

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

MARION TOBACCO AND VAPE LLC, et al.,
Plaintiffs,

v.

Case No. 2:26-cv-0438
Hon. Irene C. Berger

FREDRIC L. WOOTON, in his official capacity as
Commissioner of the West Virginia Alcohol
Beverage Control Administration,
Defendant.

**PLAINTIFFS’ REPLY TO DEFENDANT’S RESPONSE IN OPPOSITION
TO PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs, by and through undersigned counsel, respectfully submit this Reply to Defendant’s Response in Opposition to Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction.

INTRODUCTION

The Constitution is the “fundamental and paramount law of the nation,” and where legislative action conflicts with it, “the constitution, and not such ordinary act, must govern.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177–78 (1803).

That principle frames the issues before the Court. The importance of Defendant’s asserted governmental interests does not cure constitutional defects in the means chosen to advance them. In critical respects, Defendant concedes Plaintiffs’ position; in others, it offers no response at all; and where it does defend the challenged provisions, its asserted justifications reinforce the constitutional defects Plaintiffs identified. Those concessions, omissions, and inadequate justifications confirm that the *Winter* factors favor continued injunctive relief.

At the outset, Plaintiffs agree with Defendant on one fundamental point: protecting children is important. However, the means to protect that interest is not without constitutional limits. Simply put, a unilaterally declaring legislative intent as, “protecting children” does not eviscerate constitutional guardrails, to then allow impermissible discriminatory classifications, restrictions on protected speech, arbitrary regulation, or interference with established property rights.

Plaintiffs do not challenge West Virginia’s authority to prohibit sales to minors, require age verification, conduct lawful inspections, or punish unlawful conduct. Those protections exist independently of the challenged provisions and remain available regardless of the relief sought here.

Two things can therefore be true at once: protecting children is important, and the State must comply with the Constitution when doing so. Defendant attempts to reframe this case as though protecting Plaintiffs’ constitutional rights comes at the expense of protecting children. That is a false choice.

ARGUMENT

I. DEFENDANT CONCEDES THAT PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR FIRST AMENDMENT CHALLENGE

Defendant does not meaningfully defend the challenged speech restrictions. Instead, it concedes that Plaintiffs are likely to succeed on their challenge to the Act’s blanket advertising prohibition and argues that injunctive relief is unnecessary because certain restrictions are not enforceable until March and July 2027. That argument mistakes a future enforcement date for a future injury.

The regulated parties cannot wait until enforcement begins to comply. Manufacturers must develop labels, packaging, branding, and marketing, manufacture products, and distribute inventory before those products reach West Virginia retailers. Distributors and retailers likewise

purchase and stock inventory in advance. Plaintiffs must therefore make present commercial and expressive decisions based on restrictions governing words, imagery, trade dress, and product presentation that will govern products sold after the applicable dates. The burdens of compliance necessarily precede enforcement.

These are not insignificant adjustments. The challenged provisions regulate the labeling, packaging, marketing, imagery, branding, and presentation of lawful products. Plaintiffs cannot reasonably manufacture, purchase, or stock inventory that will become unlawful to sell only months later. Manufacturers must alter expression and production decisions in advance, while distributors and retailers must change purchasing and inventory decisions or risk holding products they cannot lawfully sell. The effective date is the deadline for compliance, not the date on which compliance begins.

Nor do the delayed enforcement dates eliminate the need for preliminary relief. The challenged restrictions become enforceable in March and July 2027, while this litigation remains in its early stages. Ordinary federal litigation can extend well beyond those dates; civil cases proceeding to trial took a median of 35.6 months from filing to trial in the twelve-month period ending December 2023.¹ Absent preliminary relief, Plaintiffs therefore face the challenged restrictions before any final adjudication can be assumed, requiring them either to conform their conduct in advance or risk enforcement while their constitutional claims remain pending.

Defendant's position would require Plaintiffs to wait until the eve of enforcement—after products have been redesigned, packaging altered, marketing abandoned, purchasing decisions changed, and inventory commitments made—to obtain constitutional relief. Pre-enforcement

¹ See Joanna R. Lampe, Cong. Rsch. Serv., IF12624, *Expediting Cases and Setting Deadlines for Court Actions* 2 (2024) (median time from filing to trial in civil cases was 35.6 months during the twelve-month period ending December 2023), available at https://www.congress.gov/crs_external_products/IF/PDF/IF12624/IF12624.1.pdf.

relief exists to prevent regulated parties from having to conform their conduct to a constitutionally suspect law or risk the consequences of noncompliance. Defendant's reliance on the future enforcement dates therefore does not eliminate irreparable harm; it ignores the present consequences of preparing for fixed and approaching deadlines.

Nor can Defendant avoid the March 2027 restrictions by asserting that Plaintiffs challenged only the blanket advertising prohibition. Plaintiffs expressly challenged restrictions on "product descriptions, branding, signage, and other communications" and specifically alleged that Blue Ridge is subject to the Act's "labeling, packaging, marketing, advertising, and promotional restrictions." Defendant therefore addresses only part of the First Amendment claim presented. It concedes likely success as to the blanket advertising prohibition, contests primarily the timing of the resulting injury, and offers no substantive defense to the separately challenged March 2027 restrictions.

II. DEFENDANT'S GENERALIZED ASSUMPTIONS ABOUT NONCITIZENS CANNOT SATISFY STRICT SCRUTINY OR JUSTIFY THE ACT'S SWEEPING CITIZENSHIP BAR.

The Act's categorical citizenship bar faces the Constitution's most demanding standard of review. To survive strict scrutiny, Defendant must prove that excluding every noncitizen advances a compelling governmental interest "by the least restrictive means available." *Bernal v. Fainter*, 467 U.S. 216, 219 (1984). The asserted justification must be "carefully examined," and the discriminatory means must be "necessary and precisely drawn" to accomplish it. *Nyquist v. Mauclet*, 432 U.S. 1, 7 (1977) (quoting *Examining Bd. v. Flores de Otero*, 426 U.S. 572, 605 (1976)). Defendant receives "no deference" on narrow tailoring; the Court must independently determine whether the classification is "necessary," and Defendant bears the "ultimate burden" of demonstrating that "available, workable" alternatives "do not suffice." *Fisher v. Univ. of Tex. at*

Austin, 570 U.S. 297, 311–12 (2013). Administrative convenience cannot satisfy that standard. *See Hampton v. Mow Sun Wong*, 426 U.S. 88, 114–16 (1976). Defendant has not come remotely close to carrying that burden.

Defendant’s asserted justification confirms the problem. It concedes that alienage discrimination based on generalized concerns regarding noncitizens’ “character, fitness, or trustworthiness” would likely be unconstitutional, yet substitutes another generalization: that citizenship promotes the “ease and efficacy” of background investigations because investigating noncitizens may be more difficult, time consuming, expensive, and less reliable. *Def.’s Resp.* at 11–12. That is administrative convenience, not a compelling governmental interest. The State may have an interest in ensuring that licensees are honest, fit, and qualified, but that does not justify excluding noncitizens merely because doing so makes the investigation easier.

Smith’s affidavit underscores the defect. It cites potential difficulties obtaining foreign records, securing cooperation from foreign authorities, contacting persons abroad, and overcoming “[l]anguage barriers,” and from those possibilities concludes that, “in practicality,” WVABCA cannot adequately investigate a noncitizen. Smith Aff. ¶¶ 5–6. But Defendant provides no basis for concluding that those hypothetical obstacles are unique to noncitizens. Missing records, difficult-to-reach references, incomplete histories, and language barriers can arise in any investigation. Strict scrutiny does not permit the State to convert hypothetical difficulties affecting some individuals into a categorical presumption against an entire suspect class.

Nor does administrative difficulty justify abandoning individualized constitutional treatment. A language barrier may require an interpreter; a disability may require an accommodation; an unusual residence history may require additional documentation; unavailable records may require alternative proof. The answer is to address the actual obstacle—not

categorically exclude the person based on alienage. Defendant never explains why additional documentation cannot be required where necessary, why an interpreter cannot address an actual language barrier, why available federal records cannot be considered, or why an individual whose background genuinely cannot be verified cannot simply be denied on that basis. Most importantly, Defendant never explains why citizenship itself is “necessary.”

The legislative record further undermines Defendant’s newly asserted administrative rationale. During consideration of the Act, Delegate Anders asked sponsor of the bill Delegate David McCormick directly: “I have heard a lot of discussion about bad actors—what are these bad actors doing?” McCormick’s response began not with background-check difficulties, unverifiable records, or administrative costs, but with immigration status: “we think that . . . a lot of them are here illegally.” Anders then removed any possible ambiguity, asking whether “the people that you are claiming are the bad actors” “are here illegally?” McCormick first responded, “YUP,” and then clarified: “I’m not saying all of them, but we think so.” *House Comm. on Health & Human Res., Meeting on H.B. 5437* (Feb. 17, 2026), at 23:53–24:13, 26:06–26:19, available at <https://home.wvlegislature.gov/archived-recordings/>.

That connection persisted publicly. Ten days later, McCormick publicly identified “U.S. citizenship” as part of the Act’s licensing requirements and, minutes later, explained that the legislation was intended to “tamp down and get rid of the bad actors.” *Talk of the Town*, WAJR (Feb. 27, 2026), at 2:47–2:58, 4:42–4:53, available at <https://www.spreaker.com/episode/talk-of-the-town-february-27-2026--70332717>. Later in the same interview, following discussion of operators who “aren’t from the United States,” McCormick stated that those targeted should “shut it down,” “pack up what they got,” and “leave,” concluding: “that’s who we’re after.” *Id.* at 6:30–6:57. On March 23, McCormick again distinguished “legitimate stores” from the “rogue” stores and stated that “the licensing provisions . . . alone” would “get rid” of many of those shops. *Talk*

of the Town, WAJR (Mar. 23, 2026), at 24:13–24:45, available at <https://www.spreaker.com/episode/talk-of-the-town-march-23-2026--70830860>.

Most revealing, however, is McCormick’s June 30 description of the very investigative regime Defendant now claims cannot adequately investigate noncitizens. In discussing the vape shops he characterized as “bad actors,” McCormick alleged that there was “money laundering activity going on” involving persons “out of the United States” and asserted that persons he described as “illegal citizens” were “owning and running these places.” He then explained that “these people, these bad actors” would be subjected to the Act’s “very stringent licensing requirements” and “FBI level background checks”—expressly adding that those requirements extended to “their managers.” McCormick further explained that the requirements were designed so that a person could not live in “some far away land” and “hide in the web of an LLC” or change an owner’s name, and emphasized that persons working in the stores would also undergo background checks. *Talk of the Town*, WAJR (June 30, 2026), at 32:54–33:50, available at <https://www.spreaker.com/episode/talk-of-the-town-june-30-2026--72757611>.

That record cannot be reconciled with Defendant’s present position merely by invoking administrative convenience.² The Act’s sponsor repeatedly connected immigration status, the supposed “bad actors,” and licensing provisions intended to remove those actors from the industry, while publicly touting the “very stringent” and “FBI level” background checks required for licensure. Defendant now asks this Court to accept that the same regulatory apparatus is

² The record identifies no empirical nexus between alienage and the “bad actors” invoked to justify the citizenship restriction. Neither the Act’s sponsor nor Defendant cites crime data, studies, statistics, legislative findings, or other evidence showing that noncitizens are more likely than citizens to engage in unlawful sales, money laundering, regulatory evasion, or other misconduct attributed to the targeted businesses. Smith’s affidavit supplies no such evidence; it offers opinions concerning noncitizens without identifying any empirical basis for them. The record thus contains repeated assertions that the supposed “bad actors” are noncitizens, but no evidence establishing why alienage is a proxy for unlawful conduct. That is precisely the type of generalized assumption and stereotyping Defendant itself recognizes cannot constitutionally sustain alienage discrimination. *See Def.’s Resp.* at 11–12.

nevertheless incapable of meaningfully investigating a lawful noncitizen and therefore must categorically exclude every noncitizen.

Lawful permanent residents expose the weakness in that premise. They are noncitizens, but they are hardly unknown to the government. Obtaining lawful permanent resident status requires federal adjudication of eligibility and admissibility supported by substantial identity, background, and security screening.³ That screening employs multiple DHS, DOJ, and FBI systems, including biometric fingerprint- and biographic name-based checks, with further law-enforcement coordination when information of national-security or public-safety concern is identified.⁴ USCIS describes background and security checks as a “critical element” of its adjudicatory process used to identify national-security and public-safety risks and other derogatory information bearing upon eligibility.⁵

That federal screening directly undermines Defendant’s asserted justification. Defendant relies on investigative difficulties that may arise with some noncitizens to justify excluding all noncitizens, including lawful permanent residents whose identities and backgrounds have already been subjected to extensive federal scrutiny. The Act makes no distinction based on immigration status, prior federal screening, or whether Defendant’s asserted investigative obstacles actually exist. Instead, it categorically excludes every noncitizen without determining whether that

³ See U.S. Citizenship & Immigr. Servs., *USCIS Policy Manual*, Vol. 7, Pt. A, Ch. 1, *Purpose and Background* (eligibility and admissibility requirements for adjustment to lawful permanent residence), available at <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-1>; see also *id.*, Vol. 7, Pt. B, Ch. 2, *Eligibility Requirements*.

⁴ See U.S. Dep’t of Homeland Sec., *Privacy Impact Assessment: USCIS Immigration Benefits Background Check Systems (IBBCS)*, DHS/USCIS/PIA-033, at 1–3 (describing four separate DHS, DOJ, and FBI background checks, including biometric fingerprint and biographic name checks, with further law-enforcement coordination where national-security or law-enforcement concerns arise results implicate law-enforcement or national-security interests), available at https://www.dhs.gov/sites/default/files/publications/privacy_pia_uscis_ibbcs.pdf

⁵ See U.S. Citizenship & Immigr. Servs., *Immigration Examinations Fee Account, Congressional Justification FY 2023* (describing background checks as a “critical element” for identifying national-security, public-safety); see also U.S. Citizenship & Immigr. Servs., *USCIS Policy Manual*, Vol. 1, Pt. C, Ch. 2, *Background and Security Checks*.

individual's background can, in fact, be adequately verified. Strict scrutiny does not permit Defendant to extrapolate from potential difficulties investigating some noncitizens to the asserted necessity of excluding all noncitizens.

The extension of the citizenship requirement to managers further demonstrates the lack of narrow tailoring. Defendant offers no explanation why citizenship is necessary for a manager who holds no ownership interest in the licensed entity. Indeed, an individual may manage another retailer selling the same regulated products without satisfying the Act's citizenship requirement merely because that retailer falls below the 33% threshold. Nothing about that individual's background, immigration status, or availability of records changes when the retailer crosses the statutory line. Defendant never explains why citizenship nevertheless becomes "necessary."

Nor has Defendant shown that less restrictive alternatives are inadequate. If particular records are necessary and unavailable, the State may require additional documentation or determine whether the individual has otherwise established the qualifications for licensure. What strict scrutiny does not permit is presuming that the hypothesized difficulty exists for every noncitizen and making citizenship a substitute for determining whether the information necessary to evaluate the particular person is actually available.

Defendant therefore fails strict scrutiny. Its evidence may establish that investigating some noncitizens in some circumstances could require additional time or effort. It does not establish a compelling interest in excluding noncitizens as a class, much less that citizenship is necessary to accomplish that interest. The Act instead excludes every noncitizen—including lawful permanent residents who have undergone extensive federal screening—without regard to whether the investigative problem Defendant identifies exists at all. That is not narrow tailoring.

Finally, Defendant does not address the remaining *Winter* factors as to Plaintiffs’ alienage challenge. It offers no response on irreparable harm, the balance of equities, or the public interest. Plaintiffs’ showing on those factors therefore remains unrebutted.

III. DEFENDANT DOES NOT REBUT PLAINTIFFS’ CHALLENGE TO THE ACT’S OPERATIONAL RESTRICTIONS.

Defendant does not meaningfully answer Plaintiffs’ challenge to the Act’s operational restrictions. Its Response neither cures the arbitrary application of the 33% classification nor justifies the disparate treatment it produces, and it offers no response to Plaintiffs’ challenge to the application of new restrictions to preexisting businesses.

A. Neither the Act’s 33% Classification Nor the Rule’s Method for Applying It Provides a Rational Basis for the Resulting Disparate Treatment.

Defendant attempts to reduce Plaintiffs’ challenge to whether the number “33%” is sufficiently clear, but that misses the point. Plaintiffs challenge both the statutory line and the Commissioner’s method for determining who crosses it. The Act subjects certain retailers selling regulated products to heightened restrictions based on whether 33% of their floor space is devoted to those products. The Rule compounds that defect by materially altering both the products and floor space counted toward the threshold. A mathematically definite percentage does not establish that the classification itself is rational, nor does it cure an arbitrary methodology for determining who falls within it.

West Virginia law distinguishes between an agency implementing a legislative standard and creating one. When the Legislature delegates discretionary authority, it must prescribe standards “sufficient to guide” the agency in exercising that authority. *Quesenberry v. Estep*, 142 W. Va. 426, 441 (1956). Although an agency may be authorized to “regulate and prescribe details” necessary to administer a statute, *id.*, the Legislature may not confer “unbridled authority” or

“uncontrolled discretion,” *State ex rel. State Farm Mut. Auto. Ins. Co. v. Marks*, 230 W. Va. 527, 538–39 (2012) (quoting *State ex rel. Mountaineer Park, Inc. v. Polan*, 190 W. Va. 276, 280 (1993)).

Here, the Legislature selected the dividing line itself. The Act subjects retailers that “devote[] at least 33 percent of [their] floor space” to specified products to heightened licensing and operational restrictions. W. Va. Code § 16-9H-1. On its face, that calculation is straightforward: the floor space devoted to the specified products, divided by the retailer’s total floor space. The Rule replaces that straightforward calculation with a materially different methodology.

Rather than use the retailer’s total interior floor space, the Rule subtracts space used solely for offices, limited video lottery, restrooms, and certain “empty space” for calculation of the total space. *See* W. Va. C.S.R. §§ 175-12-2.11.1–2.11.4. At the same time, the Rule expands the space deemed “devoted” to regulated products. It counts mixed-product areas, counters, displays, storage, shelving, wall boards, and certain lounge areas, and adds up to three feet to qualifying displays, counters, shelving, and wall boards. *Id.* §§ 175-12-2.29.2.a–2.29.2.d. The Rule also expands the products attributed to the regulated use beyond the statutory definitions.⁶ The Rule thus shrinks the total space against which the 33% is measured while enlarging both the space and products deemed devoted to the regulated use.

The consequences demonstrate the point. Under Plaintiffs’ good-faith application of the Rule, a retailer occupying 100 square feet and devoting only one actual square foot to qualifying products can be deemed to devote approximately 91.8% of its regulatory floor space to them. *See* W. Va. C.S.R. §§ 175-12-2.11, 2.29; Demonstrative Ex. 1 (comparing actual floor space devoted

⁶ The Rule materially expands the products counted toward the regulated use. The Act defines a “vapor product” as a non-combustible product “containing nicotine” that produces vapor. W. Va. Code § 16-9H-1. Rule § 2.30 adds vapable hemp and kratom products, and §§ 2.29 and 2.31 count “vapor products accessories” including batteries, chargers, carrying cases, tools, glass tubes, and knives toward the 33% threshold. W. Va. C.S.R. §§ 175-12-2.29–2.31. The Rule also counts broadly defined “tobacco products and accessories,” including ashtrays, lighters, charging cables, bongs, hookahs, candles, aerosols, knives, and drug paraphernalia. *Id.* §§ 175-12-2.26, 2.29.

to qualifying products with the percentage produced by the Rule’s floor-space calculation). One percent becomes nearly ninety-two percent—not because the retailer devoted more of its premises to those products, but because the Rule changed what counts and how it is counted.

That is not merely administrative “gap filling.” The Legislature chose a familiar metric—the percentage of a retailer’s “floor space” it “devotes” to specified products. WVABCA instead created a regulatory calculation that subtracts actual floor space from the whole, attributes mixed and additional space to the regulated use, adds constructive square footage around qualifying displays, and expands the products counted toward the threshold. Those choices do not merely prescribe details necessary to administer the Legislature’s standard; they materially change what is being measured and can determine whether a retailer is subject to the Act at all. Indeed, *Copenhaver* sustained administrative discretion where the Legislature itself supplied substantive factors guiding the agency’s determination. *State ex rel. W. Va. Hous. Dev. Fund v. Copenhaver*, 153 W. Va. 636, 650–51 (1969). Here, WVABCA invokes administrative discretion to alter the very inputs that determine whether the statutory threshold is crossed.

The constitutional defect, however, does not depend upon the Rule. The Act’s 33% classification is independently arbitrary. Retailers on both sides of that line may sell the same regulated products to the same consumers through the same types of transactions. Yet crossing 33% subjects one retailer—but not another—to materially different licensing, operational, advertising, ownership, management, civil, and criminal consequences. The question is therefore not merely whether 33% can be calculated, but whether 33% provides a rational basis for treating otherwise comparable retailers differently.

Plaintiffs recognize their burden to negate “every conceivable basis which might support” the classification. *Heller v. Doe*, 509 U.S. 312, 320–21 (1993). But even under “the most

deferential of standards,” courts “insist on knowing the relation between the classification adopted and the object to be attained.” *Romer v. Evans*, 517 U.S. 620, 632 (1996). A State “may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).

Defendant has not established that relationship. It asserts that a business “dedicated to a particular product or service is more likely to attract customers seeking out that product or service.” But that does not explain why the 33% threshold justifies treating otherwise comparable retailers differently. The Act does not classify retailers according to products sold, sales volume, inventory, revenue, customers attracted, unlawful sales, compliance history, or any other measure of the conduct Defendant invokes. The Rule further undermines Defendant’s “dedication” rationale because its methodology can create regulatory coverage through arithmetic rather than actual use—pulling a retailer into the licensing regime even where the premises are not, in any meaningful sense, dedicated to those products.

