.B., Licensee shall immediately remove all of Licensee's Equipment from the Building and neither party shall have any further liability hereunder, except as provided in Paragraph 8.

17. Licensee shall be responsible for installing, operating and maintaining Licensee's Equipment and appurtenances, all of which shall remain the personal property of Licensee, and shall be removed by Licensee at its own expense upon the expiration or earlier termination of this Agreement and the areas of the Building to which Licensee's Equipment has been affixed shall be restored to its condition prior to said installation, at Licensee's sole expense, excepting

ordinary wear and tear, damage by the elements or casualty and damage caused by Licensor, its agents, employees, contractors, subcontractors, or invitees. Such installation, maintenance, operation, and removal shall be performed in a manner to avoid any material interference with Licensor or any other lessees or licensees of Licensor.

18. Licensee shall report, assess, and pay all taxes on all structures, improvements, and equipment of every kind installed or placed on or in the Building by Licensee.

19. If the Building becomes unfit or undesirable for Licensee's use, Licensor, at its sole option and expense may attempt to remedy such problem within sixty (60) days after written notice thereof. In the event that Licensor either (A) elects not to attempt to cure or remedy such a problem, or (B) fails to provide an adequate remedy within such sixty (60) day period, Licensee may terminate this Agreement upon ninety (90) days' prior written notice to Licensor, in which event, Licensee shall remove Licensee's Equipment from the Building and neither party shall have any further liability hereunder, except as provided in Paragraph 8.

20. This Agreement contains the entire agreement between the parties hereto and supersedes all previous negotiations leading thereto. This Agreement may be modified only by an agreement in writing signed by Licensor and Licensee.

21. This Agreement shall be governed by and construed under the laws of the state in which the Building is located.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LICENSOR: ROLLING HILLS PLAZA LLC,  
a California Limited Liability Company

By: ROLLING HILLS PLAZA VENTURE 96, LLC,  
a California limited liability company  
Its Member

By: ROLLING HILLS PLAZA SHOPPING CENTER,  
a California limited partnership  
Managing Member

By: LA CAZE PARTNERSHIP,  
a California limited partnership  
General Partner

By: \_\_\_\_\_  
Norman R. La Caze, Trustee,  
General Partner

By: \_\_\_\_\_  
Carole J. La Caze, Trustee,  
General Partner

By: NORTHERN RHP LLC, a Delaware limited liability company,  
Its member

By: BRISTOL GROUP, INC.,  
Its Manager

By: \_\_\_\_\_  
Jeffrey S. Kott, Principal

By: \_\_\_\_\_  
James J. Curtis, Principal

LICENSEE: Beverages & More, Inc.,  
a Delaware corporation

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

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

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

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



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

A handwritten signature in black ink, consisting of a stylized, cursive letter 'A' followed by a horizontal line underneath.

EXHIBIT A

(To be provided by LICENSEE)

A handwritten signature in black ink, appearing to be the initials 'AL', is located in the bottom right corner of the page. The signature is written over a horizontal line.

**EXHIBIT B**

(To be determined by Building Manager)

A handwritten signature in black ink, appearing to be the initials 'AL', is written over a horizontal line at the bottom right of the page.

**EXHIBIT C**

**Request for Access to the Equipment Space and/or Building**

I or (We), \_\_\_\_\_, request permission of \_\_\_\_\_  
\_\_\_\_\_ to allow our employee(s) or representatives \_\_\_\_\_ (name and company) to  
enter the Equipment Space and/or the Building on \_\_\_\_\_ (date) for \_\_\_\_\_  
\_\_\_\_\_ (reason).

Licensee: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Agent

Request Approved By: \_\_\_\_\_

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



**EXHIBIT M**  
**CONFIDENTIALITY AGREEMENT**

Name  
Title  
Company  
Address  
City, State, Zip

RE:

Dear :

Per your request, we will be sending you, under separate cover, financial statements for Beverages & More, Inc. ("BevMo") in connection with the lease (the "Lease") for premises located at 2533-A Pacific Coast Highway, Torrance, California, under which Lease BevMo is the Tenant and Rolling Hills Plaza LLC is the Landlord. I am sure you understand that we are a private company and our internal financial information includes confidential and proprietary trade secrets of our company, disclosure of which to unauthorized persons would cause us irreparable harm.