The disconnect is particularly apparent in Defendant’s repeated reliance on protecting children. The same regulated products may be sold below the 33% threshold in general retail establishments accessible to minors, while retailers above that threshold are subjected to heightened restrictions purportedly designed to protect those same minors. A prohibited sale to a minor is no less harmful at 32% than at 33%; an advertisement does not become less capable of reaching a minor below 33%; and the asserted need to scrutinize those selling the products does not disappear below 33%. The harms Defendant invokes exist on both sides of the line; the Act’s heightened restrictions do not.

That is the type of disconnect *Cleburne* found constitutionally significant. There, the government subjected one class to a special requirement while permitting comparable uses

presenting the same asserted concerns, and the Supreme Court rejected rationales that failed to explain the differential treatment. 473 U.S. at 447–50. Likewise, *United States Department of Agriculture v. Moreno* rejected a classification “clearly irrelevant to the stated purposes of the Act” and not rationally related to another legitimate governmental interest. 413 U.S. 528, 533–38 (1973). Even deferential review therefore requires a rational relationship between the classification actually drawn and the governmental objective asserted to justify it.

The Act and Rule present distinct but reinforcing defects. The Act selects 33% of floor space as the point at which retailers selling the same regulated products become subject to materially different restrictions, without a rational connection between that line and the harms Defendant identifies. The Rule then compounds that arbitrary classification by expanding the products attributed to the regulated use and materially altering the floor-space calculation used to determine who crosses it. Defendant has identified reasons to regulate vapor products and unlawful conduct involving them. It has not justified why the same product, sold to the same consumer, under the same law, becomes subject to materially different regulation merely because one retailer falls above 33% and another falls below it—particularly where the Rule itself can manufacture that distinction through artificial additions and exclusions.

B. Defendant Does Not Respond to Plaintiffs’ Challenge to the Act’s Application to Preexisting Businesses.

Defendant offers no response to Plaintiffs’ challenge to the application of new operational and location-based restrictions to businesses lawfully established before those restrictions existed. Defendant does not defend the absence of grandfather protection or otherwise address Plaintiffs’ position. That argument requires no extended reply; Plaintiffs’ showing remains un rebutted.

C. Defendant’s “Alternative Uses” Argument Ignores the Actual Leasehold Interests Before the Court.

Defendant responds to Plaintiffs’ property challenge by asserting that Plaintiffs remain free to put their premises to other commercial uses or restructure their businesses to fall below the Act’s threshold. That argument ignores the property interests Plaintiffs actually hold.

Several Plaintiffs entered long-term commercial leases before the Act took effect and invested substantially in buildouts, fixtures, inventory, and location-dependent goodwill. More importantly, several of those leases expressly restrict the permitted use of the premises to the retail sale of tobacco, vapor, nicotine, or related products.⁷ Many also contain additional use restrictions or non-compete provisions that further limit Plaintiffs’ ability either to repurpose the premises or to operate the same business elsewhere during the lease term. These are not merely preferred uses; they are contractual limitations on the uses and business opportunities available to Plaintiffs.

Defendant’s hypothetical “alternative uses” therefore do not reflect the property interests Plaintiffs actually possess. Plaintiffs subject to these restrictions cannot simply convert use of the premises, and some cannot simply relocate the regulated business elsewhere without implicating separate lease restrictions. Yet their obligations for rent, guaranties, and other continuing contractual commitments remain. Defendant cannot preserve the value of Plaintiffs’ leasehold interests by pointing to uses—or alternative locations—their contracts restrict or prohibit.

That distinction matters under *Penn Central*. Plaintiffs acquired and substantially invested in these leasehold interests before the challenged restrictions existed, and the leases themselves

⁷ See Exs. 2-5. Marion Tobacco and Vape LLC’s lease limits use to “operating a Cigar, tobacco and vapor retail location, and for no other purpose.” Ex. 2, § 7, at 3. Super Smoke LLC’s lease limits use to “operating a tobacco and vape retail store, and for no other purpose.” Ex. 3, §§ 7, 12, at 3–4. Happy Smoke Vape LLC’s lease permits use “ONLY for operation of its business as an off premise Vape and tobacco retail location.” Ex. 4, § 5.1, at 4–5. Wheeling Vapor Plus LLC’s lease limits use to “Tobacco Vape Shop and Sales.” Ex. 5, §§ 2.6, 6.1, at 2, 7. Some leases also contain non-compete or additional use restrictions limiting similar retail operations during the lease term.

limit the uses available to them. Those facts bear directly on economic impact and reasonable investment-backed expectations. Defendant cannot avoid that analysis by inventing alternative uses that Plaintiffs' property interests do not permit. The resulting impairment is addressed more fully below under the Takings Clause.

Defendant does not separately contest Plaintiffs' showing on the remaining *Winter* factors as to the operational restrictions. It offers no contrary argument on irreparable harm, the balance of equities, or the public interest. Plaintiffs' showing on those factors therefore remains unrebutted.

IV. DEFENDANT'S "ALTERNATIVE USES" THEORY DOES NOT DEFEAT PLAINTIFFS' TAKINGS CLAIM.

Defendant correctly recognizes that a regulation may effect a taking when it "goes too far." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). Under *Penn Central*, the Court considers the regulation's economic impact, its interference with distinct investment-backed expectations, and the character of the governmental action. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978). Defendant's analysis, however, begins from the wrong premise: it evaluates the value of hypothetical uses of the premises rather than the value of the leasehold interests Plaintiffs actually possess.

Most Plaintiffs do not own unrestricted fee-simple interests in these properties. Their protected property interests are commercial leaseholds whose permitted uses are defined by contract. Several of those leases restrict the premises to operation as a vape shop, smoke shop, tobacco store, or substantially similar business. Plaintiffs therefore cannot simply convert the premises to an unrelated commercial use without breaching the agreements that define their possessory interests.

That distinction undermines Defendant's reliance on cases recognizing that a regulation does not effect a taking merely because it prohibits the most beneficial use of property. *See, e.g.,*

Quinn v. Bd. of Cnty. Comm'rs, 862 F.3d 433, 442 (4th Cir. 2017); *Clayland Farm Enters., LLC v. Talbot Cnty.*, 987 F.3d 346, 354 (4th Cir. 2021). Those cases considered whether the regulated property interest itself retained valuable permitted uses. *Clayland Farm*, for example, relied upon *Henry* because the property there “retained a number of valuable, expressly permitted uses.” 987 F.3d at 354. Here, Defendant points to uses that Plaintiffs’ leasehold interests do not permit. The theoretical ability of a fee owner to use the underlying real estate differently says little about the economic value remaining in Plaintiffs’ contractually restricted leaseholds.

The economic impact is substantial. If Plaintiffs cannot obtain or retain the licenses necessary to operate, they cannot lawfully conduct the businesses for which these premises were leased. Their leases prevent them from simply changing uses, while obligations for rent, guaranties, tenant improvements, fixtures, and other contractual commitments remain. Plaintiffs also face the loss of location-specific goodwill and customer relationships developed at those premises. Unless Defendant proposes that Plaintiffs operate without the required licenses, its hypothetical “alternative uses” do nothing to preserve the economic value of the leasehold interests Plaintiffs actually possess.

The challenged restrictions likewise substantially interfere with Plaintiffs’ investment-backed expectations. Before the Act and Rule existed, Plaintiffs entered long-term leases, undertook substantial contractual obligations, invested in buildouts, fixtures, inventory, and goodwill, and lawfully operated the very businesses their leases permit. The new licensing regime now conditions continued operation on circumstances that predate the Act—including location and, for certain Plaintiffs, citizenship and ownership-related qualifications. Plaintiffs cannot change those circumstances without abandoning or materially restructuring the interests in which they already invested.

The character of the governmental action points in the same direction. The challenged restrictions are imposed upon existing businesses and preexisting leaseholds, potentially preventing the very use for which those interests were acquired while leaving Plaintiffs bound by their contractual obligations. And, as Plaintiffs explained, the Act provides no meaningful grandfather protection, transition mechanism, hardship exception, or variance procedure preserving those previously lawful uses.

Defendant's "alternative uses" theory therefore does not answer Plaintiffs' *Penn Central* claim. The relevant question is not whether someone could put the underlying real estate to another use, but what economic use remains in Plaintiffs' actual property interests after the challenged restrictions are applied. Defendant cannot defeat a takings claim by assigning Plaintiffs property rights their leases do not give them.

V. THE REMAINING *WINTER* FACTORS WEIGH IN PLAINTIFFS FAVOR.

Defendant's Response does not meaningfully disturb Plaintiffs' showing on the remaining *Winter* factors. Indeed, as to Plaintiffs' alienage challenge and substantial portions of their challenge to the operational restrictions, Defendant does not address those factors at all. Plaintiffs' showing therefore remains unrebutted.

The threatened injuries are immediate and substantial. Plaintiffs face enforcement of provisions that condition their ability to continue operating established businesses, threaten existing ownership and management relationships, impair protected speech and leasehold interests, and expose them to licensing, civil, administrative, and criminal consequences. The resulting constitutional injuries, loss of customers and goodwill, disruption of business relationships, and threatened cessation of operations cannot be adequately remedied after final judgment.

Defendant's reliance on *USA Farm Labor, Inc. v. Micone* is misplaced. There, the Fourth Circuit rejected the proposition that the public interest favored an injunction merely because the challenged governmental action was allegedly unlawful. No. 23-2108, 2025 WL 586339, at *4 (4th Cir. Feb. 24, 2025). Plaintiffs do not collapse the *Winter* factors in that manner. They separately demonstrated irreparable injury, the concrete burdens they face absent relief, and the absence of corresponding harm to the State because West Virginia retains independent authority to prohibit underage sales, require age verification, conduct compliance inspections, and punish unlawful conduct.

Indeed, this Court has already recognized that *USA Farm Labor* does not require the *Winter* factors to be factually isolated from one another. In *International Association of Color Manufacturers v. Singh*, the Court acknowledged *USA Farm Labor* while recognizing that “there is some overlap” among the factors and concluding that the equities and public interest favored relief where regulated parties faced substantial compliance burdens under a likely unconstitutional statute. 814 F. Supp. 3d 652, 674 (S.D. W. Va. 2025). Plaintiffs separately satisfy each factor here. That the same governmental action bears upon more than one factor does not improperly “commingle” them.

The balance of equities and public interest likewise favor continued relief. When the government is the opposing party, those factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). And the Fourth Circuit has recognized that “the public interest favors protecting constitutional rights” and that the State suffers no cognizable harm from being prevented from enforcing restrictions likely to be unconstitutional. *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc).

Nor does Defendant's repeated invocation of protecting children alter that balance. The requested relief does not prevent West Virginia from prohibiting sales to minors, requiring age verification, conducting compliance inspections, or punishing unlawful conduct. Those protections remain independently enforceable. The public therefore need not choose between protecting children and preserving constitutional rights. The State remains free to protect children; it simply must do so within constitutional limits.

CONCLUSION

Defendant's Response does not cure the constitutional defects identified by Plaintiffs. On the First Amendment claim, Defendant largely disputes only the timing of the injury. On alienage, its justification rests on generalized assumptions and administrative convenience that cannot satisfy strict scrutiny. As to the operational restrictions, its own asserted rationale fails to explain the classification the Act and Rule actually produce. And its Takings Clause defense rests on hypothetical alternative uses that Plaintiffs' leaseholds do not permit.

The remaining *Winter* factors likewise favor relief and, in substantial part, remain unrebutted. The temporary restraining order should therefore remain in effect, and Plaintiffs respectfully request that the Court grant their Motion for Preliminary Injunction.

Respectfully submitted,

By Counsel,

/s/ Alonzo D. Washington

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/s/ William J. Ihlenfeld

William J. Ihlenfeld (WV #7465)

Maximillian F. Nogay (WV #13445)

MAVERICK LITIGATION

Post Office Box 613

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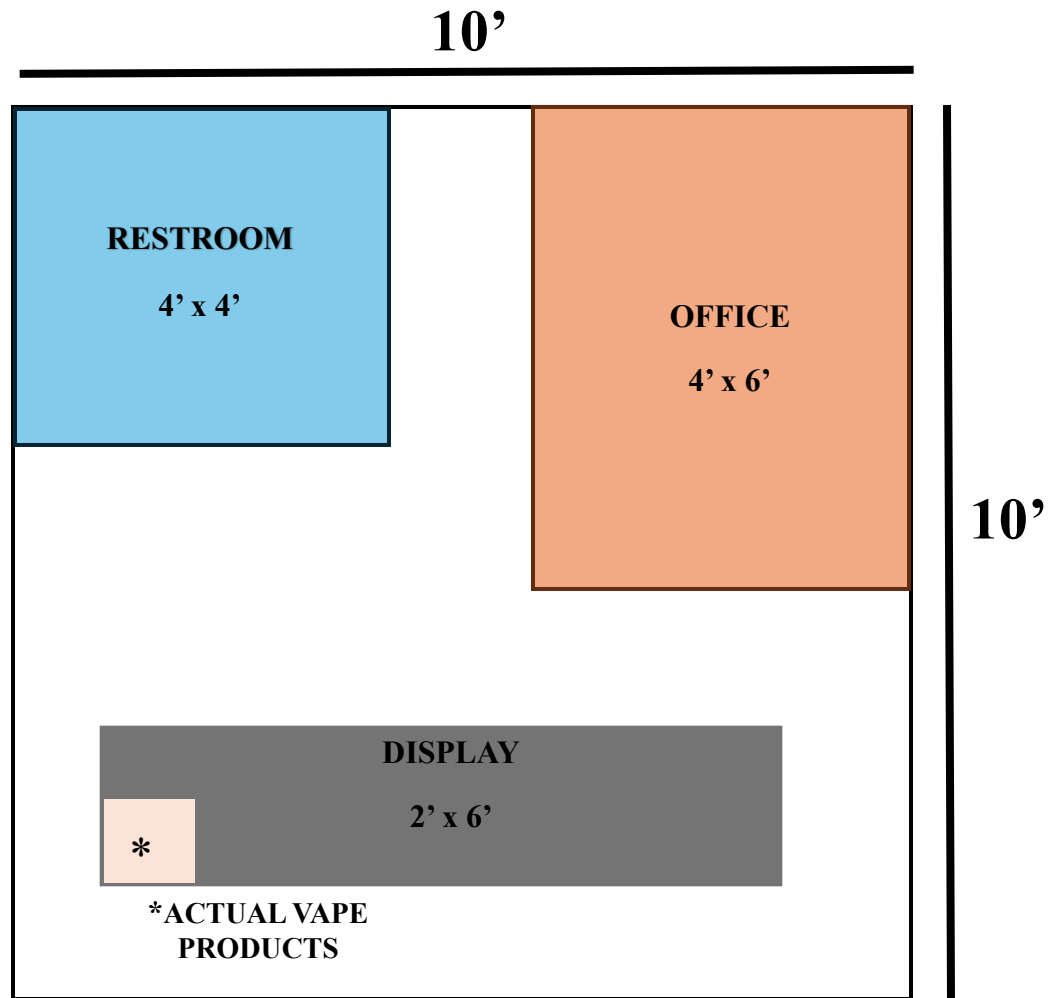
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Total Actual Floor Space = 100 sq. ft.

- Reduce Denominator:
- 16 sq. ft. (restroom)
- 24 sq. ft. (office)
- 11 sq. ft. (empty space)

Total Interior Floor Space (Rule) = 49 sq. ft.

Total Actual Vape Space = 1 sq. ft.

- Expand Numerator:
Vape or Smoke Shop Floor Space (Rule) = 45 sq. ft.

Actual Devoted Area: $1 / 100 \times 100 = 1\%$

Legs. Rule Determined Devoted Area: $45 / 49 \times 100 = 91.836734694\%$

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this **24th** of February, 2021 (the "Effective Date"), by and between **General Acquisitions LLC** (hereinafter referred to as "Landlord") and **70 East Tobacco, LLC**, a North Carolina limited liability company (hereinafter referred to as "Tenant").

1. **Demised Premises.** Landlord hereby leases to Tenant for the term and upon the covenants hereinafter set forth, approximately **One Thousand Five Hundred (1500) square feet** of space in that certain building commonly known as "Middletown Commons", or by such other name as Landlord may from time to time hereafter designate ("Demised Premises"), located and situate on that certain real estate at **2600 Middle Commons, Suite 123, White Hall, Marion County, West Virginia, 26554** (the "Property").

2. **Term** **5 years**

(a) The initial term of this Lease (the "Initial Term") shall commence on Effective Date, and shall expire at 11:59 p.m., eastern time, on the last date of the calendar month which is ~~one hundred~~ **Sixty** ~~twenty (120) months~~ after the month in which the Rent Commencement Date (as hereinafter defined) occurs (the "Expiration Date"), unless sooner terminated in accordance with the provisions hereof.

60 (b) As used herein, "Term" shall mean and refer to the Initial Term and, if applicable, any Renewal Term.

3. **Rent.**

(a) Commencing on the earlier of (i) the date which is **Forty-Five (45) days** after Landlord's work is completed as set forth in Exhibit C (Landlord's Work), or (ii) the date which Tenant opens for business to the public in the Demised Premises (such date, the "Rent Commencement Date") and continuing during the Term of the Lease, Tenant shall pay annual "Base Rent" for the Demised Premises as set forth below, payable to Landlord, without demand, deduction, set-off or counterclaim, in equal installments, in advance, on the first (1st) day of each month.

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Years 1-5	\$57,000.00	\$4,750.00

Total charges from the Lease Commencement Date through June 30, 2022:
\$4,750.00 per Month + \$2.00 NNN = \$60,000/per year and \$5,000/per month. Commencing July 1, 2022
Tenant NNN charges shall be prorated as set forth herein.

(i) If the Rent Commencement Date occurs on a day other than the first (1st) day of a month, all Rent shall be prorated on a daily basis on the basis of a thirty (30) day month.

(b) **ADDITIONAL CHARGES:** Estimate of additional charges: CAM (Common Area Maintenance) \$0.75 PSF, Property Taxes \$1.00 PSF, and Property Insurance \$0.25 PSF. **Additional Charges will be fixed from the Lease Commencement Date until June 30, 2022 at the total of \$2.00 PSF as broken out above. Commencing on July 1, 2022 the additional charges will be Tenant's pro-rata share as defined herein.**

(c) Tenant shall pay its pro rata share of any new or unknown cost not currently charged pertaining to the Property operating expenses, including, but not necessarily limited to any fire fees, pest control expenses, and any other governmental fees or assessments against the Property. Tenant's pro rata share of the charges shall be based on the ratio of the Demised Premises based upon the total building leasable space. All charges shall be paid within ten (10) days of billing.

(d) Throughout the Term of this Lease, Tenant shall pay to Landlord, without demand, deductions, set-offs or counterclaims, the Rent (as such term is defined below) when and as the same shall be due and payable hereunder. Unless otherwise stated, all sums of money or charges payable to Landlord from Tenant by this Lease other than Base Rent are defined as "Additional Rent" and are due thirty (30) days after the rendering of an invoice therefor, without any deductions, set-offs or counterclaims, and failure to pay such charges carries the same consequences as Tenant's failure to pay Base Rent. As used herein, the term "Rent" shall mean and refer to the Base Rent and the Additional Rent, if any.

(e) In the event any sums required hereunder to be paid are not received on or before the tenth (10th) calendar day after the same are due, then, for each and every late payment, Tenant shall immediately pay, as Additional Rent, a service charge equal to 10% of the amount of the sums due. Notwithstanding this service charge, Tenant shall be in Default under this Lease if all payments required to be made by Tenant are not made at or before the times herein stipulated, including, but not limited to, Rent, Taxes, Insurance, filing fees, and any and all rents and extra fees billed to the Tenant.

(f) In the event that Tenant's check for rents and charges is returned for any reason, Tenant agrees to pay Landlord the sum of Twenty Five Dollars (\$25.00), or such lesser sum as permitted by applicable law, as a handling charge in addition to any applicable late charge. Returned checks must be redeemed by cashier's check. In the event more than one check is returned, Tenant agrees to pay all subsequent rents and charges by cashier's check.

4. Security Deposit. Tenant, concurrently with the execution of this Lease, shall deposit with Landlord the sum of **Four Thousand Seven Hundred Fifty Dollars (\$4,750.00)** (the "Security Deposit"), which sum shall be held by Landlord as security against a Default by Tenant, pursuant to the terms of this Lease. The Security Deposit (which shall not bear interest to Tenant) may be applied by Landlord in order to cure any Default in any of the terms, provisions or conditions of this Lease. The Security Deposit shall be returned to Tenant by the Landlord, after deducting therefrom any sums owed to Landlord, pursuant to provisions of this Lease, upon the termination of this Lease, provided such termination is not caused by Tenant. A mortgagee in possession of the Demised Premises, or any interest therein, through public or private foreclosure or the acceptance of a deed in lieu thereof, shall have no liability to Tenant for return of all or any portion of the Security Deposit, unless, and then only to the extent that, such mortgagee has acknowledged receipt of all or any portion of Tenant's Security Deposit. In the event Landlord applies the Security Deposit in whole or in part against a Default by Tenant, Tenant shall, upon demand by Landlord, deposit sufficient funds to maintain the Security Deposit in the initial amount. Failure of Tenant to deposit additional funds as security shall constitute a Default hereunder and entitle the Landlord to avail itself of the remedies as provided in this Lease for non-payment of Base Rent by Tenant. Upon the expiration of the term hereof, Landlord shall retain the Security Deposit, or so much as has not been applied in accordance with the provisions hereof, until such time as all of Tenant's obligations to pay any Additional Rent have been fully paid and satisfied. Landlord reserves the right to increase the amount of the Security Deposit in its sole reasonable discretion in the event Tenant causes damage to the Demised Premises on multiple occasions or in the event Tenant leases additional space from Landlord.

5. Landlord's Work. Landlord, at its expense, shall construct, install and complete the work described on Exhibit C attached hereto and incorporated herein by this reference ("Landlord's Work"). Other than Landlord's Work, any work done by Landlord at Tenant's request shall be at Tenant's expense, and

shall be paid for by Tenant in such manner as Landlord may reasonably require (including prepayment). Tenant shall be deemed to have taken possession of the Demised Premises on the Delivery Date regardless of when Tenant shall actually occupy or possess the Demised Premises.

6. Tenant's Alterations.

(a) Tenant shall not make any alterations, additions or install fixtures to the Demised Premises or any part thereof except by written consent of Landlord. All approved alterations, additions or fixtures shall be in accordance with all building, zoning, fire, health and safety, or other laws, rules or regulations. All alterations, additions, or fixtures shall remain for the benefit of the Landlord at the end of the Term of this Lease; provided that upon Landlord's request, Tenant shall remove such alterations, additions or fixtures at the end of the Term and repair all damages done by the removal at Tenant's sole expense. Tenant agrees to indemnify and save harmless the Landlord all expenses, liens, mechanics or otherwise, claims or damages to persons or property arising out of, or resulting from, undertaking or making of said alterations, additions or improvements. Tenant shall complete all alterations in a good and workmanlike manner.

(b) In the event that any mechanic's lien is filed against the Demised Premises or Property as the result of any work or act of Tenant, Tenant, at Tenant's expense, shall discharge or bond off the same within ten (10) days from the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay without inquiring into the validity or merits of such lien and all sums so advanced shall be paid on demand as Additional Rent.

(c) Prior to the commencement of any work by Tenant, Tenant shall obtain public liability insurance to cover Tenant's contractor(s) to be employed by Tenant, shall require Tenant's contractors to obtain and maintain workers' compensation insurance and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval. Should the Tenant's use or occupancy of the Demised Premises cause any increase in insurance or other building expenses, Tenant shall be solely responsible to pay the full amount of said increases as Additional Rent.

(d) If, in an emergency, it shall become necessary to make repairs required to be made by Tenant, Landlord may reenter the Demised Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay Landlord the costs of such repairs on demand as Additional Rent.

7. Use. Tenant shall use and occupy the Demised Premises only for the purpose of operating a **cigar, tobacco and vapor retail location**, and for no other purpose.

8. Utilities. Tenant, at its expense, shall pay the cost of all utility services provided or used in or at the Demised Premises, commencing with the Effective Date and throughout the Term of this Lease. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of such utility services and from all costs and charges for utilities consumed on or by the Demised Premises.

9. Signage. Tenant shall be required to install and shall maintain in good working order (with full illumination) one (1) sign affixed to the front of the Demised Premises, subject to the prior written approval of Landlord, **no later than thirty (30) days after opening for business** and conforming to all applicable legal and insurance requirements. No additional signs, banners or artwork, which can be seen from the exterior of the Demised Premises, shall be installed or displayed in, on or about the Demised Premises without the prior written consent of Landlord. Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered). Any sign or display visible from the exterior of the Demised Premises which does not meet the above criteria may be removed at any time by Landlord without incurring any liability therefor. For the avoidance of doubt, and notwithstanding any provision contained herein to the contrary, Tenant's signage must

comply with the standards and guidelines set forth on Exhibit D attached hereto and incorporated herein by this reference.

10. Covenants. Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the Term hereof it shall: (i) keep the Demised Premises in a neat and clean condition, (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature, (iii) any Tenant selling or servicing any kind of food whatsoever must have a monthly exterminating service and must document it to Landlord, and (iv) observe all reasonable rules and regulations established by Landlord for all Tenants on the Property.

11. Compliance with Laws. Tenant, at its sole expense, shall comply with all laws, orders, ordinances and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request. Notwithstanding the foregoing, Landlord's completion of the Landlord's Work shall comply with all applicable laws, orders and ordinances.

12. Hazardous Materials. Tenant agrees that it will not place, hold or dispose of any Hazardous Material (defined hereinafter) on, under or at the Demised Premises or the Property and that it will not use the Demised Premises or any other portion of the Property as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material. Tenant further agrees that it will not cause or allow any asbestos to be incorporated into any improvements or alterations which it makes or causes to be made to the Demised Premises. Tenant hereby indemnifies Landlord against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs and actual attorney's fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord for, with respect to, or as a direct or indirect result of (A) a breach by Tenant of the foregoing covenants, or (B) to the extent caused or allowed by Tenant or any agent, employee, invitee or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, onto or into the Demised Premises, the Property, the atmosphere, or any watercourse, body of water or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material); and the provisions of and undertakings and indemnification set out in this Section shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. The provisions of the preceding sentence shall govern and control over any inconsistent provision of this Lease. For purposes of this Lease, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous, waste, substance or material.

13. Rules and Regulations. Landlord reserves the right to establish rules for the operation of the Demised Premises, building, parking lot and surrounding property so as to maintain the character and

professional nature of the Property, enhance its value, comply with applicable laws and to achieve such other goals in operating the Property as Landlord, in its sole discretion, deems necessary or desirable.

14. Right to Use Common Areas.

(a) During the Term of this Lease, Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for ingress and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any building on the Property or of the common areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, all common areas shall be subject to the exclusive control and management of Landlord.

(b) Landlord agrees to maintain and keep in good service and repair all common areas, including, without limitation, snow and ice removal (except to the extent required to be removed by Tenant pursuant to Paragraph 15 hereof) and landscaping. Commencing the first (1st) year of the Initial Term, Tenant agrees to pay Landlord as Additional Rent hereunder, Tenant's pro-rata share of the Common Area Maintenance Expenses. Tenant's pro-rata share of the Common Area Maintenance Expenses following the first year of the Initial Term shall be **Seventy-Five Cents (\$0.75) (the "Baseline CAM Charge") per square foot of the Demised Premises until June 30, 2022, (commencing on July 1, 2022 the additional charges will be Tenant's actual pro-rata share)** and Tenant shall pay such amount in advance, in equal monthly installments on or before the first day of each month. The manner in which said payment shall be used shall be within the sole reasonable discretion and control of Landlord. The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) common area gas, electricity, water, sewer and other common area utility charges (including surcharges) of whatever nature, (ii) building personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other building personnel, (iii) costs of service and maintenance contracts, including, but not limited to, chillers, boilers, controls, windows, janitorial and general cleaning, security services, and management fees, (iv) all other maintenance and repair expenses (including those payable by Landlord under Section 15 below) and supplies which may be deductible for such calendar year in computing federal income tax liability, (v) any other costs and expenses (i.e., items which are not capital improvements) incurred by Landlord in operating the Property, (vi) the cost of any additional services not provided to the Property at the Lease Commencement Date but thereafter provided by Landlord in the prudent management of the Property, and (vii) the cost of any capital improvements which are made by Landlord after completion of initial construction of the Property, provided; however, that the cost of each such capital improvements, together with any financing charges incurred in connection therewith, shall be amortized and/or depreciated over the useful life thereof and only that portion thereof attributable to such calendar year shall be included in the Common Area Expenses for such calendar year. Common Area Maintenance Expenses shall not include (i) principal payments or interest payments on any mortgages, deeds of trust or other financing encumbrances, (ii) leasing commissions payable by Landlord, (iii) deductions for depreciation of the Property; (iv) legal expenses in enforcing the terms of any other lease, (v) expenses for repair and other work occasioned by fire or other casualty to the extent such expenses shall have been reimbursed under Landlord's fire policy or policies or which would have been covered by insurance required to be carried by Landlord hereunder, (vi) except as otherwise provided, expenses incurred in the leasing or processing of new tenants, including lease commissions, (vii) except as otherwise provided, expenses for renting space for new tenants, (viii) initial cost of the Property construction, (viii) cost of repairs or replacement of items that are covered by any warranty, and (ix) costs of environmental remediation and governmental compliance required by Landlord hereunder, but not caused by Tenant. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all

Common Area Maintenance Expenses to which shall be added an additional administrative fee in an amount equal to fifteen percent (15%) of such expenses and divide the Common Area Expenses by a number which is the total square footage of the Property (and any expansion thereof) by the total square footage of in the Demised Premises. Notwithstanding the above, commencing with the fifth year of the Initial Term and for each year thereafter, in the event Landlord determines that the amount of Common Area Maintenance Expenses actually being incurred by Landlord, exceeds the Baseline CAM Charge, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of Rent due an amount sufficient to result in Tenant's paying its full proportionate share of Common Area Maintenance Expenses as computed on the basis of Landlord's revised cost estimate of the Common Area Maintenance Expenses. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish to Tenant a statement ("Expense Statement") setting forth the computation of actual Common Area Maintenance Expenses for such calendar year and the amount, if any, by which Tenant has overpaid or underpaid Tenant's proportionate share. If Tenant has underpaid, Tenant shall pay to Landlord the amount of such underpayment within thirty (30) days after receipt of Landlord's statement. If Tenant has overpaid, such overpayment shall be credited to Tenant's subsequently due installments of Common Area Maintenance Expenses for the following year. At the end of the Term, any overpayment shall be refunded to Tenant. FOR THE AVOIDANCE OF DOUBT, COMMON AREA MAINTENANCE EXPENSES DOES NOT INCLUDE REAL ESTATE TAXES, INSURANCE OR UTILITIES, WHICH ITEMS ARE SEPARATELY ADDRESSED ELSEWHERE IN THIS LEASE.

15. Maintenance.

(a) Landlord shall keep in good repair the sewer and water lines serving the Demised Premises and the structural supports, inclusive of the roof, of the Demised Premises.

(b) Except as stated in Section 15(a) above, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work that is necessary in order to keep the Demised Premises in good order and repair and in a safe and dry tenantable condition inclusive of removal of ice and snow from surrounding sidewalks and walkways, (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Property, (iii) enter into an agreement with a third party trash removal company reasonably acceptable to Landlord for the removal of Tenant's trash, provided, that, the location of all trash storage or container bins shall be as determined by Landlord, provided, further, Landlord reserves the right to provide trash services to the total Property, provided, further, in the event Landlord elects to provide said services, Landlord shall give Tenant notice of same and Tenant shall be obligated to use said service and pay its trash bill as Additional Rent, however, said trash removal services shall be at a commercially reasonable rate, (iv) change Tenant's air conditioning filter as necessary, but not less than six (6) times a year, (v) enter into an agreement with a third-party provider reasonably satisfactory to Landlord to provide maintenance for the air conditioner and heating units not less often than two (2) times a year, (vi) if applicable, enter into an agreement with a third-party provider reasonably satisfactory to Landlord to provide maintenance as needed for the hood system and grease traps, (vii) repair any portion of the Property which is damaged as the result of any act or omission of Tenant, and (viii) maintain during the Term adequate heat in the Demised Premises to avoid any damage to the Building and to keep all plumbing and water from freezing. Tenant shall promptly provide Landlord with copies of all agreements required by this Paragraph 15(b) as well as copies of all service records related thereto. Notwithstanding any contrary provision of this Section 15, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

16. Real Estate Taxes.

(a) Starting with the Rent Commencement Date and throughout the entire Term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes (as hereinafter

defined) for each tax year. As used herein, the term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, real and/or personal (to the extent and only to the extent Landlord owns personal property which is used in connection with Landlord's provision of common area maintenance and which is assessed for personal property tax purposes), foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Property. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the Term of this Lease, the present method of taxation shall be changed so that in lieu of or in addition to the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon or imposed upon any personal property used in connection therewith or upon the collection of rents or other sums due hereunder, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Property, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes, and multiply by a fraction, the numerator of which shall be the total square footage of the Demised Premises and the denominator of which is the total square footage of the Property (and any expansion thereof). **Tenant's pro-rata share of the Taxes of the Initial Term shall be One Dollar (\$1.00) (the "Baseline Tax Charge") per square foot of the Demised Premises until June 30, 2022.** At the written request of Tenant, Landlord shall provide Tenant with proof of payment of all Taxes.

(b) Tenant shall pay its pro-rata share of such Taxes by the following method: one-twelfth (1/12) of the Baseline Tax Charge shall be paid each month with the Base Rent from the Rent Commencement Date **until June 30, 2022; thereafter, the monthly payments** shall be Tenant's pro-rata share based upon the tax bill for the previous tax year, any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished. Notwithstanding the end of the Term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

17. Insurance.

(a) Landlord shall obtain and maintain during the Term of this Lease, fire and extended coverage insurance commonly referred to as "all risk" coverage, insuring against all reasonable perils and liabilities, for one hundred percent (100%) of the replacement value of the Demised Premises and Landlord's Work. Such insurance shall be issued by an insurance company licensed to do business in the jurisdiction in which the Property is located.

(b) Starting with the Rent Commencement Date and throughout the entire Term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Landlord's insurance costs pursuant to Section 17(a) above. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all such insurance costs, and multiply by a fraction, the numerator of which shall be the total square footage of the Demised Premises and the denominator of which is the total square footage of the Property (and any expansion thereof). **Tenant's pro-rata share of Landlord's insurance costs pursuant to Section 17(a) shall be Twenty-Five Cents (\$0.25) (the "Baseline Insurance Charge") per square foot of the Demised Premises until June 30, 2022.** Following this date of the Initial Term, Landlord shall adjust the Baseline Insurance Charge based upon Tenant's pro-rata share of the actual costs of procuring such insurance. In the event that, in any given year following June 30, 2022 of the Initial Term, the amount so paid to Landlord shall be more than Tenant's proportionate share, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of rent due an amount sufficient to result in Tenant's paying its proportionate share of the Landlord's insurance expense. At the end

of each year, there shall be an adjustment if the amount paid by Tenant is more or less than Tenant's proportionate share actually incurred in that year. Any amount due Landlord shall be paid within ten (10) days after demand therefor by Landlord. Any amount due Tenant shall be credited to Tenant's next payment of Landlord's insurance expenses.

(c) Tenant, at Tenant's sole cost and expense, shall obtain and maintain for the term of this Lease, insurance policies providing the following coverage: (i) Tenant's fixtures, equipment, furnishings, merchandise and other contents in the Demised Premises, for the full replacement value of said items, (ii) one (1) full year Base Rent coverage, (iii) all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Property is located, (iv) plate glass insurance, if available, and (v) comprehensive general liability insurance naming Landlord, any mortgagee and master lessor, if any, as additional insureds, which policy is to be in the minimum amount of One Million Dollars (\$1,000,000.00) with respect to any one occurrence, in the minimum amount of Three Million Dollars (\$3,000,000.00) in the aggregate, and in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) with respect to Property damage. The minimum limits hereinbefore set forth may, at Landlord's option, be increased by not more than ten percent (10%), such increase to occur not more often than once during each two (2) consecutive lease years during the Term hereof. Tenant shall deliver to Landlord certificates of insurance, or duplicate originals of each such policy. At the written request of Tenant, Landlord shall provide Tenant with proof of payment of all insurance.

(d) The policies described in this Section 17 shall: (i) be acceptable to Landlord in form and content, (ii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Landlord's agents and employees, and mortgagees and ground lessors, (iii) contain a provision that it shall not be canceled and that it shall continue in full force and effect, unless Landlord has received at least thirty (30) days prior written notice of such cancellation or termination, (iv) not be materially changed without prior notice to Landlord, (v) shall automatically renew each year without Landlord requesting, and (vi) shall name Landlord as additional insured.

(e) Tenant shall not permit to be done any act which will invalidate or be in conflict with the fire insurance policies covering the Property or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents shall increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.

(f) Landlord and Tenant each hereby release the other, its officers, directors, employees and agents from any and all liability for responsibility for any loss or damage to Property covered by valid and collectible fire insurance with standard and extended coverage endorsement, unless such fire or other casualties shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

(g) Tenant hereby indemnifies and agrees to save harmless Landlord, any mortgagee and master lessor, if any, of the Property, from and against all claims that arise from or in connection with the possession, use, occupation, management, repairs, maintenance or control of the Demised Premises. Tenant shall, at its own cost and expense, defend any and all actions which may be brought against Landlord, any mortgagee or master lessor with respect to the foregoing. Tenant shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against Landlord, any mortgagee or master lessor in connection with the foregoing.

(h) Except with respect to any damages resulting from the gross negligence of Landlord, its agents or employees, Landlord shall not be liable to Tenant, its agents, employees or customers, for any damage, loss, compensation, accident or claims whatsoever.

18. Casualty Loss. In the event the Demised Premises shall be partially or totally destroyed by fire or other casualty insured under the provisions of Section 17 above, so as to become partially or totally untenable, then the damage to the Demised Premises shall be promptly repaired, unless Landlord shall elect not to rebuild or repair as hereinafter set forth, and annual Base Rent and other charges shall be abated in proportion to the amount of the Demised Premises rendered untenable until so repaired. In no event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, furnishings or equipment.

19. Condemnation. If twenty-five percent (25%) of the Floor Area of the Demised Premises shall be taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date of which such title shall vest in the authority. If the parking facilities are reduced below the minimum parking requirements imposed by the applicable authorities, Landlord may elect to terminate this lease by giving Tenant notice within one hundred twenty (120) days after such taking or supply additional parking to meet minimal standards. In case of any taking or condemnation, whether or not the Term of this Lease shall cease and terminate, the entire award shall be the Property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for fixtures and other equipment which under the terms of this Lease would not have become the Property of the Landlord; further provided, that any such award to Tenant shall not be in diminution of any award to Landlord.

20. Assignment. Tenant shall not, without Landlord's written consent, (i) assign or otherwise transfer, or mortgage or otherwise encumber, this Lease, or any of its rights hereunder, (ii) sublet the Demised Premises or any part thereof, or permit the use of the Demised Premises or any part thereof by any persons other than Tenant or its agents. In the event Tenant requests Landlord's written consent to an assignment or sublease, Tenant shall reimburse Landlord for its actual out-of-pocket costs incurred in connection therewith and shall make a non-refundable deposit equal to One Thousand Five Hundred and 00/100 Dollars (\$1,500.00). Notwithstanding any provision contained herein to the contrary, Tenant shall not display, or allow to be displayed, any real estate brokerage signs or any other form of advertising stating that the Demised Premises is "for lease" or "for sublease" or any other similar terms by any agent or broker other than Premier Commercial Real Estate Services, LLC.

21. Subordination; Attornment; Estoppel.

(a) This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage or deed of trust now or hereafter placed upon the interest of Landlord and the Demised Premises. Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee subordinating this Lease to the lien of any present or future mortgage or deed of trust. Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver any such instrument of Tenant.

(b) If, and so long as this Lease is in full force and effect, at the option of the mortgagee: (i) this Lease shall remain in full force, notwithstanding (A) a default under the mortgage by Landlord, (B) failure of Landlord to comply with this Lease, (C) a defense to which Tenant might be entitled against Landlord under this Lease, or (D) any bankruptcy or similar proceedings with respect to Landlord, (ii) if any such mortgagee shall become possessed of the Demised Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease, and (iii) if any mortgagee or purchaser, at a private or public sale shall become possessed of the Demised Premises, Tenant shall, without charge, attorn to such mortgagee or purchaser as its landlord under the Lease.

(c) Tenant agrees that any time within ten (10) days on the Landlord's request to execute, acknowledge, and deliver to the Landlord a written statement certifying that this Lease is unmodified and is in full force and effect or, if there have been modifications, that the same is in full force

and effect as modified and been paid in advance, if any; it being the intent that such statement delivered under this Section may be relied upon by perspective purchase or mortgagee of the Demised Premises.

22. Landlord's Lien. To secure performance of Tenant's obligations hereunder, Tenant grants to Landlord a security interest in all goods, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper, general intangibles, and other personal property of Tenant situated on the Demised Premises and in the proceeds thereof. Such Property shall not be removed from the Demised Premises until all of Tenant's obligations hereunder have been performed and Landlord acknowledges such performance by notice to Tenant. If an Event of Default occurs, Landlord shall have, in addition to all other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code. The statutory lien for rent is not hereby waived. Tenant shall execute such other instruments requested by Landlord to perfect this security interest. This Lease may be filed as a financing statement or Landlord may, on Tenant's behalf as its agent, execute and file a financing statement to perfect the security interest.

23. Tenant's Default.

(a) If any one or more of the following events occur, said event or events shall hereby be classified as a "Default":

(i) Tenant fails to pay Base Rent, Additional Rent, or any other sums payable by it under this Lease when due; or

(ii) Tenant shall default in the performance of any other covenant or agreement of this Lease or any rules and regulations attached to this Lease or promulgated by Landlord pursuant to this Lease, or in any way frustrates the purpose of this Lease (including, without limitation, and for example, making unwarranted maintenance requests, unnecessarily compelling Landlord to enforce the terms of this Lease or unnecessarily compelling Landlord to expend funds to enforce the terms of this Lease) (collectively a "Non-Monetary Default"); or

(iii) Tenant or any Guarantor or surety for Tenant's obligations under this Lease shall become bankrupt or insolvent or make a general assignment for the benefit of creditors or take the benefit of any insolvency act, or if any debtor proceedings be taken by or against Tenant or any such Guarantor or surety; or

(iv) a receiver or trustee in bankruptcy be appointed for the Tenant's property and such appointment be not vacated and set aside within sixty (60) days from the date of such appointment; or

(v) Tenant, before the expiration of the Lease Term, and without the written consent of Landlord, abandons possession of the Demised Premises; or

(vi) the leasehold estate granted to Tenant by this Lease shall be taken on execution or other process of law or equity in any action against Tenant; then Tenant shall be in default under this Lease.

Notwithstanding anything contained in this Lease to the contrary, Tenant shall have a period of ten (10) days after notice from Landlord of a Default in which to cure said Default. In addition, provided that Landlord or the Demised Premises is not otherwise jeopardized and that such Default does not constitute a nuisance or cause damage to Landlord or any of its other tenants, this grace period may be extended with respect to a Non-Monetary Default of a nature that it cannot be completely cured within the ten (10) day period solely as a result of non-financial circumstances outside of Tenant's control, provided that Tenant

has promptly commenced all appropriate actions to cure such Non-Monetary Default within the ten (10) day period and such actions are thereafter diligently and continuously pursued by Tenant in good faith. In no event, however, shall the grace period exceed a total of ninety (90) days. If the Default is not cured prior to the expiration of the grace period, as extended, then Landlord may pursue any or all of its remedies provided in this Lease and/or permitted by law or equity. In the sole discretion of Landlord, in the event of multiple Non-Monetary Defaults, Landlord may invoice Tenant as Additional Rent the greater of Five Hundred Dollars (\$500.00) or One Hundred Dollars (\$100.00) per hour in liquidated damages for each Non-Monetary Default to cover Landlord's time and expenses related thereto.