Accordingly, before we share the information with you, we ask that you confirm on behalf of \_\_\_\_\_ [name of Company] (the "Company") that you and the Company will maintain and keep any such information confidential and that you and the Company (1) will not disclose any of the information to any third party without our express, written consent, which consent will be conditioned on delivery to us of a letter from such third party identical to this letter whereby such third party agrees to keep the information confidential (provided that any partner or member of or shareholder in the Company [and also including Landlord's Managing Agent, and such partners, members or shareholders thereof, if Landlord is the Company] shall be permitted to receive such information with the implied agreement that such person or entity shall be deemed bound by the Company's agreement that the same shall remain confidential), (2) will disclose such information internally and to our accountants and/or attorneys only on a "need-to-know" basis, (3) will agree that you will use such information only in connection with the terms and conditions of the Lease, and (4) will return to us all of our confidential information upon our request. These obligations also extend to excerpts, extracts, summaries or copies of our confidential information.

Notwithstanding the foregoing, the Company shall be permitted to disclose such information (i) to the Company's accountants performing a review of such information, (ii) to the principals of the Company who receive the results of such review and (iii) as specifically required by applicable legal requirements, statutory reporting requirements or auditing disclosure requirements. Furthermore, this agreement shall not be deemed to prevent the Company from disclosing the confidential information in the course of any proceeding to enforce or defend a claim brought under the Lease or this agreement. In addition, the provisions of this agreement shall not be deemed to obligate the Company to withhold disclosure when such disclosure is required as a matter of law or in connection with any governmental investigation or other governmental proceeding (e.g., legislative hearings); however, if the Company is served with legal process purporting to compel such disclosure, the Company shall give us prompt written notice thereof so that we may seek such protective relief as we deem necessary or appropriate.

Landlord and Landlord's Managing Agent (but not other recipients of such confidential information) shall have the right to keep a single copy of the confidential information BevMo provides as well as any notes that are derived from such information.

This confidentiality letter agreement may be executed in one or more counterparts and may be executed by the parties exchanging executed signature pages via facsimile or electronic mail.

Upon receipt of a countersigned copy of this letter, we will forward the requested information to you. If you have any questions, please do not hesitate to call me at (925) 609-1330.

Sincerely,  
BEVERAGES & MORE, INC.

By: \_\_\_\_\_  
Denise Rowan  
Chief Financial Officer

The undersigned acknowledges receipt of the foregoing letter and agrees to comply fully with the terms and conditions contained therein.

[NAME OF COMPANY]

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 20\_\_



EXHIBIT NENVIRONMENTAL REPORTS

The following reports have either been provided to Tenant or made available to Tenant for Tenant's inspection at Landlord's offices:

Phase I Environmental Assessment prepared by Environ, dated May 15, 2002

Limited Asbestos Survey prepared by Panacea, Inc., dated July 27, 2005

Hazardous Materials Survey of Bldg. EX-15 (2533-A PCH) prepared by Environ, dated January 27, 2009

Asbestos Operation and Maintenance Plan Final prepared by Panacea, Inc., dated May 2002

Asbestos O&M letter (file copy, master 2007) –

Other Reports Available at Landlord's office (some of which may have supplement information regarding removal certification):

Final Supplemental Asbestos Survey for Building EX-1, dated December 27, 2001;

Limited Asbestos Survey – Final – Building EX 9B (2585 PCH), dated August 2, 2005;

Limited Asbestos Survey – Final – Building EX 10 (partial), dated December 27, 2001;

Limited Asbestos Survey – Final – Building EX 10 (2 suites), dated December 2, 2002;

Limited Asbestos Survey – Final – Building EX 10 (storage rooms), dated November 5, 2003;

Limited Asbestos Survey – Final – Building EX 10 (1 suites), dated September 24, 2003;

Limited Asbestos Survey – Final – Building EX 14 (2501), dated April 22, 2005;

Limited Asbestos Survey – Final – Building EX 4 (2665), dated September 2006;

Asbestos Survey Report – Final – Building EX-9 – Suite 2613, dated March 2004;

Asbestos Survey Report – Final – Building EX-9A – Suite 2613, dated August 2005

Physical - Environmental - Phase I(1999)

Phase I Environmental Site Assessment Rolling Hills Plaza

Prepared by Environ Corporation

March 4, 1999

Area Surveyed:

2601 Airport Drive. Torrance, CA

Physical - Environmental - Phase I (2002)

Phase I Environmental Site Assessment Rolling Hills Plaza

Prepared by Environ Corporation

May 15, 2002

Area Surveyed:

Rolling Hills Plaza, 2601 Airport Blvd. (Phase I)

Office Building at the former Rolling Hills Auto Center, 25210 Crenshaw Blvd.