24. Remedies. Should a Default occur under this Lease, Landlord may pursue any or all of the following:

(a) Terminate this Lease and any right of renewal and retake possession of the Demised Premises.

(b) Enter the Demised Premises and relet the same or any part of the Demised Premises in the name of Landlord, or otherwise, as Tenant's agent, for a term shorter or longer than the balance of the Term, and may grant concessions or free rent in connection therewith, thereby terminating Tenant's right to possess the Demised Premises, without terminating Tenant's obligations to pay (i) the entire balance of all forms of Base Rent and Additional Rent for the remainder of the Term, plus (ii) all costs and expenses incurred by Landlord in connection with the reletting of the Demised Premises following a default by Tenant, including, without limitation, the expenses of obtaining possession of the Demised Premises, the costs of cleaning, renovation, repairs, decoration, and alteration of the Demised Premises for a new tenant or tenants, all advertising and marketing expenses, all brokerage and legal fees, the costs of protecting or caring for the Demised Premises while vacant, the costs of removing and storing any property located on the Demised Premises, any increase in insurance premiums caused by the vacancy of the Demised Premises, and any other out-of-pocket expenses incurred by Landlord including tenant inducements such as the cost of moving the new tenant or tenants and the cost of assuming any portion of the existing lease(s) of the new tenant(s), plus (iii) the unamortized balance of any allowances granted to Tenant under this Lease, plus (iv) the unamortized balance of the cost of any improvements to the Demised Premises made by Landlord pursuant to this Lease, plus (v) the unamortized portion of any brokerage commission paid by Landlord in connection with this Lease. Any amounts received by Landlord from reletting the Demised Premises shall be deducted from Tenant's obligations under this Lease. Landlord shall have the obligation to make a reasonable effort to relet the Demised Premises. Landlord shall not, in any event, be required to pay Tenant any surplus of any sums received by Landlord on a reletting of the Demised Premises in excess of the Rent provided in this Lease. Any entry or re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Tenant from liability under this Lease. "Re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning. No such re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease or to accept a surrender of the Demised Premises unless a written notice of such intention is given to Tenant. Notwithstanding any such re-letting without termination, Landlord may at all times thereafter elect to terminate this Lease for such previous Default.

(c) Institute an action to recover any Rent due hereunder.

(d) Impose liquidated damages as provided above.

(e) With respect to a Default under Paragraph 23(a)(ii), Landlord may charge Tenant liquidated damages, payable as Additional Rent, in the amount of One Hundred Dollars (\$100.00) per hour to compensate Landlord for the time and effort associated with Tenant's Non-Monetary Default(s).

(f) Obtain injunctive and declaratory relief, temporary or permanent, or both, against Tenant or any acts, conduct, or omissions of Tenant, and further to obtain specific performance of any term, covenant, or condition of this Lease.

(g) After regaining possession of the Demised Premises, remove all or any part of Tenant's property from the Demised Premises and any property removed may be stored at the cost of, and for the account of, Tenant, and, except as required by applicable law, Landlord shall not be responsible for the care or safekeeping of such property whether in transport, storage, or otherwise, and Tenant waives any and all claims against Landlord for loss, destruction, damage, or injury which may be occasioned by any of the aforesaid acts. Landlord may retain possession of such property until all storage charges and all other amounts owed by Tenant to Landlord under this Default section have been paid in full. Nothing set forth in this subsection shall limit Landlord's rights to enforce any lien or security interest in favor of Landlord against any such property of Tenant or to deem the property abandoned pursuant to applicable law.

(h) If Landlord exercises the remedies provided in this Section 24, Landlord may declare the entire balance of all forms of Rent due under this Lease for the remainder of the Term to be forthwith due and payable and may collect the then present value of such Rents (calculated using a discount equal to the yield then obtainable from the United States Treasury Bill or Note with a maturity date closest to the date of expiration of the Term) by distress or otherwise. The accelerated Additional Rent shall be calculated by multiplying the highest Additional Rent amount payable by Tenant in any calendar year times the number of calendar years (including any fractional calendar year) remaining in the Term following the date of default.

(i) Should Tenant Default in the observance or performance of any term or covenant on Tenant's part to be observed or performed pursuant to this Lease, Landlord may perform the obligations of Tenant, and if Landlord, in connection therewith, makes any expenditures or incurs any obligation for the payment of money, including, but not limited to, reasonable attorneys' fees, such sums so paid or obligations incurred shall be deemed to be Additional Rent under this Lease and shall be paid by Tenant to Landlord within ten (10) days of rendition of a bill or statement to Tenant therefor. If the Term shall have expired at the time of the making of such expenditures or incurring of such obligations, such sums shall be recoverable by Landlord as damages. This Section shall survive the expiration or sooner termination of this Lease.

(j) The remedies provided in this Lease or presently or hereafter existing at law or in equity shall be cumulative and concurrent, and may be exercised as often as occasion therefor shall occur. No single or partial exercise by Landlord of any remedy shall preclude any other or further exercise of such remedy or of any other remedy. No action or inaction by Landlord shall constitute a waiver of a Default and no waiver of Default shall be effective unless it is in writing, signed by the Landlord.

(k) Tenant acknowledges that any rights or options of first refusal, or to extend the Term, to expand the size of the Demised Premises, to purchase the Demised Premises, or other such or similar rights or options which have been granted to Tenant under this Lease are conditioned upon the prompt and diligent performance of the terms of this Lease by Tenant. Accordingly, should Tenant Default under this Lease beyond any applicable grace period on three (3) or more occasions during any twelve (12) month period, in addition to all other remedies available to Landlord, all such rights and options shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect.

(l) If Tenant shall be in Default hereunder, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Default for the account of and at the expense of the Tenant. No such notice shall be required for emergency repairs. Tenant agrees to pay Landlord interest, at a rate equal to two

percent (2%) in excess of the prime rate of interest announced from time to time by The Chase Manhattan Bank N.A. but not in excess of the maximum legal rate, for all sums paid by Landlord pursuant to the terms of this Article, and for all sums due and owing to Landlord more than ten (10) days after the date such sums are due.

25. Landlord's Default. Landlord shall in no event be charged with a Default hereunder unless Landlord shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such Default shall be deemed to have been cured if Landlord commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

26. Venue; Attorneys' Fees.

(a) Should any litigation occur as the result of any aspect of the parties' relations, interpretation or negotiation of this Lease, or any matter relating directly or indirectly to Tenant's occupancy or this Lease, it shall be in the courts of Marion County, West Virginia. Both the parties and all signatories to this Lease hereto understand that each party has a constitutional right to a jury trial regarding certain issues and each party individually and voluntarily waives his/her/its right to a jury trial.

(b) Regardless of the remedy or form, and regardless of which party ultimately prevails, each party shall pay for its own attorney's fees and any other related dispute resolution costs; except that, if Tenant is delinquent in Rent, Additional Rent or damages the Demised, Premises, building, Property or improvements and Landlord is forced to take any actions in order to collect back the Rent due or for damages done, then Tenant shall pay Landlord's attorney's fees and costs. In addition, in the event Tenant alleges that the Landlord has breached any part of this Lease, it shall be a condition precedent to instituting any litigation or any other action or resolution or remedy that Tenant continue paying Rent; under no circumstances is Tenant relieved of any obligation to pay Rent during any dispute resolution process regardless of the nature of the same.

27. Landlord's Right of Access. Landlord may, upon prior notice to Tenant, enter upon the Demised Premises for the purpose of inspecting, making repairs, replacements or alterations, and showing the Demised Premises to prospective purchasers, lenders or lessees. During the last six (6) months of the term, Landlord shall have the right to display one (1) or more "for rent" or "for lease" signs on or about the Demised Premises.

28. Force Majeure. If Landlord or Tenant is delayed from performing any of their respective obligations during the Term of this Lease because of acts of God or other cause beyond their control, then the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the defaulting party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid by Tenant hereunder or any obligation of Landlord or Tenant that can be satisfied by the payment of money.

29. Surrender.

(a) Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Demised Premises, in good order, broom clean, normal wear and tear and acts of God excepted, to the Landlord. Subject to the other terms of this Lease, Tenant shall, at its expense, remove all property of Tenant, all alterations to the Demised Premises not wanted by Landlord and repair damage caused by such removal and return the Demised Premises to the condition in which it was prior to the installation of the article so removed.

(b) If Tenant shall hold possession of the Demised Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Demised Premises as a tenant from month-to-month at double the Base Rent and Additional Rent in effect during the last lease year immediately preceding such holdover and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has under this Lease or at a law or in equity including an action for wrongfully holding over. No payment by Tenant, or receipt by Landlord, of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to Landlord be deemed to effect or evidence an accord and satisfaction, and Landlord may accept such check or payments without prejudice to Landlord's rights to recover the balance of the Rent or other amount owed or to pursue any other remedy provided in this Lease.

30. Quiet Enjoyment. Landlord covenants that if, and for so long as, Tenant pays the Rent and all other charges provided for herein and performs all of its obligations provided for herein, Tenant shall at all times during the Term hereof peaceably have, hold and enjoy the Demised Premises, without any interruption or disturbance from Landlord, or anyone claiming through or under Landlord, subject to the terms hereof.

31. Exculpation. Notwithstanding anything else whatsoever in this Lease, at law, or in equity to the contrary, Tenant agrees that it shall look to and shall have recourse solely to the estate and property of the Landlord in the land and buildings comprising the deed parcel of real estate of which the Demised Premises are a part, for the collection of any judgment (or any other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord, or in the event of any other judgment or judicial process obtained by Tenant in any way arising directly or indirectly out of or under this Lease or the performance hereof or out of the relationship of Landlord or Tenant established hereunder, and no other real or personal property of the Landlord, tangible or intangible, shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies. In the event of the sale of any of Landlord's right, title and interest in the Property, Landlord shall be released from all liabilities and obligations under this Lease after the sale.

32. Brokers. Landlord and Tenant warrants and represents that there was no broker or agent instrumental in consummating this Lease except **Premier Commercial Real Estate Services, LLC** (the "Broker"). Landlord covenants and agrees to compensate Broker pursuant to the terms and provisions of a separate written agreement between Landlord and Broker. Each party agrees to indemnify and hold the other party harmless against any claims for brokerage commissions, finder's fees and other compensation resulting from a breach of this Section 32.

33. Miscellaneous Provisions.

(a) This Lease contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, or warranties or representations, oral or written, between them other than as herein set forth.

(b) No notice or other communications given under this Lease shall be effective unless the same is in writing and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid or a recognized overnight express mail courier, addressed:

(i) If to Landlord, Attention: Richard A. Biafora, 6200 Mid Atlantic Drive, Morgantown, West Virginia 26508, or to such other address as Landlord shall designate by giving notice thereof to Tenant.

(ii) If to Tenant, Attention: **Abdo Nasser Abdulgabar, 108 Conner Grant Road, New Bern, NC 28562** or such other address as Tenant shall designate by giving notice thereof to Landlord.

(c) It is the intent of the parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the jurisdiction in which the Property is located.

(d) This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

(e) Landlord hereunder shall have the right to freely assign this Lease without notice to or consent of Tenant.

(f) The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint venturers.

(g) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Demised Premises and/or any claim of injury or damage.

(h) If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(i) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

(j) Tenant hereby acknowledges and agrees that it shall at all times during the Term provide Landlord with working keys to the Demised Premises as well as all current alarm codes in the event of an emergency. In the event Tenant fails to provide Landlord with working keys and/or current alarm codes, Tenant shall be responsible for all damages resulting from Landlord having to enter the Demised Premises in the event of an emergency. Tenant's Local Emergency Contact information is as follows:

(k) Every third month of the Term, Tenant shall include with the monthly Rent payment a report of Tenant's gross monthly sales volume, being the same as which Tenant reports to the West Virginia State Tax Department. Landlord shall keep all such sales information confidential.

34. Pandemic Closure

In the event Tenant is required to close by State or Local Order due to a Pandemic ("Closure Order") then the Parties hereby agree to the following:

(1) Tenant shall pay its full rent for the first thirty (30) days after the Closure Order.

- (2) Provided Tenant is not in default of the Lease following said thirty (30) day period and assuming the Closure Order is still in effect, Landlord agrees to abate all rentals for the subsequent consecutive sixty (60) days of the Lease Term, for the period of time the closure order is in effect.
- (3) Following said consecutive ninety (90) day period, in the event said Closure Order is still in effect, then Landlord shall have the option to either extend the rent abatement period, terminate the Lease by written notice to Tenant, or negotiate a new Lease Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed effective the day and year first above written.

LANDLORD:
GENERAL ACQUISITIONS LLC

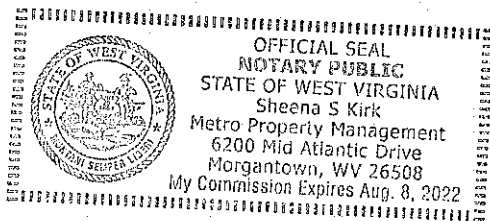
By: [Signature]
Name: Richard A. Biafora
Title: MANAGER

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this 25 day of February, 2021, by Richard A. Biafora, the Manager of General Acquisition LLC, a West Virginia limited liability company, for and on behalf of said limited liability company under authority duly granted.

My Commission Expires: Aug 8 2022

(Notarial Seal)



Sheena S. Kirk
Notary Public

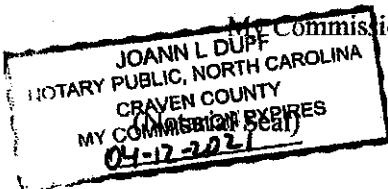
TENANT:
70 East Tobacco, LLC

By: [Signature]
Name: Abdo Nasser Abdulgabar
Title: Owner

STATE OF North Carolina
COUNTY OF Craven, to-wit:

The foregoing instrument was acknowledged before me this 24th day of Feb-, 2021, by Abdulgabar Nasser, for and on behalf of said company under authority duly granted.

My Commission Expires: 04-12-2021



Joann L. Dupf
Notary Public

GUARANTY OF LEASE AGREEMENT

In consideration of and as a material inducement to General Acquisitions LLC ("Landlord") executing and delivering simultaneously herewith, in reliance upon this Guaranty that certain Lease Agreement (the "Lease") of even date herewith, between **70 East Tobacco, LLC** (hereinafter called "Tenant"), the undersigned ("Guarantor") hereby unconditionally and absolutely guarantees unto Landlord, its successors and assigns, the full, prompt and complete payment by Tenant of any Base Rent, Additional Rent and any additional payments, as these terms may be provided for and used in the Lease and the prompt, faithful and complete performance and observance by Tenant of all of the terms, covenants and conditions of the Lease on Tenant's part to be performed or observed.

Guarantor does hereby waive notice of any and all defaults on the part of Tenant, waives acceptance and notice of acceptance of this Guaranty, and waives all demands for payment or performance. Guarantor agrees that no delay on the part of Landlord in enforcing any of its rights or remedies or insisting thereupon, nor any extension of time nor any charges or modifications in or to, or in connection with the Lease, shall in any way limit, affect or impair the liability of Guarantor hereunder; and Guarantor hereby expressly consents to and approves thereof with the same force and effect as though its written consent had been given to each of such delays, extensions, changes and modifications.

This Guaranty is independent of and in addition to any security or other remedies which landlord has or may have for the performance of any of the obligations on the part of Tenant. Guarantor agrees that Landlord shall not be required to resort to any other security or other remedies before proceeding upon this Guaranty, but that Landlord may proceed hereunder against Guarantor at any time it sees fit, independently of or concurrently with any other remedies it may have.

The undersigned agrees that in the event of insolvency, bankruptcy, or reorganization of Tenant, any liquidation, dissolution, winding-up or cancellation of the legal status of Tenant, any composition or arrangement by Tenant with its creditors, and irrespective of any rejection, assignment or termination of the Lease or any of the terms and conditions thereof by Tenant or any trustee of Tenant in connection with any petition for bankruptcy or reorganization filed by Tenant under the Bankruptcy Code or any other applicable federal or state law, the undersigned shall, nonetheless, remain liable hereunder for the full and complete performance of the terms and conditions of the Lease to be complied with or performed by Tenant during the entire Term designated in the Lease.

No set-off, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature which the Guarantor has or may have against Landlord shall limit or in any way affect the obligations of Guarantor hereunder.

It is understood that the liability hereunder of Guarantor shall continue for and during the entire Term of the Lease and any renewals or extensions thereof, notwithstanding any assignment of the Lease or subletting of all or any portion of the Demised Premises demised under the Lease. This Guaranty shall not be limited to any amount or time and shall at all times include the full indebtedness and all other liability and obligation of Tenant, or any assignee or subtenant of Tenant, to Landlord under the Lease.

If Guarantor is a corporation and is merged into or with any other company, firm or corporation, the resulting merged company, firm or corporation shall become liable as the Guarantor hereunder, to the same extent as the Guarantor.

If Guarantor is a corporation or a partnership (general or limited), firm or other entity the officers or partners executing this Guaranty on behalf of Guarantor hereby jointly and severally warrant and represent that the Guarantor has full power and authority to guarantee the Lease and to make and execute this Guaranty and that this Guaranty is fully and legally binding upon Guarantor.

If this Guaranty is executed by two (2) or more corporations, individuals, firms, partnerships (general or limited) or other entities (or any combination thereof) the liability of said parties executing this Guaranty shall be joint and several.

This Guaranty shall be binding upon the undersigned, the undersigned's successors and assigns, and shall inure to the benefit of Landlord, its successors and assigns.

Dated: 2-24, 2021

Witness:

Guarantor:

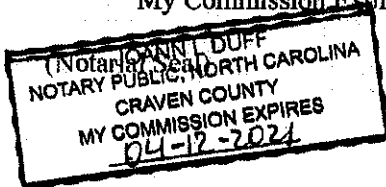
Akram Al-Shaebi

Abdo Nasser Abdulgabar

STATE OF ~~WEST VIRGINIA~~, North Carolina
COUNTY OF Craven, to-wit:

The foregoing instrument was acknowledged before me this 24th day of February, 2021, by Abdulgabar Nasser, for the purposes therein contained.

My Commission Expires: 04-12-2021



Joan L. Duff
Notary Public

**EXHIBIT A
TO
LEASE AGREEMENT**

Site Plan

EXHIBIT B

TENANT'S WORK

All Tenant construction shall be in accordance with the requirements of all applicable codes, ordinances, rules, and regulations, including, but not limited to, the Americans with Disabilities Act Accessibility Guidelines and the applicable building codes, and all authorities having jurisdiction over the work and Landlord's insurance carrier. In case of conflict, the standard rule, ordinance, etc. providing the higher standard/ requirement shall prevail. In addition to the items set forth in Section 1 of this work letter as Tenant's responsibility, Tenant's design and construction must also comply with the minimum criteria below.

A. General Design and Construction Criteria:

1. Tenant and/or Tenant's contractor prior to commencing of any work at the Property shall meet with Landlord to discuss procedures and requirements.
2. Tenant's contractor shall follow all Landlord's or Landlord's Shell General Contractor's safety, parking and related rules.
3. Tenant's contractor shall not use any temporary signage.
4. All Tenant construction shall be in conformance with the approved construction type of the structure and the building code.
5. Any penetrations planned by Tenant through the roof, ceiling, floor, or exterior wall of the Premises must be approved by Landlord, in writing, at the time of plan preparation and prior to performing such work. All openings must be done so per the building code as it relates to fire ratings and protection. For any openings through structurally supported levels, concrete slab must be core-bored, sleeved, grouted, sealed, and made waterproof Sleeves must extend at least 2" above finish floor.
6. All penetrations through roof shall be by Landlord's roofing contractor and paid for by Tenant. Penetrations will require Landlord's prior written approval.
7. No fastening to or suspending from the underside of the floor or roof deck is permitted without the Landlord's prior written approval for all loads over 400 pounds. Such approval will not be given prior to review of appropriate loading and detail information. Tenant shall submit detailed information to Shell General Contractor.
8. Intentionally Omitted
9. Work by Tenant's contractor must be coordinated with Landlord's contractor. If shell is not completely finished, Tenant's contractor must keep a clean site, free of all trash and debris, and is responsible for trash removal. Trash and debris shall not be left, at any time, outside the Premises.

10. All Tenant drawings will be approved by Landlord.

11. Tenant or Tenant's contractor shall provide dumpsters at locations designated by Landlord. Tenant shall provide Landlord with evidence that Tenant has contracted and paid for trash removal.

12. Tenant's plan shall be subject to Landlord's approval.

B. Electrical Design Criteria:

1. Lighting system design:

a. All lighting must be reviewed and approved by Landlord prior to installation, and must conform to the following lighting guidelines. Tenant is responsible for furnishing and installing all lighting fixtures, lamps, wiring, convenience outlets, time clocks, contactors, signs, etc., and all related conduits, controls, and wiring within the Premises. Entire installation shall meet all requirements of national and local electrical codes. All equipment shall bear UL labels, and HUD lighting shall not be used unless approved by the Landlord.

b. Exit/emergency lighting system shall be by Tenant. Emergency means of egress and lighting shall be provided by Tenant to illuminate Premises, as required by the building code. Exit/emergency means of egress lighting fixtures shall be provided with battery back-up and shall be recessed lights or twin-head light packs. In areas visible to customers, battery assembly for emergency means of egress lights shall be concealed and remote-type light fixtures. Type of fixtures to be approved in advance by Landlord and shall match manufacturer and model number of fixtures installed in building common areas.

c. Intentionally Omitted.

d. Intentionally Omitted.

e. All conduits installed in public areas shall be concealed from public view, unless approved in advance, in writing, by the Landlord.

f. Any Tenant requiring new exit doors or relocation of existing doors shall also provide additional lighting at new door location(s). Light fixture(s) shall match manufacturer and model number of existing lighting fixtures installed by Landlord. Final connection to Landlord's lighting circuit shall be by Tenant.

2. Fire alarm protective signaling systems:

a. In buildings provided with fire alarm protective signaling systems, Tenant shall provide a protective signaling system. Tenant shall provide a complete fire alarm protective signaling system that will function independently of the building fire alarm system, and shall use Landlord's fire alarm contractor for all work within premises. Tenant provided fire alarm system shall take control of and provide power to all audio-visual devices, and shall provide signaling and initiating circuits to the building fire alarm system. Tenant provided fire alarm

systems shall be UL listed for fire alarm system signaling and initiation by the building fire alarm system. Final connection to the building fire alarm signaling and initiating circuits shall be located at the fire alarm junction box in the building common area. Refer to Section 1, "Landlord's Shell Building - Fire Protection System". Final connections and any required modifications to the building fire alarm system shall be provided by the Landlord's fire alarm contractor at the Tenant's expense.

b. Fire alarm monitor signaling system: Tenant shall furnish and install duct smoke detectors as required by code at all Landlord supplied units. Detectors to shut down HVAC unit and signal the Landlord's monitor system. Tenant shall run wire from smoke detection device to Landlord's junction box located in the space. Landlord's fire alarm contractor shall make final connections at the Tenant's expense.

3. Special systems design:

a. Television and security systems, associated equipment, and all conduits and wiring required by such systems, shall be by Tenant, if required. The installation of any rooftop mounted antenna or satellite dish must be approved in advance, in writing, by the Landlord.

b. Delivery buzzer system, including associated conduit and wire, shall be provided by Tenant, if required by Tenant.

c. Audio systems installed by Tenant shall be designed in such a way that the sound shall be contained within Tenant's leased Premises.

C. Plumbing Criteria:

1. The plumbing system must be reviewed and approved in advance by the Landlord and must conform to the following plumbing guidelines.

D. Fire protection:

1. The Tenant shall modify all branch piping and sprinklers as required per tenant plan, and shall be hydraulically calculated. Tenant shall employ the Landlord's fire protection contractor for all work related to fire protection system, at Tenant's expense.

2. The fire protection system shall comply with all governing codes.

3. Sprinkler system: Tenant work shall include, but is not limited to, modification of branch lines, hangers, sprinkler drops, etc. All sprinkler heads shall be semi-recessed pendant sprinkler heads with chrome finish and escutcheon located in the ceiling tiles, to meet all building codes.

4. The Tenant is responsible for any drain downs/refilling of the fire protection system, including all related costs, as required for the build-out of the Tenant's space.

5. The Landlord shall be given notice five (5) working days prior to any shut-downs that may be required. Tenant Premises must be designed so that Premises can be shut-down without shutting down entire system.

E. Tenant Finishes Criteria:

1. All Tenant work shall be subject to Landlord's review and approval.

2. Swinging doors must not open across the Tenant's lease line or into any common area, unless approved, in writing, by Landlord. Roll down, sliding, or folding grilles are not allowed. Tenant spaces with occupant loads exceeding 50 persons must have outward swinging doors per code.

3. Tenant's interior partitions shall be made of metal-stud framing with 5/8" gypsum board finish on all sides, with taped and speckled joints.

4. Tenant shall provide and install noncombustible fire stops as may be required at separations from the leased premises and ceiling above common areas. Fire stop must not be attached to the Landlord's ceiling system.

5. Metal suspension systems shall be used for all ceilings and shall be secured to Landlord's structural framing only. No connections to Landlord's roof or floor deck, piping, ductwork, conduit, etc. will be permitted.

6. Combustible materials of any sort (including non-plenum rated cabling) may not be used or stored above the Tenant's ceiling.

7. Provide access panels to permit servicing to all equipment located above the ceiling. Access panels in hard surface ceilings must be flush and fully concealed with adjacent finishes. Access panel should be installed on vertical ceiling soffits or located as inconspicuously as possible.

8. Intentionally Omitted.

9. Intentionally Omitted.

10. Intentionally Omitted.

11. Tenant is responsible for maintaining integrity of all fire protected or sound rated assemblies. Tenant shall be responsible for providing code required column protection system, ceiling membrane system, and associated components at all areas within tenant space required to have protection where protection has not been installed by the Landlord. If rated assembly

components are damaged or compromised during construction, the Tenant shall repair the assembly per all building codes and Landlord approval.

12. Construction should not interfere in any way with adjacent Premises. All restaurant or assembly use, Tenants shall provide sound batt insulation, full depth of stud, full height of demising wall, tight to deck and completely seal all voids between wall and deck.

13. Tenant is responsible to maintain a minimum sound transmission classification (STC) of 40 at demising wall. At all restaurant or assembly use tenants, provide a minimum STC of 45, including two layers of 5/8" gypsum board on Restaurant/Assembly tenant side of demising wall, but in no case should sound penetrate outside demising line. If additional gypsum board is required on adjacent tenant side of demising wall, responsibility shall be Restaurant or Assembly use. Tenant will be responsible to design demising walls to prevent sound transmission, based on Tenant's operation.

14. Tenant restrooms: All first floor restrooms shall be designed and constructed by Tenant and shall comply with all building codes and ADA, and approved by Landlord. Fixtures to be ADA compliant. Restroom doors to be 3' x 7', solid core, paint grade door in hollow metal frame, with appropriate hardware.

15. Flooring (first floor tenants): Tenant shall install hard surfaced, durable flooring, such as upgraded porcelain tile, wood, slate, etc., in all public areas within 10'-0" from front lease line adjacent to a public entrance. Other proposed flooring must be approved in writing by Landlord.

16. Awnings: At some exterior building facades, Landlord may incorporate awnings into the design of the building. At such locations, as deemed by the Landlord, Tenant shall provide and install any awnings which have been included in the building's design. Tenant shall be responsible for entire system, including any blocking or structural elements needed for adequate support. Awning design, color, size, configuration, and location to be approved by Landlord prior to installation and should reflect the building's original design intent. Graphics of any kind will not be allowed. Tenant shall be responsible for awning maintenance, as approved by Landlord. If awnings are installed prior to Tenant's construction, Tenant shall reimburse the Landlord for the cost of each awning.

F. Tenant Opening Requirements:

1. Intentionally Omitted.

a. At least five (5) days prior to the opening of the Premises for business, Tenant shall deliver to the Landlord (a) insurance certificates with Landlord as an additional insured; (b) mechanics' or construction lien waivers as the case may be, as required by the Lease, including this Exhibit B; (c) a permanent certificate of occupancy or its equivalent (d) certificate by Tenant's architect certifying that the construction of the Premises has been completed in accordance with all plans and specifications approved by the Landlord; and (e) all evidence

typically required in the jurisdiction where the shopping center is located to provide evidence of compliance with all applicable building and fire codes and all other governmental requirements.

b. Tenant shall give Landlord at least five (5) days' notice of the date of completion of Tenant's work in the Premises and Landlord shall have inspected the Premises to determine whether Tenant's work is complete in accordance with the requirements of the Lease and Landlord shall have approved all such work.

c. Intentionally Omitted.

d. No approval by Landlord shall make Landlord responsible for the condition of the Premises or constitute a representation by Landlord of compliance with any applicable requirements or constitute a waiver of any rights and remedies that Landlord may have under this Lease or at law or in equity. If Tenant shall open the Premises in violation of the requirements of this requirement, such action by Tenant shall constitute a material default under this Lease. On the date Tenant opens for business in the Premises, Tenant shall be deemed to have accepted the Premises and agrees that it is in the condition, with respect to any of Landlord's obligations, which is required under this Lease. The opening requirements shall apply not only to Tenant's initial construction, but to any subsequent opening after any temporary closure, casualty, damage, or permitted alteration.

2. Upon completion of Tenant's work, Tenant shall deliver to Landlord the following:

a. Tenant's final notarized original affidavit that Tenant's work has been completed to Tenant's satisfaction and in strict accordance with the final working drawings and Tenant's construction requirements, which affidavit may be relied on by Landlord. Any deliberate or negligent misstatement or any false statement made by Tenant therein shall constitute a breach of this Lease.

b. The final notarized original affidavit of Tenant's general contractor performing Tenant's work stating that Tenant's work has been completed in accordance with the final working drawings and that all subcontractors, laborers, and material suppliers engaged in furnishing materials or rendering services for Tenant's work have been paid in full.

c. A final notarized original, unconditional waiver of lien with respect to the Premises executed by Tenant's general contractor and, if requested by Landlord, final notarized original, unconditional waiver of liens executed by each subcontractor, laborer, and material supplier engaged in or supplying materials or services for Tenant's work. All waiver of lien documentation must, in every circumstance, be totally unconditional releases.

G. Insurance Requirements of Tenant's Contractors:

1. The contractor, for the protection and benefit of itself and the Owner, shall specifically procure, pay for, and maintain in full force and effect until final payment (unless otherwise designated), at no expense to the Owner, the following policies of insurance, to be

written by an insurer acceptable to the Owner, who is qualified to do business in the State of West Virginia, and which shall, as a minimum, afford the following types and limits of coverage.

- a. Workers' Compensation: Statutory
- b. Employer's Liability: \$1,000,000 (one million dollars)
- c. Commercial General Liability (including Premises-Operation; Contractual Liability; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):
 - d. Bodily Injury & Property Damage - combined single limit
 - (i) \$1,000,000 (one million dollars) Each Occurrence.
 - (ii) \$2,000,000 (two million dollars) Annual Aggregate
 - e. Products and Completed Operations to be maintained for three (3) years after final payment.
 - f. Property Damage Liability Insurance will provide X, C, or U coverage as applicable.
 - g. A per project/job aggregate endorsement shall apply.
 - h. Umbrella Liability: \$5,000,000 (five million dollars) (to cover at least all risks described in the Commercial General Liability policy) which shall cover and relate to the Project and no other work of the contractor or any other party.
 - i. Comprehensive Automobile Liability: Bodily Injury and Property Damage: \$1,000,000 (one million dollars) Combined Single Limit.
 - j. Subcontractor's Insurance: The contractor shall either:
 - (i) Require each of its subcontractors to procure and maintain during the life of its subcontract, Subcontractor's Liability Insurance of the type and in the amount specified for the contractor herein, or
 - (ii) Insure the activities of its subcontractors in its policy as specified herein.
 - k. All Risk Contractor's Equipment Insurance, covering owned, used, and leased equipment required to perform the services called for under the contract documents; and all risk builder's risk insurance, including the perils of earthquake and flood, with limits adequate to cover the value of the work installed and materials while in transit and while stored at the site, equipment machinery, tools, and supplies of any nature whatsoever, including buildings and all

temporary structures to be used in, or incidental to, the fabrication, erection, testing, or completion of the work.

l. Regulatory: Any other insurance required by applicable federal, state, or local laws, ordinances, rules, regulations, or orders.

m. The insurance required under Subparagraphs la through lh above shall also include the Owner, its constituent members, the Owner's lender(s), and others designated by the Owner as additional insureds. The inclusion therein of any person or entity as an additional insured shall not affect any right such person or entity would have as a claimant thereunder if not so included. Each such policy shall contain the following cross-liability wording: In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder. All such insurance shall be primary and noncontributing with any insurance carried by the Owner, and any similar or additional insurance maintained by the Owner shall be secondary and excess to that carried by the contractor and subcontractor. Before commencing the work, the contractor shall furnish a certificate from its insurance carrier showing that it has complied with the provisions of this Paragraph, and providing that the said insurance policies will not be changed or canceled during their term until after at least thirty (30) days prior notice by registered mail to the Owner. Upon receipt of any notice of expiration, cancellation, or alteration, the contractor shall, within ten (10) days of receiving such notice, delivery to the Owner other policies of insurance similar in all respects to the policy or policies about to expire or be canceled or altered. In the event of failure of the contractor to furnish and maintain such insurance or to furnish a satisfactory certificate therefor, the Owner shall have the right to take out and maintain the said insurance for and in the name of the contractor, and the contractor agrees to furnish all necessary information to permit the Owner to take out and maintain such insurance for the account of the contractor and to pay the cost thereof to the Owner immediately upon presentation of a bill. Compliance by the contractor with the foregoing requirements as to carrying insurance and furnishing certificates shall not relieve the contractor from liability under this Contract.

**EXHIBIT C
TO
LEASE AGREEMENT**

Landlord's Work

Landlord to Complete:

1. 1 ADA Bathroom
2. Walls Taped, Sanded and Painted
3. Drop Ceiling
4. HVAC Capacity and Distributions
5. Level Concrete Slab
6. Run all electric with convenience outlets
7. Ceiling Lights

**EXHIBIT D
TO
LEASE AGREEMENT**

Signage Standards and Guidelines

All signs installed by Tenant shall be lighted and meet the following:

1. The design of the Tenant's signs must be submitted to and approved by Landlord before installation and must be consistent with other existing signage, both in size, quality and appearance, within the Property of which Demised Premises is a part.
2. The entire shopfront is the sign field. Signs are to be reviewed on the basis of how well they are integrated with the architectural storefront elements into an attractive composition.
3. All illuminated storefront signs shall be located within the limits of the storefront. The preferred method is for the sign to be centered on the Tenant's sign band area, typical for all tenants.
4. The advertising or informative content of all signs shall be limited to letters designating the store name and/or type of store (which such designation of the store type shall be by general descriptive terms and shall not include any specification of the merchandise offered for sale therein or the services rendered therein) and shall contain no advertising devices, slogans, symbols or marks (other than the store name and/or type of store, as aforesaid, and other than crests and corporate shields which may be permitted in Landlord's sole discretion if less than 32" in width and height per Section 7 below.
5. The letters on all signs shall be script or individual block type. No box signs will be permitted. The size of the letters shall be in proportion to the size of the sign as determined in accordance with the provisions of this Exhibit and the letters shall be internally illuminated with translucent face, the lamps therefore being contained wholly within the depth structure of the letters.
6. The character, design, color and layout of all signs shall be subject to Landlord's prior approval, which shall not be unreasonably withheld to the extent the sign in question complies with the criteria set forth in this Exhibit.
7. All signs shall be in accordance with the following requirements:
 - (a) For signs on the neutral band area, the sign and any part or parts thereof, except as otherwise provided in Section 7(b) and 7(d) below, shall be located within the physical limits of the storefront of the leased premises of the occupant.
 - (b) No sign or any part or parts thereof shall project beyond the vertical neutral strip of the storefront or, if there are no neutral strips, more than 6" beyond the storefront, subject, however, to Section 7(d).
 - (c) Neon shop window signs may divide the total square footage of sign area equally, providing signs no lower than 6'0" A.F.F. and no higher than 8'0" A.F.F. behind the storefront glazing. No shop window "signature signs" will be allowed with this signing option.
 - (d) The size of all signs except anchor store's signs shall be limited. The scale and concept of the center requires the use of signs which are not larger than necessary to be legible. Each party's

signs shall be located within the limits of its respective storefront and shall not project more than six inches (6') beyond the storefront and, subject to Landlord's right to approve in Landlord's sole discretion, shall conform to the following proportional height criteria: 18" capitals, 12" body.

(e) In addition to complying with the above criteria, signs in the center shall be limited in length to 67% of each frontage.

(f) No sign shall exceed a maximum brightness of 100 foot lamberts.

(g) All signs shall be fabricated and installed in compliance with all applicable building and electrical codes and shall bear a U.L. label.

(h) Painted or printed signs on the exterior surface of any building shall be prohibited except small scale relative to store name and stating store hours which are neatly lettered on the glass of the storefront, but subject to Landlord's approval. In addition, any non-customer door for receiving merchandise may have, in two-inch (2") block letters, the name of the Store or Tenant.

8. The fabrication, installation and operation of all signs shall be subject to the following restrictions:

(a) Fluorescent and/or incandescent tubing or lamps, ballast boxes and/or electrical transformers, crossovers, conduit and/or sign cabinets shall not be permitted nor shall translucent sides of sign letters be permitted.

(b) No flashing, moving, flickering and/or blinking illumination, animation, emission of audible sound, moving lights and/or floodlight illumination shall be permitted.

(c) The name and/or stamp of the sign contractor or Sign Company of both shall not be exposed to view.

(d) All neon signage and decorative display must be recessed, covered or fronted by protective Plexiglas.

9. The following type signs are prohibited:

(a) Paper signs and/or stickers utilized as signs.

(b) Signs of a temporary character or purpose, irrespective of the composition of the sign or material used therefor.

(c) Except as set forth above, painted or printed signs, except, however, one (1) non-illuminated, small-scale "signature sign" which is lettered on the glass portion of a storefront of an occupant and/or affixed to such storefront surface, provided such sign does not project more than two inches (2") from the storefront surface.

(d) Outrigger signs.

(e) Moving signs.

(f) Pylon signs.

(g) Rooftop signs.

(h) Signs mounted on the exterior walls of the building.

10. All signs and their installation shall comply with all applicable state and local building and electrical codes and ordinances. Electrical signs shall bear the U.L. label. All signs must be positioned on a raceway when installed.

11. Tenant identification and/or logos, crests or ornamentation may occur on the glass of the storefront if applied or painted onto the inside surface of the glass in gold or silver leaf, or other suitable color.

12. Stores with more than one orientation may install an additional sign, if appropriate, of equal size and proportion in accordance with the percentage of storefront width per orientation. Subject to prior landlord's review and approval.

13. All signs are to be provided and installed by Tenant at Tenant's expense.

14. The Tenant is responsible for compliance with all local sign codes.

Notwithstanding anything contained herein to the contrary, Landlord reserves the right to

15. deviate from any one or more of the sign standards and guidelines set forth in this Exhibit D.

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 3rd day of January 2022 (the "Effective Date"), by and between **CHEAT ROAD LLC**, a West Virginia limited liability company (hereinafter referred to as "Landlord") and **TVM SMOKE INC**, a West Virginia corporation, and **SAMIRA MARRAE** (hereinafter collectively referred to as "Tenant").

1. **Demised Premises.** Landlord hereby leases to Tenant for the term and upon the covenants hereinafter set forth, approximately 1,487 square feet of space located and situated on that certain real estate at 200 Fort Pierpont Drive, Suite 109, Morgantown, Monongalia County, West Virginia ("Demised Premises") in that certain commercial development commonly known as "Fort Pierpont" or by such other name as Landlord may from time to time hereafter designate, (the "Property").

2. **Term.**

(a) The initial term of this Lease (the "Initial Term") shall commence on Effective Date, and shall expire at 11:59 p.m., eastern time, on the last date of the calendar month which is Sixty (60) months after the month in which the Rent Commencement Date (as hereinafter defined) occurs (the "Expiration Date"), unless sooner terminated in accordance with the provisions hereof.

(b) So long as Tenant is not in Default (as such term is defined below) of this Lease and no set of facts or circumstances exist which, but for the provision of notice, right to cure and passage of time, would constitute a Default, Tenant shall have the right to extend the Initial Term for One (1) renewal or extension period of five (5) years (the "Renewal Term"), by providing written notice to Landlord at least one hundred eighty (180) days prior to the expiration of the Initial Term.

(c) As used herein, "Term" shall mean and refer to the Initial Term and, as applicable, the Renewal Term.

3. **Rent.**

(a) Commencing on the earlier of (i) the date which is Thirty (30) days after the Effective Date, or (ii) the date on which Tenant opens for business to the public in the Demised Premises (such date, the "Rent Commencement Date"), and continuing during the Term of the Lease, Tenant shall pay annual "Base Rent" for the Demised Premises as set forth below, payable to Landlord, without demand, deduction, set-off or counterclaim, in equal installments, in advance, on the first (1st) day of each month.

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>	<u>Rent Per Square Foot</u>
Months 1-60	\$32,714.00	\$2,726.17	\$22.00
Months 61-120 (as applicable)	Annual Base Rent plus a CPI adjustment as calculated in Paragraph 3(a)(ii)		

(i) If the Rent Commencement Date occurs on a day other than the first (1st) day of a month, all Rent shall be prorated on a daily basis on the basis of a thirty (30) day month.

(ii) The Base Rent at the beginning of the Renewal Term (as applicable) shall be adjusted to reflect any increase in the rate of inflation as measured by the Index (as such term is defined below). As used herein, the term "Index" shall mean and refer to the Consumer Price Index – Seasonably adjusted US City average for All Items For All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, or any applicable successor thereto published by said Department if the Index is discontinued. Because the Index is published in arrears, all determinations made utilizing the Index shall use a date three (3) months prior to the actual and applicable date. Thus, the base line for establishing the adjustment in Rent shall be the Index published for the date which is three (3) calendar months prior to the commencement of the Initial Term.

(b) Tenant shall pay its pro rata share of any new or unknown cost not currently charged pertaining to the Property operating expenses, including, but not necessarily limited to any fire fees, pest control expenses, and any other governmental fees or assessments against the Property. Tenant's pro rata share of the charges shall be based on the ratio of the Demised Premises based upon the total building leasable space. All charges shall be paid within ten (10) days of billing.

(c) Throughout the Term of this Lease, Tenant shall pay to Landlord, without demand, deductions, set-offs or counterclaims, the Rent (as such term is defined below) when and as the same shall be due and payable hereunder. Unless otherwise stated, all sums of money or charges payable to Landlord from Tenant by this Lease other than Base Rent are defined as "Additional Rent" and are due thirty (30) days after the rendering of an invoice therefor, without any deductions, set-offs or counterclaims, and failure to pay such charges carries the same consequences as Tenant's failure to pay Base Rent. As used herein, the term "Rent" shall mean and refer to the Base Rent and the Additional Rent, if any.

(d) In the event any sums required hereunder to be paid are not received on or before the tenth (10th) calendar day after the same are due, then, for each and every late payment, Tenant shall immediately pay, as Additional Rent, a service charge equal to 10% of the amount of the sums due. Notwithstanding this service charge, Tenant shall be in Default under this Lease if all payments required to be made by Tenant are not made at or before the times herein stipulated, including, but not limited to, Rent, Taxes, Insurance, filing fees, and any and all rents and extra fees billed to the Tenant.

(e) In the event that Tenant's check for rents and charges is returned for any reason, Tenant agrees to pay Landlord the sum of Twenty-Five Dollars (\$25.00), or such lesser sum as permitted by applicable law, as a handling charge in addition to any applicable late charge. Returned checks must be redeemed by cashier's check. In the event more than one check is returned, Tenant agrees to pay all subsequent rents and charges by cashier's check.