Physical — Environmental — Phase I 1999— Levin-Fricke

Phase I Environmental Site Assessment Performed on S&S Auto Center

Prepared by LFR, Levine and Fricke

April 6, 1999

Area Surveyed:

S&S Auto Center, 25210-25212 Crenshaw Blvd., Torrance, CA, approx. 37,800 sq. ft.

Physical — Environmental — Phase I(1998)

Phase I Environmental Site Assessment Rolling Hills Plaza

Prepared by Vertex Engineering Services, Inc.

August 20, 1998

Area Surveyed:

2601 Airport Drive, Torrance, CA, approx. 29 acres in area, 377,500 sq. ft. of rentable space, parcel numbers 7377-

006- 903 and 905

Physical - Property Condition Report - EMG - April 2002

Property Condition Report of Rolling Hills Plaza, Intersection of Pacific Coast Highway and Crenshaw Blvd., Torrance, CA

90505

Prepared by EMG

May 6, 2002

- Clearance Air Monitoring Certification

Prepared by Steven Modtland and Hsin H. Chou, Panacea, Inc.

7/22/05

RHP, Unit #25420, Building EX-17

- Air Monitoring Certification  
Prepared by Steven Modtland and Hsin H. Chou, Panacea, Inc.  
9/24/04  
area surveyed: RHP, Building EX-1 (Suites #25306 and #25308)
- Air Monitoring Certification  
Prepared by Steven Modtland and Hsin H. Chou, Panacea, Inc.  
9/14/04  
area surveyed: RHP, Building EX-9A (Suites #2613)
- Perimeter Air Monitoring Certification  
Prepared by Steven Modtland, Hsin H. Chou, Panacea, Inc.  
9/26/02  
Area surveyed: RHP
- Clearance Air Monitoring Certification  
Prepared by Steven Modtland and Hsin H. Chou, Panacea, Inc.  
12/12/03  
RHP Building EX.10, Gift Komer Storage
- Clearance AI Monitoring Certification  
Prepared by Steven Modtland Hsin H. Chou, Panacea Inc.  
2/21/02  
area surveyed: RHP, Building EX-1 (Suite #25348)

Physical - Soils Report

Reports and Letter from various Dates

- Bi-Annual Soil Vapor Monitoring  
Prepared by Bryant, Palmer, Soto, Inc.  
July 9, 1996  
Area surveyed: 2617 Pacific Coast Highway
- Analytical Results  
Prepared by American Environmental Testing Laboratory Inc.  
1995  
Area surveyed: Rolling Hills Plaza
- Building Materials Sampling and Analysis  
Prepared by Jack K. Bryant Engineers,  
July 1996  
Area surveyed- 2645 Airport Drive
- Geotechnical Investigation re: Pile Capacity  
Prepared by American Geotechnical soil report  
May 8, 1996  
Area surveyed: AMC Rolling Hills

**EXHIBIT O**

**HVAC REPORT**

There is a 5 ton gas electric unit for the south side entry that is 17 years old and is in fair condition.  
The unit is an Amana Gas/Electric labeled unit # 1  
Model number - Illegible  
Serial number - Illegible  
However, Dennis was able to decipher that the unit was built in 1992  
NOTE: This tenant has never had a gas service so Dennis could not verify the heating operation.

There is a 3 ton heat pump for the basement that is 24 years old and is in fair condition.  
The unit is a BDP Heat Pump labeled unit # 2  
Model number - Illegible  
Serial number - Illegible  
However, Dennis was able to decipher that the unit was built in 1985

There is a 3 ton heat pump for the upper level that is 23 years old and is in fair condition.  
The unit is a BDP Heat Pump labeled unit # 3  
Model number - Illegible  
Serial number - Illegible  
However, Dennis was able to decipher that the unit was built in 1986