4. Security Deposit. Tenant, concurrently with the execution of this Lease, shall deposit with Landlord the sum of \$2,726.17 (the "Security Deposit"), which sum shall be held by Landlord as security against a Default by Tenant, pursuant to the terms of this Lease. The Security Deposit (which shall not bear interest to Tenant) may be applied by Landlord in order to cure any Default in any of the terms, provisions or conditions of this Lease. The Security Deposit shall be returned to Tenant by the Landlord, after deducting therefrom any sums owed to Landlord, pursuant to provisions of this Lease, upon the termination of this Lease, provided such termination is not caused by Tenant. A mortgagee in possession of the Demised Premises, or any interest therein, through public or private foreclosure or the acceptance of a deed in lieu thereof, shall have no liability to Tenant for return of all or any portion of the Security Deposit, unless, and then only to the extent that, such mortgagee has acknowledged receipt of all or any portion of Tenant's Security Deposit. In the event Landlord applies the Security Deposit in whole or in part against a Default by Tenant, Tenant shall, upon demand by Landlord, deposit sufficient funds to maintain the Security Deposit in the initial amount. Failure of Tenant to deposit additional funds as security shall constitute a Default hereunder and entitle the Landlord to avail itself of the remedies as provided in this Lease for non-payment of Base Rent by Tenant. Upon the

expiration of the term hereof, Landlord shall retain the Security Deposit, or so much as has not been applied in accordance with the provisions hereof, until such time as all of Tenant's obligations to pay any Additional Rent have been fully paid and satisfied. Landlord reserves the right to increase the amount of the Security Deposit in its sole reasonable discretion.

5. "AS IS" Delivery. Landlord is delivering the Demised Premises to Tenant on an AS IS basis immediately upon the final execution of this Lease (the "Delivery Date") per the site plan attached hereto as Exhibit A. Any work done by Landlord at Tenant's request shall be at Tenant's expense, and shall be paid for by Tenant in such manner as Landlord may reasonably require (including prepayment). Tenant shall be deemed to have taken possession of the Demised Premises on the Delivery Date regardless of when Tenant shall actually occupy or possess the Demised Premises. Landlord represents and warrants that all electrical, mechanical and plumbing systems are in working order.

6. Tenant's Build-Out; Alterations.

(a) Tenant, at Tenant's sole cost and expense, shall acquire all furniture, fixtures, equipment, and appliances, and perform all other work necessary to prepare the Demised Premises to operate as a tobacco and vape retail store.

(b) Tenant shall not make any alterations, additions or install fixtures to the Demised Premises or any part thereof except by written consent of Landlord. All approved alterations, additions, or fixtures shall be in accordance with the requirements set forth in "Tenant's Build-Out" (as such term is defined on Exhibit C), and all building, zoning, fire, health and safety, or other laws, rules or regulations. All alterations, additions, or fixtures shall remain for the benefit of the Landlord at the end of the Term of this Lease; provided that upon Landlord's request, Tenant shall remove such alterations, additions or fixtures at the end of the Term and repair all damages done by the removal at Tenant's sole expense. Tenant agrees to indemnify and save harmless the Landlord all expenses, liens, mechanics or otherwise, claims or damages to persons or property arising out of, or resulting from, undertaking or making of said alterations, additions or improvements. Tenant shall complete all alterations in a good and workmanlike manner.

(c) In the event that any mechanic's lien is filed against the Demised Premises or Property as the result of any work or act of Tenant, Tenant, at Tenant's expense, shall discharge or bond off the same within ten (10) days from the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay without inquiring into the validity or merits of such lien and all sums so advanced shall be paid on demand as Additional Rent.

(d) Prior to the commencement of any work by Tenant, Tenant shall obtain public liability insurance to cover Tenant's contractor(s) to be employed by Tenant, shall require Tenant's contractors to obtain and maintain workers' compensation insurance and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval. Should the Tenant's use or occupancy of the Demised Premises cause any increase in insurance or other building expenses, Tenant shall be solely responsible to pay the full amount of said increases as Additional Rent.

(e) If, in an emergency, it shall become necessary to make repairs required to be made by Tenant, Landlord may reenter the Demised Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay Landlord the costs of such repairs on demand as Additional Rent.

7. Use. Tenant shall use and occupy the Demised Premises only for the purpose of operating a tobacco and vape retail store, and for no other purpose.

8. Utilities. Tenant, at its expense, shall pay the cost of all utility services provided or used in or at the Demised Premises, commencing with the Effective Date and throughout the Term of this Lease. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of such utility services and from all costs and charges for utilities consumed on or by the Demised Premises.

9. Signage. Within thirty (30) days of opening for business, Tenant, at its own expense, shall install and shall maintain in good working order (with full illumination) one (1) sign affixed to the front of the Demised Premises and one (1) sign on the Fort Pierpont pylon sign, subject to the prior written approval of Landlord, and conforming to all applicable legal and insurance requirements. No additional signs, banners or artwork, which can be seen from the exterior of the Demised Premises, shall be installed or displayed in, on or about the Demised Premises without the prior written consent of Landlord. Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered). Any sign or display visible from the exterior of the Demised Premises which does not meet the above criteria may be removed at any time by Landlord without incurring any liability therefor. For the avoidance of doubt, and notwithstanding any provision contained herein to the contrary, Tenant's signage must comply with the standards and guidelines set forth on Exhibit B attached hereto and incorporated herein by this reference.

10. Covenants. Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the Term hereof it shall: (i) keep the Demised Premises in a neat and clean condition, (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature, (iii) any Tenant selling or servicing any kind of food whatsoever must have a monthly exterminating service and must document it to Landlord, and (iv) observe all reasonable rules and regulations established by Landlord for all Tenants on the Property.

11. Compliance with Laws. Tenant, at its sole expense, shall comply with all laws, orders, ordinances and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request.

12. Competition. Tenant agrees that so long as this Lease shall remain in effect, Tenant (or any officer, director or shareholder owning capital stock of Tenant) will not, within the Property, except under a lease with Landlord, or within a radius of five (5) miles of the perimeter of the Property, either directly or indirectly, own, operate or be financially interested in, either itself or with others, a business like, or similar to, the business permitted to be conducted under Section 7 of this Lease.

13. Hazardous Materials. Tenant agrees that it will not place, hold or dispose of any Hazardous Material (defined hereinafter) on, under or at the Demised Premises or the Property and that it will not use the Demised Premises or any other portion of the Property as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material, other than in the ordinary course of Tenant's business, in which case, such Hazardous Materials shall be disposed of in accordance with all applicable laws, rules and regulations. Tenant further agrees that it will not cause or allow any asbestos to be incorporated into any improvements or alterations which it makes or causes to be made to the Demised Premises. Tenant hereby indemnifies Landlord against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs and actual attorney's fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord for, with respect to, or as a direct or indirect result of (A) a breach by Tenant of the foregoing covenants, or (B) to the extent caused or allowed by Tenant or any agent, employee, invitee or licensee of Tenant, the presence on or under,

or the escape, seepage, leakage, spillage, discharge, emission or release from, onto or into the Demised Premises, the Property, the atmosphere, or any watercourse, body of water or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material); and the provisions of and undertakings and indemnification set out in this Section shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. The provisions of the preceding sentence shall govern and control over any inconsistent provision of this Lease. For purposes of this Lease, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous, waste, substance or material.

14. Rules and Regulations. Landlord reserves the right to establish rules for the operation of the Demised Premises, building, parking lot and surrounding property so as to maintain the character and professional nature of the Property, enhance its value, comply with applicable laws and to achieve such other goals in operating the Property as Landlord, in its sole discretion, deems necessary or desirable.

15. Right to Use Common Areas.

(a) During the Term of this Lease, Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for ingress and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any building on the Property or of the common areas, or any part thereof, including, without limitation, the right to locate and/or erect thereon kiosks, structures and other buildings and improvements of any type. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, all common areas shall be subject to the exclusive control and management of Landlord.

(b) Landlord agrees to maintain and keep in good service and repair all common areas, including, without limitation, snow and ice removal and landscaping. Tenant agrees to pay Landlord as Additional Rent hereunder, Tenant's pro-rata share of the Common Area Maintenance Expenses. Landlord estimates that Tenant's pro-rata share of the Common Area Maintenance Expenses for the initial year of the Term shall be Seventy-Five Cents (\$0.75) (the "Baseline CAM Charge") per square foot of the Demised Premises, and Tenant shall pay such amount in advance, in equal monthly installments on or before the first day of each month. The manner in which said payment shall be used shall be within the sole reasonable discretion and control of Landlord. The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) common area gas, electricity, water, sewer and other common area utility charges (including utility imposed surcharges) of whatever nature, (ii) building personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other building personnel, (iii) costs of service and maintenance contracts, including, but not limited to, chillers, boilers, controls, windows, janitorial and general cleaning, security services, and management fees, (iv) all other maintenance and repair expenses (including those payable by Landlord under Section 16 below) and supplies which may be deductible for such calendar year in computing federal income tax liability, (v) any other costs and expenses (i.e. items which are

not capital improvements) incurred by Landlord in operating the Property, (vi) the cost of any additional services not provided to the Property at the Lease Commencement Date but thereafter provided by Landlord in the prudent management of the Property, and (vii) the cost of any capital improvements which are made by Landlord after completion of initial construction of the Property, provided, however, that the cost of each such capital improvements, together with any financing charges incurred in connection therewith, shall be amortized and/or depreciated over the useful life thereof and only that portion thereof attributable to such calendar year shall be included in the Common Area Expenses for such calendar year. Common Area Maintenance Expenses shall not include (i) principal payments or interest payments on any mortgages, deeds of trust or other financing encumbrances, (ii) leasing commissions payable by Landlord, (iii) deductions for depreciation of the Property; (iv) legal expenses in enforcing the terms of any lease, (v) expenses for repair and other work occasioned by fire or other casualty to the extent such expenses shall have been reimbursed under Landlord's fire policy or policies or which would have been covered by insurance required to be carried by Landlord hereunder, (vi) expenses incurred in the leasing or processing of new tenants, including lease commissions, (vii) expenses for renting space for new tenants, (viii) initial cost of the Property construction, (viii) cost of repairs or replacement of items that are covered by any warranty, and (ix) costs of environmental remediation and governmental compliance by Landlord hereunder. Tenant's obligation shall be calculated as follows: (i) Landlord shall aggregate together all Common Area Maintenance Expenses to which shall be added an additional administrative fee in an amount equal to fifteen percent (15%) of such expenses and divide the Common Area Expenses by a number which is the total square footage of the Property (and any expansion thereof) by the total square footage of in the Demised Premises. Notwithstanding the above, in the event Landlord, at any time determines that the amount of Common Area Maintenance Expenses actually being paid by Landlord, exceeds the Baseline CAM Charge, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of rent due an amount sufficient to result in Tenant's paying its full proportionate share of Common Area Maintenance Expenses as computed on the basis of Landlord's revised cost estimate of the Common Area Maintenance Expenses. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish to Tenant a statement ("Expense Statement") setting forth the computation of actual Common Area Maintenance Expenses for such calendar year and the amount, if any, by which Tenant has overpaid or underpaid Tenant's proportionate share. If Tenant has underpaid, Tenant shall pay to Landlord the amount of such underpayment within thirty (30) days after receipt of Landlord's statement. If Tenant has overpaid, such overpayment shall be credited to Tenant's subsequently due installments of Common Area Maintenance Expenses for the following year. At the end of the Term, any overpayment shall be refunded to Tenant. FOR THE AVOIDANCE OF DOUBT, COMMON AREA MAINTENANCE EXPENSES DOES NOT INCLUDE REAL ESTATE TAXES, INSURANCE OR UTILITIES, WHICH ITEMS ARE SEPARATELY ADDRESSED ELSEWHERE IN THIS LEASE.

16. Maintenance.

(a) Landlord shall keep in good repair the sewer and water lines serving the Demised Premises and the structural supports, inclusive of the roof, of the Demised Premises.

(b) Except as stated in Section 16(a) above, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work that is necessary in order to keep the Demised Premises in good order and repair and in a safe and dry tenantable condition inclusive of removal of ice and snow from surrounding sidewalks and walkways, (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Property, (iii) Tenant shall enter into an agreement with a third party trash removal company reasonably acceptable to Landlord for the removal of Tenant's trash, provided, that, the location of all trash storage or container bins shall be as determined by Landlord, provided, further, Landlord reserves the right to provide trash services to the total Property, provided, further, in the event Landlord elects to provide said services, Landlord shall give Tenant notice of same and Tenant shall be obligated to use said service and pay its trash bill as Additional Rent, however, said trash removal services shall be at a commercially reasonable rate, (iv) change Tenant's air conditioning filter as

necessary, but not less than six (6) times a year and have Tenant's air conditioner and heater serviced as necessary, but not less often than two (2) times a year, (v) repair any portion of the Property which is damaged as the result of any act or omission of Tenant, and (vi) Tenant agrees to maintain during the Term adequate heat in the Demised Premises to avoid any damage to the building and to keep all plumbing and water from freezing. Notwithstanding any contrary provision of this Section 16, Tenant, at its expense, shall make any and all repairs to the Demised Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Demised Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours.

17. Real Estate Taxes.

(a) Starting with the Rent Commencement Date and throughout the entire Term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes (as hereinafter defined) for each tax year. As used herein, the term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, real and/or personal, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Property. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the Term of this Lease, the present method of taxation shall be changed so that in lieu of or in addition to the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon or imposed upon any personal property used in connection therewith or upon the collection of rents or other sums due hereunder, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Property, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes, and multiply by a fraction, the numerator of which shall be the total square footage of the Demised Premises and the denominator of which is the total square footage of the Property (and any expansion thereof). Landlord estimates that Tenant's pro-rata share of the Taxes for the initial year of the Term shall be Two Dollars (\$2.00) (the "Baseline Tax Charge") per square foot of the Demised Premises.

(b) Tenant shall pay its pro-rata share of such Taxes by the following method: one-twelfth (1/12) of the Baseline Tax Charge shall be paid each month with the Base Rent until the end of the first tax year following the Rent Commencement Date; thereafter, the monthly payments shall be based upon the tax bill for the previous tax year, any adjustments necessary for the amount paid for the previous tax year shall be debited or credited (as the case may be) in the next monthly installments until the liability has been extinguished. Notwithstanding the end of the Term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

18. Insurance.

(a) Landlord shall obtain and maintain during the Term of this Lease, fire and extended coverage insurance commonly referred to as "all risk" coverage, insuring against all reasonable perils and liabilities, for one hundred percent (100%) of the replacement value of the Demised Premises and Landlord's Work. Such insurance shall be issued by an insurance company licensed to do business in the jurisdiction in which the Property is located.

(b) Starting with the Rent Commencement Date and throughout the entire Term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Landlord's insurance costs pursuant to Section 18(a) above. Tenant's proportionate share hereunder shall be calculated as follows:

(i) Landlord shall aggregate together all such insurance costs, and multiply by a fraction, the numerator of which shall be the total square footage of the Demised Premises and the denominator of which is the total square footage of the Property (and any expansion thereof). Landlord estimates that Tenant's pro-rata share of Landlord's insurance costs pursuant to Section 18(a) for the initial year of the Term shall be Twenty-Five Cents (\$0.25) (the "Baseline Insurance Charge") per square foot of the Demised Premises. Following the first year of the Term, Landlord shall adjust the Baseline Insurance Charge based upon its actual costs of procuring such insurance. In the event that, in any given year, the amount so paid to Landlord shall be more or less than Tenant's proportionate share, Tenant, following a request from Landlord, shall commence to pay with the next monthly installment of rent due an amount sufficient to result in Tenant's paying its proportionate share of the Landlord's insurance expense. At the end of each year, there shall be an adjustment if the amount paid by Tenant is more or less than Tenant's proportionate share actually incurred in that year. Any amount due Landlord shall be paid within ten (10) days after demand therefor by Landlord. Any amount due Tenant shall be credited to Tenant's next payment of Landlord's insurance expenses.

(c) Tenant, at Tenant's sole cost and expense, shall obtain and maintain for the term of this Lease, insurance policies providing the following coverage: (i) Tenant's fixtures, equipment, furnishings, merchandise and other contents in the Demised Premises, for the full replacement value of said items, (ii) one (1) full year Base Rent coverage, (iii) all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Property is located, (iv) plate glass insurance, if available, and (v) comprehensive general liability insurance naming Landlord, any mortgagee and master lessor, if any, as additional insureds, which policy is to be in the minimum amount of One Million Dollars (\$1,000,000.00) with respect to any one occurrence, in the minimum amount of Three Million Dollars (\$3,000,000.00) in the aggregate, and in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) with respect to Property damage. The minimum limits hereinbefore set forth may, at Landlord's option, be increased by not more than ten percent (10%), such increase to occur not more often than once during each two (2) consecutive lease years during the Term hereof. Tenant shall deliver to Landlord certificates of insurance, or duplicate originals of each such policy.

(d) The policies described in this Section 18 shall: (i) be acceptable to Landlord in form and content, (ii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Landlord's agents and employees, and mortgagees and ground lessors, (iii) contain a provision that it shall not be canceled and that it shall continue in full force and effect, unless Landlord has received at least thirty (30) days prior written notice of such cancellation or termination, (iv) not be materially changed without prior notice to Landlord, (v) shall automatically renew each year without Landlord requesting, and (vi) shall name Landlord as additional insured.

(e) Tenant shall not permit to be done any act which will invalidate or be in conflict with the fire insurance policies covering the Property or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents shall increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.

(f) Landlord and Tenant each hereby release the other, its officers, directors, employees and agents from any and all liability for responsibility for any loss or damage to Property covered by valid and collectible fire insurance with standard and extended coverage endorsement, unless such fire or other casualties shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

(g) Tenant hereby indemnifies and agrees to save harmless Landlord, any mortgagee and master lessor, if any, of the Property, from and against all claims that arise from or in connection with the possession, use, occupation, management, repairs, maintenance or control of the Demised Premises. Tenant

shall, at its own cost and expense, defend any and all actions which may be brought against Landlord, any mortgagee or master lessor with respect to the foregoing. Tenant shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against Landlord, any mortgagee or master lessor in connection with the foregoing.

(h) Except with respect to any damages resulting from the gross negligence of Landlord, its agents or employees, Landlord shall not be liable to Tenant, its agents, employees or customers, for any damage, loss, compensation, accident or claims whatsoever.

19. Casualty Loss. In the event the Demised Premises shall be partially or totally destroyed by fire or other casualty insured under the provisions of Section 18 above, so as to become partially or totally untenable, then the damage to the Demised Premises shall be promptly repaired, unless Landlord shall elect not to rebuild or repair as hereinafter set forth, and annual Base Rent and other charges shall be abated in proportion to the amount of the Demised Premises rendered untenable until so repaired. In no event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, furnishings or equipment.

20. Condemnation. If twenty-five percent (25%) of the Floor Area of the Demised Premises shall be taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date of which such title shall vest in the authority. If the parking facilities are reduced below the minimum parking requirements imposed by the applicable authorities, Landlord may elect to terminate this lease by giving Tenant notice within one hundred twenty (120) days after such taking or supply additional parking to meet minimal standards. In case of any taking or condemnation, whether or not the Term of this Lease shall cease and terminate, the entire award shall be the Property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for fixtures and other equipment which under the terms of this Lease would not have become the Property of the Landlord; further provided, that any such award to Tenant shall not be in diminution of any award to Landlord.

21. Assignment. Tenant shall not, without Landlord's written consent, (i) assign or otherwise transfer, or mortgage or otherwise encumber, this Lease, or any of its rights hereunder, (ii) sublet the Demised Premises or any part thereof, or permit the use of the Demised Premises or any part thereof by any persons other than Tenant or its agents. In the event Tenant requests Landlord's written consent to an assignment or sublease, Tenant shall reimburse Landlord for its actual out-of-pocket costs incurred in connection therewith and shall make a non-refundable deposit equal to One Thousand Five Hundred and 00/100 Dollars (\$1,500.00). Notwithstanding any provision contained herein to the contrary, Tenant shall not display, or allow to be displayed, any real estate brokerage signs or any other form of advertising stating that the Demised Premises is "for lease" or "for sublease" or any other similar terms by any agent or broker other than Premier Commercial Real Estate Services, LLC.

22. Subordination; Attornment; Estoppel.

(a) This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage or deed of trust now or hereafter placed upon the interest of Landlord and the Demised Premises. Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee subordinating this Lease to the lien of any present or future mortgage or deed of trust. Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver any such instrument of Tenant.

(b) If, and so long as this Lease is in full force and effect, at the option of the mortgagee: (i) this Lease shall remain in full force, notwithstanding (A) a default under the mortgage by Landlord, (B) failure of Landlord to comply with this Lease, (C) a defense to which Tenant might be entitled against Landlord

under this Lease, or (D) any bankruptcy or similar proceedings with respect to Landlord, (ii) if any such mortgagee shall become possessed of the Demised Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease, and (iii) if any mortgagee or purchaser, at a private or public sale shall become possessed of the Demised Premises, Tenant shall, without charge, attorn to such mortgagee or purchaser as its landlord under the Lease.

(c) Tenant agrees that any time within ten (10) days on the Landlord's request to execute, acknowledge, and deliver to the Landlord a written statement certifying that this Lease is unmodified and is in full force and effect or, if there have been modifications, that the same is in full force and effect as modified and been paid in advance, if any; it being the intent that such statement delivered under this Section may be relied upon by perspective purchase or mortgagee of the Demised Premises.

23. Landlord's Lien. To secure performance of Tenant's obligations hereunder, Tenant grants to Landlord a security interest in all goods, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper, general intangibles, and other personal property of Tenant situated on the Demised Premises and in the proceeds thereof. Such Property shall not be removed from the Demised Premises until all of Tenant's obligations hereunder have been performed and Landlord acknowledges such performance by notice to Tenant. If an Event of Default occurs, Landlord shall have, in addition to all other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code. The statutory lien for rent is not hereby waived. Tenant shall execute such other instruments requested by Landlord to perfect this security interest. This Lease may be filed as a financing statement or Landlord may, on Tenant's behalf as its agent, execute and file a financing statement to perfect the security interest.

24. Tenant's Default.

(a) If any one or more of the following events occur, said event or events shall hereby be classified as a "Default":

(i) Tenant fails to pay Base Rent, Additional Rent, or any other sums payable by it under this Lease when due; or

(ii) Tenant shall default in the performance of any other covenant or agreement of this Lease or any rules and regulations attached to this Lease or promulgated by Landlord pursuant to this Lease, or in any way frustrates the purpose of this Lease (including, without limitation, and for example, making unwarranted maintenance requests, unnecessarily compelling Landlord to enforce the terms of this Lease or unnecessarily compelling Landlord to expend funds to enforce the terms of this Lease) (collectively a "Non-Monetary Default"); or

(iii) Tenant or any Guarantor or surety for Tenant's obligations under this Lease shall become bankrupt or insolvent or make a general assignment for the benefit of creditors or take the benefit of any insolvency act, or if any debtor proceedings be taken by or against Tenant or any such Guarantor or surety; or

(iv) a receiver or trustee in bankruptcy be appointed for the Tenant's property and such appointment be not vacated and set aside within sixty (60) days from the date of such appointment; or

(v) Tenant shall "go dark" or otherwise cease to conduct fully its business as specified in this Lease for a period of fifteen (15) consecutive days; or

(vi) Tenant, before the expiration of the Lease Term, and without the written consent of Landlord, vacates the Demised Premises or abandons possession of the Demised Premises; or

(vii) the leasehold estate granted to Tenant by this Lease shall be taken on execution or other process of law or equity in any action against Tenant; then Tenant shall be in default under this Lease.

Notwithstanding anything contained in this Lease to the contrary, Tenant shall have a period of five (5) days after notice from Landlord of a Default in which to cure said Default. In addition, provided that Landlord or the Demised Premises is not otherwise jeopardized and that such Default does not constitute a nuisance or cause damage to Landlord or any of its other tenants, this grace period may be extended with respect to a Non-Monetary Default of a nature that it cannot be completely cured within the five (5) day period solely as a result of non-financial circumstances outside of Tenant's control, provided that Tenant has promptly commenced all appropriate actions to cure such Non-Monetary Default within the five (5) day period and such actions are thereafter diligently and continuously pursued by Tenant in good faith. In no event, however, shall the grace period exceed a total of ninety (90) days. If the Default is not cured prior to the expiration of the grace period, as extended, then Landlord may pursue any or all of its remedies provided in this Lease and/or permitted by law or equity. In the sole discretion of Landlord, in the event of multiple Non-Monetary Defaults, Landlord may invoice Tenant as Additional Rent the greater of Five Hundred Dollars (\$500.00) in liquidated damages for each Non-Monetary Default to cover Landlord's time and expenses related thereto.

25. Remedies. Should a Default occur under this Lease, Landlord may pursue any or all of the following:

(a) Terminate this Lease and any right of renewal and retake possession of the Demised Premises.

(b) Enter the Demised Premises and relet the same or any part of the Demised Premises in the name of Landlord, or otherwise, as Tenant's agent, for a term shorter or longer than the balance of the Term, and may grant concessions or free rent in connection therewith, thereby terminating Tenant's right to possess the Demised Premises, without terminating Tenant's obligations to pay (i) the entire balance of all forms of Base Rent and Additional Rent for the remainder of the Term, plus (ii) all costs and expenses incurred by Landlord in connection with the reletting of the Demised Premises following a default by Tenant, including, without limitation, the expenses of obtaining possession of the Demised Premises, the costs of cleaning, renovation, repairs, decoration, and alteration of the Demised Premises for a new tenant or tenants, all advertising and marketing expenses, all brokerage and legal fees, the costs of protecting or caring for the Demised Premises while vacant, the costs of removing and storing any property located on the Demised Premises, any increase in insurance premiums caused by the vacancy of the Demised Premises, and any other out-of-pocket expenses incurred by Landlord including tenant inducements such as the cost of moving the new tenant or tenants and the cost of assuming any portion of the existing lease(s) of the new tenant(s), plus (iii) the unamortized balance of any allowances granted to Tenant under this Lease, plus (iv) the unamortized balance of the cost of any improvements to the Demised Premises made by Landlord pursuant to this Lease, plus (v) the unamortized portion of any brokerage commission paid by Landlord in connection with this Lease. Any amounts received by Landlord from reletting the Demised Premises shall be deducted from Tenant's obligations under this Lease. Landlord shall have the obligation to make a reasonable effort to relet the Demised Premises. Landlord shall not, in any event, be required to pay Tenant any surplus of any sums received by Landlord on a reletting of the Demised Premises in excess of the Rent provided in this Lease. Any entry or re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Tenant from liability under this Lease. "Re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning. No such re-entry or taking

possession of the Demised Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease or to accept a surrender of the Demised Premises unless a written notice of such intention is given to Tenant. Notwithstanding any such re-letting without termination, Landlord may at all times thereafter elect to terminate this Lease for such previous Default.

(c) Institute an action to recover any Rent due hereunder.

(d) Impose liquidated damages as provided above.

(e) With respect to a Default under Paragraph 23(a)(ii), Landlord may charge Tenant liquidated damages, payable as Additional Rent, in the amount of One Hundred Dollars (\$100.00) per hour to compensate Landlord for the time and effort associated with Tenant's Non-Monetary Default(s).

(f) Obtain injunctive and declaratory relief, temporary or permanent, or both, against Tenant or any acts, conduct, or omissions of Tenant, and further to obtain specific performance of any term, covenant, or condition of this Lease.

(g) After regaining possession of the Demised Premises, remove all or any part of Tenant's property from the Demised Premises and any property removed may be stored at the cost of, and for the account of, Tenant, and, except as required by applicable law, Landlord shall not be responsible for the care or safekeeping of such property whether in transport, storage, or otherwise, and Tenant waives any and all claims against Landlord for loss, destruction, damage, or injury which may be occasioned by any of the aforesaid acts. Landlord may retain possession of such property until all storage charges and all other amounts owed by Tenant to Landlord under this Default section have been paid in full. Nothing set forth in this subsection shall limit Landlord's rights to enforce any lien or security interest in favor of Landlord against any such property of Tenant or to deem the property abandoned pursuant to applicable law.

(h) If Landlord exercises the remedies provided in this Section 25, Landlord may declare the entire balance of all forms of Rent due under this Lease for the remainder of the Term to be forthwith due and payable and may collect the then present value of such Rents (calculated using a discount equal to the yield then obtainable from the United States Treasury Bill or Note with a maturity date closest to the date of expiration of the Term) by distress or otherwise. The accelerated Additional Rent shall be calculated by multiplying the highest Additional Rent amount payable by Tenant in any calendar year times the number of calendar years (including any fractional calendar year) remaining in the Term following the date of default.

(i) Should Tenant Default in the observance or performance of any term or covenant on Tenant's part to be observed or performed pursuant to this Lease, Landlord may perform the obligations of Tenant, and if Landlord, in connection therewith, makes any expenditures or incurs any obligation for the payment of money, including, but not limited to, reasonable attorneys' fees, such sums so paid or obligations incurred shall be deemed to be Additional Rent under this Lease and shall be paid by Tenant to Landlord within five (5) days of rendition of a bill or statement to Tenant therefor. If the Term shall have expired at the time of the making of such expenditures or incurring of such obligations, such sums shall be recoverable by Landlord as damages. This Section shall survive the expiration or sooner termination of this Lease.

(j) The remedies provided in this Lease or presently or hereafter existing at law or in equity shall be cumulative and concurrent, and may be exercised as often as occasion therefor shall occur. No single or partial exercise by Landlord of any remedy shall preclude any other or further exercise of such remedy or of any other remedy. No action or inaction by Landlord shall constitute a waiver of a Default and no waiver of Default shall be effective unless it is in writing, signed by the Landlord.

(k) Tenant acknowledges that any rights or options of first refusal, or to extend the Term, to expand the size of the Demised Premises, to purchase the Demised Premises, or other such or similar rights or options which have been granted to Tenant under this Lease are conditioned upon the prompt and diligent performance of the terms of this Lease by Tenant. Accordingly, should Tenant Default under this Lease beyond any applicable grace period on three (3) or more occasions during any twelve (12) month period, in addition to all other remedies available to Landlord, all such rights and options shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect.

(l) If Tenant shall be in Default hereunder, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Default for the account of and at the expense of the Tenant. No such notice shall be required for emergency repairs. Tenant agrees to pay Landlord interest, at a rate equal to two percent (2%) in excess of the prime rate of interest announced from time to time by The Chase Manhattan Bank N.A. but not in excess of the maximum legal rate, for all sums paid by Landlord pursuant to the terms of this Article, and for all sums due and owing to Landlord more than five (5) days after the date such sums are due.

26. Landlord's Default. Landlord shall in no event be charged with a Default hereunder unless Landlord shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such Default shall be deemed to have been cured if Landlord commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

27. Venue; Attorneys' Fees.

(a) Should any litigation occur as the result of any aspect of the parties' relations, interpretation or negotiation of this Lease, or any matter relating directly or indirectly to Tenant's occupancy or this Lease, it shall be in the courts of Monongalia County, West Virginia. Both the parties and all signatories to this Lease hereto understand that each party has a constitutional right to a jury trial regarding certain issues and each party individually and voluntarily waives his/her/its right to a jury trial.

(b) Regardless of the remedy or form, and regardless of which party ultimately prevails, each party shall pay for its own attorney's fees and any other related dispute resolution costs; except that, if Tenant is delinquent in Rent, Additional Rent or damages the Demised, Premises, building, Property or improvements and Landlord is forced to take any actions in order to collect back the Rent due or for damages done, then Tenant shall pay Landlord's attorney's fees and costs. In addition, in the event Tenant alleges that the Landlord has breached any part of this Lease, it shall be a condition precedent to instituting any litigation or any other action or resolution or remedy that Tenant continue paying Rent; under no circumstances is Tenant relieved of any obligation to pay Rent during any dispute resolution process regardless of the nature of the same.

28. Landlord's Right of Access. Landlord may, upon prior notice to Tenant, enter upon the Demised Premises for the purpose of inspecting, making repairs, replacements or alterations, and showing the Demised Premises to prospective purchasers, lenders or lessees. During the last six (6) months of the term, Landlord shall have the right to display one (1) or more "for rent" or "for lease" signs on or about the Demised Premises.

29. Force Majeure. If Landlord or Tenant is delayed from performing any of their respective obligations during the Term of this Lease because of acts of God or other cause beyond their control, then the period of such delays shall be deemed added to the time herein provided for the performance of any such

obligation and the defaulting party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid by Tenant hereunder or any obligation of Landlord or Tenant that can be satisfied by the payment of money.

30. Surrender.

(a) Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Demised Premises, in good order, broom clean, normal wear and tear and acts of God excepted, to the Landlord. Subject to the other terms of this Lease, Tenant shall, at its expense, remove all property of Tenant, all alterations to the Demised Premises not wanted by Landlord and repair damage caused by such removal and return the Demised Premises to the condition in which it was prior to the installation of the article so removed.

(b) If Tenant shall hold possession of the Demised Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Demised Premises as a tenant from month-to-month at double the Base Rent and Additional Rent in effect during the last lease year immediately preceding such holdover and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has under this Lease or at a law or in equity including an action for wrongfully holding over. No payment by Tenant, or receipt by Landlord, of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to Landlord be deemed to effect or evidence an accord and satisfaction, and Landlord may accept such check or payments without prejudice to Landlord's rights to recover the balance of the Rent or other amount owed or to pursue any other remedy provided in this Lease.

31. Quiet Enjoyment. Landlord covenants that if, and for so long as, Tenant pays the Rent and all other charges provided for herein and performs all of its obligations provided for herein, Tenant shall at all times during the Term hereof peaceably have, hold and enjoy the Demised Premises, without any interruption or disturbance from Landlord, or anyone claiming through or under Landlord, subject to the terms hereof.

32. Exculpation. Notwithstanding anything else whatsoever in this Lease, at law, or in equity to the contrary, Tenant agrees that it shall look to and shall have recourse solely to the estate and property of the Landlord in the land and buildings comprising the deed parcel of real estate of which the Demised Premises are a part, for the collection of any judgment (or any other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord, or in the event of any other judgment or judicial process obtained by Tenant in any way arising directly or indirectly out of or under this Lease or the performance hereof or out of the relationship of Landlord or Tenant established hereunder, and no other real or personal property of the Landlord, tangible or intangible, shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies. In the event of the sale of any of Landlord's right, title and interest in the Property, Landlord shall be released from all liabilities and obligations under this Lease after the sale.

33. Brokers. Landlord and Tenant warrants and represents that there was no broker or agent instrumental in consummating this Lease except Premier Commercial Real Estate Services, LLC (the "Broker"). Landlord covenants and agrees to compensate Broker pursuant to the terms and provisions of a separate written agreement between Landlord and Broker. Each party agrees to indemnify and hold the other party harmless against any claims for brokerage commissions, finder's fees and other compensation resulting from a breach of this Section 33.

34. Estoppel Certificate. The Tenant agrees that any time within ten (10) days on the Landlord's request to execute, acknowledge, and deliver to the Landlord a written statement certifying that this Lease is

unmodified and is in full force and effect or, if there have been modifications, that the same is in full force and effect as modified and been paid in advance, if any; it being the intent that such statement delivered under this paragraph may be relied upon by perspective purchase or mortgagee of the Demised Premises.

35. Bankruptcy Provisions:

(a) “Creditor Event” means that (i) a Bankruptcy Action (as hereinafter defined) shall be commenced involuntarily against Tenant seeking a decree and/or order for (A) the appointment of a custodian, receiver, liquidator, assignee, trustee, and/or sequestrator (or similar official) for Tenant and/or of any substantial part of Tenant’s properties or (B) the reorganization, winding up, and/or liquidation of the affairs of Tenant, and such Bankruptcy Action shall remain un-dismissed and/or un-stayed for sixty (60) consecutive calendar days or such court shall enter a decree and/or order granting the relief sought in such Bankruptcy Action, (ii) Tenant, any Tenant-related parties and/or affiliate of Tenant shall commence a Bankruptcy Action seeking a decree and/or order with respect to Tenant and/or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, and/or sequestrator (or similar official) for Tenant and/or any substantial part of Tenant’s properties, (iii) Tenant shall make a general assignment for the benefit of creditors, (iv) Tenant shall consent to and/or take any action in furtherance of, or, indicating its consent to, approval of, and/or acquiescence in, any of the acts set forth in the preceding clauses, (v) Tenant shall admit in writing Tenant’s inability to, or shall be generally unable to, pay Tenant’s debts as such debts become due, (vi) Tenant shall cease to be solvent, or (vii) an execution and/or attachment shall be issued against Tenant or any of Tenant’s properties, whereby the Premises, in whole or in part, shall be taken and/or occupied or attempted to be taken and/or occupied by a party other than Tenant, and such execution and/or attachment shall not be set aside, vacated, discharged, and/or released within thirty (30) calendar days after the issuance of the same.

(b) “Bankruptcy Action” means any action, case, and/or other proceeding commenced in any court of competent jurisdiction under and/or pursuant to the Bankruptcy Code or any other applicable foreign, federal, and/or state bankruptcy, insolvency, reorganization, conservatorship, relief of debtors and/or similar law(s).

(c) “Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as in effect as of the Effective Date and as subsequently amended, modified, supplemented and/or restated during the Term, and all rules and regulations promulgated thereunder and/or in connection therewith.

(d) As a material inducement to Landlord to make and enter into this Lease and grant and create the leasehold estate subject hereof, Tenant acknowledges and agrees that Landlord is materially relying on (i) the financial condition and specific operating experience of Tenant, (ii) Tenant’s obligation to use the Demised Premises for the use permitted by Paragraph 7 hereof, (iii) Tenant’s timely performance of each and all of Tenant’s obligations set forth and provided for in this Lease, notwithstanding the entry of an order for relief with respect to Tenant under and/or pursuant to the Bankruptcy Code, and (iv) each and all of the defaults of Tenant with respect to this Lease being cured or remedied promptly and this Lease being assumed within sixty (60) calendar days of the entry of any order for relief with respect to Tenant under and/or pursuant to the Bankruptcy Code or this Lease being rejected within such sixty (60) calendar day period and the Demised Premises surrendered to Landlord.

(e) For and in consideration of the mutual Leases, covenants, liabilities, and obligations of the Parties set forth, contained, and provided for in this Lease, and other good and valuable consideration, Tenant agrees and covenants that:

(i) All obligations that accrue and/or become due under and/or pursuant to this Lease, including, without limitation, the obligation to pay Rent, from and after the date that a Bankruptcy

Action shall be commenced shall be timely performed exactly as set forth and provided for in this Lease and any failure to so perform shall be harmful and prejudicial to Landlord;

(ii) Any and all obligations that accrue and/or become due under and/or pursuant to this Lease from and after the date that a Bankruptcy Action shall be commenced and that shall not be paid as required by this Lease shall, in the amount of such obligations, constitute administrative expense claims allowable under and/or pursuant to the Bankruptcy Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the commencement of the Bankruptcy Action;

(iii) Any extension of the time period within which Tenant may assume or reject this Lease without an obligation to cause all obligations accruing and/or coming due under and/or pursuant to this Lease from and after the date that a Bankruptcy Action shall be commenced to be performed as and when required by this Lease shall be harmful and prejudicial to Landlord;

(iv) Any time period designated as the period within which Tenant must cure all defaults and compensate Landlord for all pecuniary losses that extends beyond the date of assumption of this Lease shall be harmful and prejudicial to Landlord;

(v) Any Assignment must result in all conditions, covenants, obligations, and terms of this Lease being assumed by the assignee without alteration, amendment and/or modification and any Assignment which shall result in an alteration, amendment, and/or modification of any of the conditions, covenants, obligations, and/or terms of this Lease without the express written consent of Landlord shall be harmful and prejudicial to Landlord;

(vi) Any proposed Assignment to an assignee (A) that will not use the Demised Premises for the use permitted by Paragraph 7 hereof, or (B) that shall not possess a financial condition, an operating performance, and experience characteristics equal to or better than the financial condition, operating performance, and experience characteristics of Tenant as of the Execution Date, shall be harmful and prejudicial to Landlord; and

(vii) The rejection, or deemed rejection, of this Lease for any reason whatsoever shall constitute cause for immediate relief from the automatic stay provisions of the Bankruptcy Code, and Tenant stipulates that such automatic stay shall be lifted immediately and possession of the Premises shall be delivered to Landlord immediately without the necessity of any further action by Landlord.

(f) No provision of this Lease shall be deemed a waiver of Landlord's rights and/or remedies under and/or pursuant to the Bankruptcy Code or other applicable laws to oppose any assumption or assignment of this Lease, to require timely performance of Tenant's obligations under and/or pursuant to this Lease, or to regain possession of the Demised Premises as the result of the failure of Tenant to comply with the terms and conditions of this Lease or the Bankruptcy Code.

(g) Notwithstanding any other provision of this Lease, all amounts payable by Tenant to and/or on behalf of Landlord under and/or pursuant to this Lease, whether or not expressly denominated as such, shall constitute "Rent" for the purposes of the Bankruptcy Code.

(h) For the purposes of this paragraph addressing the respective rights and obligations of the Parties in the event that a Bankruptcy Action shall be commenced, the term "Tenant" shall include Tenant's successor in bankruptcy, whether a trustee, Tenant as debtor-in-possession, or other responsible person.

36. Miscellaneous Provisions.

(a) This Lease contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, or warranties or representations, oral or written, between them other than as herein set forth.

(b) No notice or other communications given under this Lease shall be effective unless the same is in writing and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid or a recognized overnight express mail courier, addressed:

(i) If to Landlord, Attention: Richard A. Biafora, 6200 Mid Atlantic Drive, Morgantown, West Virginia 26508, or to such other address as Landlord shall designate by giving notice thereof to Tenant.

(ii) If to Tenant, Samira Marrae, 200 Fort Pierpont Drive, Suite 109, Morgantown, West Virginia 26508, or such other address as Tenant shall designate by giving notice thereof to Landlord.

(c) It is the intent of the parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the jurisdiction in which the Property is located.

(d) This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

(e) Landlord hereunder shall have the right to freely assign this Lease without notice to or consent of Tenant.

(f) The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint venturers.

(g) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Demised Premises and/or any claim of injury or damage.

(h) If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(i) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

(j) Tenant hereby acknowledges and agrees that it shall at all times during the Term provide Landlord with working keys to the Demised Premises as well as all current alarm codes in the event of an emergency. In the event Tenant fails to provide Landlord with working keys and/or current alarm codes, Tenant shall be responsible for all damages resulting from Landlord having to enter the Demised Premises in the event of an emergency. Tenant's Local Emergency Contact information is as follows: _____.

(k) Tenant shall include with each monthly Rent payment a report of Tenant's gross monthly sales volume, being the same as which Tenant reports to the West Virginia State Tax Department. Landlord shall keep all such sales information confidential.

37. COVID-19 Pandemic Closure. In the event Tenant is required to close by State or Local Order due to the COVID-19 Pandemic ("Closure Order") then the Parties hereby agree to the following:

(a) Tenant shall pay all Rent due for the first thirty (30) days after the Closure Order;

(b) Provided Tenant is not in default of the Lease following said thirty (30) day period and assuming the Closure Order is still in effect, Landlord agrees to abate all Rent for the subsequent consecutive sixty (60) days of the Lease Term, for the period of time the Closure Order is in effect; and

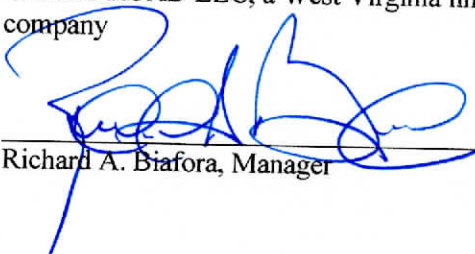
(c) Following said consecutive ninety (90) day period, in the event said Closure Order is still in effect, then Landlord shall have the option to either extend the Rent abatement period, terminate the Lease by written notice to Tenant, or negotiate a new lease agreement.

[Balance of page intentionally left blank; signature pages to follow]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed effective the day and year first above written.

LANDLORD:

CHEAT ROAD LLC, a West Virginia limited liability company


Richard A. Biafora, Manager

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of January, 2021, by Richard A. Biafora, the Manager of Cheat Road LLC, a West Virginia limited liability company, for and on behalf of said limited liability company under authority duly granted.

My Commission Expires: 3/11/2025

(Notarial Seal)


Notary Public



TENANT:

TVM SMOKE INC, a West Virginia corporation


Samira Marrae, its President

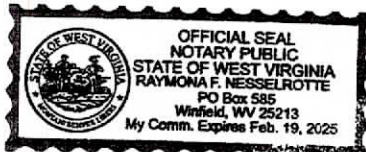
STATE OF West Virginia
COUNTY OF Monongalia to-wit:

The foregoing instrument was acknowledged before me this 2nd day of December, 2021, by Samira Marrae, the President of TVM SMOKE INC, a West Virginia corporation, for and on behalf of said corporation under authority duly granted.

My Commission Expires: Feb 19, 2025

(Notarial Seal)


Notary Public



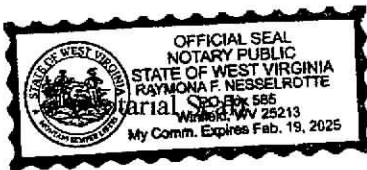
SAMIRA
SAMIRA MARRAE

STATE OF W. Va.
COUNTY OF Marshall, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of December 2021, by SAMIRA MARRAE for the purposes therein contained.

My Commission Expires Feb. 19, 2025

Raymond F. Nesselrotte
Notary Public



GUARANTY OF LEASE AGREEMENT

In consideration of and as a material inducement to CHEAT ROAD LLC, a West Virginia limited liability company ("Landlord") executing and delivering simultaneously herewith, in reliance upon this Guaranty that certain Lease Agreement (the "Lease") dated ~~December 3, 2021~~ ^{January 3, 2022}, between Landlord and TVM SMOKE INC, a West Virginia corporation, and Samira Marrae (hereinafter collectively called "Tenant"), the undersigned, SAMIRA MARRAE (the "Guarantor") hereby unconditionally and absolutely guarantees unto Landlord, its successors and assigns, the full, prompt and complete payment by Tenant of any Base Rent, Additional Rent and any additional payments, as these terms may be provided for and used in the Lease and the prompt, faithful and complete performance and observance by Tenant of all of the terms, covenants and conditions of the Lease on the Tenant's part to be performed or observed.

Guarantor does hereby waive notice of any and all defaults on the part of Tenant, waives acceptance and notice of acceptance of this Guaranty, and waives all demands for payment or performance. Guarantor agrees that no delay on the part of Landlord in enforcing any of its rights or remedies or insisting thereupon, nor any extension of time nor any charges or modifications in or to, or in connection with the Lease, shall in any way limit, affect or impair the liability of Guarantor hereunder; and Guarantor hereby expressly consents to and approves thereof with the same force and effect as though its written consent had been given to each of such delays, extensions, changes and modifications.

This Guaranty is independent of and in addition to any security or other remedies which landlord has or may have for the performance of any of the obligations on the part of Tenant. Guarantor agrees that Landlord shall not be required to resort to any other security or other remedies before proceeding upon this Guaranty, but that Landlord may proceed hereunder against Guarantor at any time it sees fit, independently of or concurrently with any other remedies it may have.

The undersigned agree that in the event of insolvency, bankruptcy, or reorganization of Tenant, any liquidation, dissolution, winding-up or cancellation of the legal status of Tenant, any composition or arrangement by Tenant with its creditors, and irrespective of any rejection, assignment or termination of the Lease or any of the terms and conditions thereof by Tenant or any trustee of Tenant in connection with any petition for bankruptcy or reorganization filed by Tenant under the Bankruptcy Code or any other applicable federal or state law, the undersigned shall, nonetheless, remain liable hereunder for the full and complete performance of the terms and conditions of the Lease to be complied with or performed by Tenant during the entire Lease Term designated in the Lease.

No set-off, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature which the Guarantor has or may have against Landlord shall limit or in any way affect the obligations of the Guarantor hereunder.

It is understood that the liability hereunder of Guarantor shall continue for and during the entire term of the Lease and any renewals or extensions thereof, notwithstanding any assignment of the Lease or subletting of all or any portion of the Demised Premises demised under the Lease. This Guaranty shall not be limited to any amount of time and shall at all times include the full indebtedness and all other liability and obligation of Tenant, or any assignee or subtenant of Tenant, to Landlord under the Lease.

If the Guarantor is a corporation and is merged into or with any other company, firm or corporation, the resulting merged company, firm or corporation shall become liable as the Guarantor hereunder, to the same extent as the Guarantor.

If the Guarantor is a corporation or a partnership (general or limited), firm or other entity the officers or partners executing this Guaranty on behalf of Guarantor hereby jointly and severally warrant

and represent that the Guarantor has full power and authority to guarantee the Lease and to make and execute this Guaranty and that this Guaranty is fully and legally binding upon Guarantor.

If this Guaranty is executed by two (2) or more corporation, individuals, firms, partnerships (general or limited) or other entities (or any combination thereof) the liability of said parties executing this Guaranty shall be joint and several.

This Guaranty shall be binding upon the undersigned, the undersigned's successors and assigns, and shall inure to the benefit of Landlord, its successors and assigns.

Dated: December 23rd, 2021

GUARANTOR:

Witness:

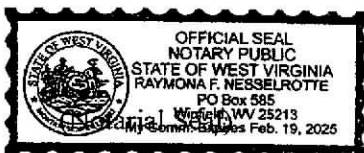
[Signature]
Quang T. Mai

[Signature]
SAMIRA MARRAE

STATE OF West Virginia
COUNTY OF Marshall to-wit:

The foregoing instrument was acknowledged before me this 23rd day of December 2021, by SAMIRA MARRAE for the purposes therein contained.

My Commission Expires: Feb. 19, 2025



[Signature]
Notary Public

**EXHIBIT A
TO
LEASE AGREEMENT**

Site Plan

**EXHIBIT B
TO
LEASE AGREEMENT**

Signage Standards and Guidelines

All signs installed by Tenant shall be lighted and meet the following:

1. The design of the Tenant's signs must be submitted to and approved by Landlord before installation and must be consistent with other existing signage, both in size, quality and appearance, within the Property of which Demised Premises is a part.
2. The entire shopfront is the sign field. Signs are to be reviewed on the basis of how well they are integrated with the architectural storefront elements into an attractive composition.
3. All illuminated storefront signs shall be located within the limits of the storefront. The preferred method is for the sign to be centered on the Tenant's sign band area, typical for all tenants. Typically, signage may be as long as up to 67% of the storefront width with a maximum width of 30'0".
4. The advertising or informative content of all signs shall be limited to letters designating the store name and/or type of store (which such designation of the store type shall be by general descriptive terms and shall not include any specification of the merchandise offered for sale therein or the services rendered therein) and shall contain no advertising devices, slogans, symbols or marks (other than the store name and/or type of store, as aforesaid, and other than crests and corporate shields which may be permitted in Landlord's sole discretion if less than 32" in width and height per Section 7 below.
5. The letters on all signs shall be script or individual block type. No box signs will be permitted. The size of the letters shall be in proportion to the size of the sign as determined in accordance with the provisions of this Exhibit and the letters shall be internally illuminated with translucent face, the lamps therefore being contained wholly within the depth structure of the letters.
6. The character, design, color and layout of all signs shall be subject to Landlord's prior approval, which shall not be unreasonably withheld to the extent the sign in question complies with the criteria set forth in this Exhibit.
7. All signs shall be in accordance with the following requirements:
 - (a) For signs on the neutral band area, the sign and any part or parts thereof, except as otherwise provided in Section 7(b) and 7(d) below, shall be located within the physical limits of the storefront of the leased premises of the occupant.
 - (b) No sign or any part or parts thereof shall project beyond the vertical neutral strip of the storefront or, if there are no neutral strips, more than 6" beyond the storefront, subject, however, to Section 7(d).
 - (c) Neon shop window signs may divide the total square footage of sign area equally, providing signs no lower than 6'0" A.F.F. and no higher than 8'0" A.F.F. behind the storefront glazing. No shop window "signature signs" will be allowed with this signing option.
 - (d) The size of all signs except anchor store's signs shall be limited. The scale and concept of the center requires the use of signs which are not larger than necessary to be legible. Each party's

signs shall be located within the limits of its respective storefront and shall not project more than six inches (6") beyond the storefront and, subject to Landlord's right to approve in Landlord's sole discretion shall conform to the following proportional height criteria:

- (i) Up to 30' storefront: 18" capitals, 12" body.
- (ii) 30' to 60' storefront: 24" capitals, 18" body.
- (iii) 60' to 100' storefront: 36" capitals, 24" body.

(e) In addition to complying with the above criteria, signs in the center shall be limited in length to 67% of each frontage.

(f) No sign shall exceed a maximum brightness of 100 foot lamberts.

(g) All signs shall be fabricated and installed in compliance with all applicable building and electrical codes and shall bear a U.L. label.

(h) Painted or printed signs on the exterior surface of any building shall be prohibited except small scale relative to store name and stating store hours which are neatly lettered on the glass of the storefront, but subject to Landlord's approval. In addition, any non-customer door for receiving merchandise may have, in two-inch (2") block letters, the name of the Store or Tenant.

8. The fabrication, installation and operation of all signs shall be subject to the following restrictions:

(a) Fluorescent and/or incandescent tubing or lamps, ballast boxes and/or electrical transformers, crossovers, conduit and/or sign cabinets shall not be permitted nor shall translucent sides of sign letters be permitted.

(b) No flashing, moving, flickering and/or blinking illumination, animation, emission of audible sound, moving lights and/or floodlight illumination shall be permitted.

(c) The name and/or stamp of the sign contractor or Sign Company of both shall not be exposed to view.

(d) All neon signage and decorative display must be recessed, covered or fronted by protective Plexiglas.

9. The following type signs are prohibited:

(a) Paper signs and/or stickers utilized as signs.

(b) Signs of a temporary character or purpose, irrespective of the composition of the sign or material used therefor.

(c) Except as set forth above, painted or printed signs, except, however, one (1) non-illuminated, small-scale "signature sign" which is lettered on the glass portion of a storefront of an occupant and/or affixed to such storefront surface, provided such sign does not project more than two inches (2") from the storefront surface.

(d) Outrigger signs.

- (e) Moving signs.
- (f) Pylon signs.
- (g) Rooftop signs.
- (h) Signs mounted on the exterior walls of the building.

10. All signs and their installation shall comply with all applicable state and local building and electrical codes and ordinances. Electrical signs shall bear the U.L. label. All signs must be positioned on a raceway when installed.

11. Tenant identification and/or logos, crests or ornamentation may occur on the glass of the storefront if applied or painted onto the inside surface of the glass in gold or silver leaf, or other suitable color.

12. Stores with more than one orientation may install an additional sign, if appropriate, of equal size and proportion in accordance with the percentage of storefront width per orientation. Subject to prior landlord's review and approval.

13. All signs are to be provided and installed by Tenant at Tenant's expense.

14. The Tenant is responsible for compliance with all local sign codes.

15. Notwithstanding anything contained herein to the contrary, Landlord reserves the right to deviate from any one or more of the sign standards and guidelines set forth in this Exhibit.

**EXHIBIT C
TO
LEASE AGREEMENT**

Tenant's Build-Out

Tenant's Build-Out includes, without limitation: additional electric, necessary plumbing, any specialty lighting, any specialty ceiling, and paint. Tenant's Build-Out shall conform to all governing codes and shall include, but not limited to, the following:

1. All Tenant construction shall be in accordance with the requirements of all applicable codes, ordinances, rules, and regulations, including, but not limited to, the Americans with Disabilities Act Accessibility Guidelines and the applicable building codes, and all authorities having jurisdiction over the work and Landlord's insurance carrier. In case of conflict, the standard rule, ordinance, etc. providing the higher standard/requirement shall prevail. In addition to the items set forth in this Section 1 of this work letter as Tenant's responsibility, Tenant's design and construction must also comply with the minimum criteria below.

2. General Design and Construction Criteria:

(a) Tenant and/or Tenant's contractor prior to commencing of any work at the Demised Premises shall meet with Landlord's general contractor to discuss procedures and requirements.

(b) Tenant's contractor shall follow all Landlord's or Landlord's general contractor's safety, parking and related rules.

(c) Tenant's contractor shall not use any temporary signage.

(d) All Tenant construction shall be in conformance with the approved construction type of the structure and the building code.

(e) Any penetrations planned by Tenant through the roof, ceiling, floor, or exterior wall of the Demised Premises must be approved by Landlord, in writing, at the time of plan preparation and prior to performing such work. All openings must be done so per the applicable building code as it relates to fire ratings and protection. For any openings through structurally supported levels, concrete slab must be core-bored, sleeved, grouted, sealed, and made waterproof. Sleeves must extend at least 2" above finish floor.

(f) All penetrations through roof shall be by Landlord's roofing contractor and paid for by Tenant. Penetrations will require Landlord's prior written approval.

(g) No fastening to or suspending from the underside of the floor or roof deck is permitted without the Landlord's prior written approval for all loads over 400 pounds. Such approval will not be given prior to review of appropriate loading and detail information. Tenant shall submit detailed information to Landlord's general contractor.

(h) Work by Tenant's contractor must be coordinated with Landlord's contractor. If shell is not completely finished, Tenant's contractor must keep a clean site, free of all trash and debris, and is responsible for trash removal. Trash and debris shall not be left, at any time, outside the Demised Premises.

(i) All Tenant drawings must be approved by Landlord.

(j) Prior to commencing work, Tenant shall pay to Landlord \$1,500.00 for temporary electric power, if Tenant's meter has not been set and temporary power from Landlord is available. In the event Landlord cannot make temporary power available to Tenant, then Tenant, at Tenant's sole cost and expense shall obtain a generator to be placed in a location approved by Landlord, until either temporary or permanent power is available.

(k) Tenant or Tenant's contractor shall provide dumpsters at locations designated by Landlord. Tenant shall provide Landlord with evidence that Tenant has contracted and paid for trash removal.

(l) The plan review process for Tenant's plans shall be as set forth in the Lease.

3. Electrical Design Criteria:

(a) Lighting system design:

(i) All lighting must be reviewed and approved by Landlord prior to installation, and must conform to the following lighting guidelines. Tenant is responsible for furnishing and installing all lighting fixtures, lamps, wiring, convenience outlets, time clocks, contactors, signs, etc., and all related conduits, controls, and wiring within the Demised Premises. Entire installation shall meet all requirements of national and local electrical codes. All equipment shall bear UL labels, and HUD lighting shall not be used unless approved by the Landlord.

(ii) Exit/emergency lighting system shall be by Tenant. Emergency means of egress and lighting shall be provided by Tenant to illuminate Premises, as required by the applicable building code. Exit/emergency means of egress lighting fixtures shall be provided with battery back-up and shall be recessed lights or twin-head light packs. In areas visible to customers, battery assembly for emergency means of egress lights shall be concealed and remote-type light fixtures. Type of fixtures to be approved in advance by Landlord and shall match manufacturer and model number of fixtures installed in building common areas.

(iii) All conduits installed in public areas shall be concealed from public view, unless approved in advance, in writing, by the Landlord.

(iv) Any Tenant requiring new exit doors or relocation of existing doors shall also provide additional lighting at new door location(s). Light fixture(s) shall match manufacturer and model number of existing lighting fixtures installed by Landlord. Final connection to Landlord's lighting circuit shall be by Tenant.

(b) Power systems design:

(i) Tenant is responsible for furnishing and installing electrical service feeders in Landlord provided 4" diameter conduit from Landlord's electric distribution equipment and electric meter room to Tenant's Premises. Landlord shall furnish and install a fusible disconnect switch. Electric meter shall be furnished and installed by the electric utility company. Electric service conductors shall be sized as required by code for Tenant's requirements. If required conduit size exceeds 4" diameter, larger conduit shall be furnished and installed by the Tenant, at the Tenant's expense. All conduits within the Demised Premises shall be furnished and installed by Tenant. Tenant shall coordinate metering and

service requirements with Landlord. All conductors shall be insulated copper wire type THHN or THWN. Minimum electrical service size shall be 100 amp at 480/277 volt, 3 phase, 4 wire.

(ii) All conduits installed in public areas shall be concealed. Exposed conduit visible to the public is not acceptable.

(iii) Panel board(s) shall be designed for 20% minimum spare capacity (based on connected load) and 20% spare breaker space.

(iv) Tenant is responsible for furnishing and installing all electrical equipment, including, but not limited to, distribution panel boards, appliance panel boards, disconnect switches (fusible or non-fusible), transformers, motor starters, wiring devices, and all related conduits, feeders, branch circuits, and control wiring within the Demised Premises.

(v) Tenant shall be responsible for the installation and removal of temporary lighting and power and related ground fault circuit protection, including all associated energy charges.

(vi) Landlord is responsible for providing a weatherproof toggle switch, service light, and ground fault circuit interrupting receptacle at Landlord's expense, and providing rooftop equipment, as required by the building code.

(vii) All convenience outlets located within 6'0" of water sources shall be provided by a ground fault circuit interrupting device.

(viii) All first floor tenants (including restaurants): Electric service to rooftop unit(s) shall be provided by Tenant, from Tenant's metered electric service.

(ix) All second floor tenants: Electric service to rooftop unit(s) shall be provided by Landlord, from Landlord's metered electric service.

(c) Fire alarm protective signaling systems:

(i) Landlord shall provide a building fire alarm protective signaling system. Final connections and any required modifications to the building fire alarm protective signaling system shall be provided by the Landlord's fire alarm contractor at the Tenant's expense.

(ii) Fire alarm monitor signaling system: Tenant shall furnish and install duct smoke detectors as required by code at all Landlord supplied units. Detectors to shut down HVAC unit and signal the Landlord's monitor system. Tenant shall run wire from smoke detection device to Landlord's junction box located in the space. Landlord's fire alarm contractor shall make final connections at the Tenant's expense.

(d) Special systems design:

(i) Television and security systems, associated equipment, and all conduits and wiring required by such systems, shall be by Tenant, if required. The installation of any rooftop mounted antenna or satellite dish must be approved in advance, in writing, by Landlord.

(ii) Delivery buzzer system, including associated conduit and wire, shall be provided by Tenant, if required by Tenant.

(iii) Audio systems installed by Tenant shall be designed in such a way that the sound shall be contained within Tenant's leased Premises.

4. HVAC Design Criteria:

(a) The HVAC system must be reviewed and approved in advance by Landlord and must conform to the following HVAC guidelines:

(b) General requirements (upper level office tenants):

(i) Landlord provided central air conditioning systems will provide 55° Fahrenheit ($\pm 2^\circ$ Fahrenheit) air with outside temperatures ranging from 92° FDB/73° to FDB Maximum cfm available for upper level offices is 13 fm/square foot. The cooling system shall be designed to maintain a maximum inside temperature of 75° Fahrenheit.

(ii) Tenant shall furnish and install standard insulated low velocity air distribution system.

(iii) All Tenants shall provide ducted return air system.

(iv) Any Tenant required additional rooftop equipment needed in excess of that provided by the Landlord (one ton per 350 square feet) shall be the same manufacturer as that provided by the Landlord and shall be of a color to match the membrane roof. Rooftop units mounted on the second story must be mounted on isolation curbs.

(c) Distribution Equipment:

(i) Toilet rooms shall be exhausted per code as approved by Landlord.

(ii) All supply diffusers, return grilles, and balance dampers within the Demised Premises shall be provided by the Tenant and shall be sized to distribute the required air volume and maintain an NC 30. The type and manufacturer for these devices is left to the discretion of Tenant.

5. Plumbing Criteria:

(a) The plumbing system must be reviewed and approved in advance by the Landlord and must conform to the following plumbing guidelines.

(b) Landlord shall provide piping as required to connect its plumbing system to the piping stubbed into or near its space by Landlord.

(c) The plumbing system shall comply with the state and local plumbing codes.

(d) Plumbing fixtures and accessories shall be of commercial quality and shall be of water conserving type, regardless of whether supplied by Landlord or Tenant.

(e) Water heater to be provided by Tenant to meet Tenant requirements.

6. Fire protection:

(a) Tenant shall employ the Landlord's fire protection/security contractor for all work related to fire protection and security systems, at Tenant's expense.

(b) The fire protection and security systems shall comply with all governing codes.

(c) Sprinkler system: The parties acknowledge that current building code does not require a sprinkler system for the Property or Demised Premises.

(d) Tenant is responsible for any drain downs/refilling of the fire protection system, including all related costs, as required for the build-out of the Tenant's space.

(e) Landlord shall be given notice five (5) working days prior to any shut-downs that may be required. Tenant Premises must be designed so that Premises can be shut-down without shutting down entire system.

7. Tenant Finishes Criteria:

(a) All Tenant work shall comply with the Tenant Design Criteria Booklet, provided by Landlord.

(b) Swinging doors must not open across the Tenant's lease line or into any common area, unless approved, in writing, by Landlord. Roll down, sliding, or folding grilles are not allowed. Tenant spaces with occupant loads exceeding 50 persons must have outward swinging doors per code.

(c) Tenant's interior partitions shall be made of metal stud framing with 5/8" gypsum board finish on all sides, with taped and speckled joints.

(d) Tenant shall provide and install noncombustible fire stops as may be required at separations from the leased premises and ceiling above common areas. Fire stop must not be attached to the Landlord's ceiling system.

(e) Metal suspension systems shall be used for all ceilings and shall be secured to Landlord's structural framing only. No connections to Landlord's roof or floor deck, piping, ductwork, conduit, etc. will be permitted.

(f) Combustible materials of any sort (including non-plenum rated cabling) may not be used or stored above the Tenant's ceiling.

(g) Provide access panels to permit servicing to all equipment located above the ceiling. Access panels in hard surface ceilings must be flush and fully concealed with adjacent finishes. Access panel should be installed on vertical ceiling soffits or located as inconspicuously as possible.

(h) Tenant is responsible for maintaining integrity of all fire protected or sound rated assemblies. Tenant shall be responsible for providing code required column protection system, ceiling membrane system, and associated components at all areas within tenant space required to have protection where protection has not been installed by the Landlord. If rated assembly components are damaged or compromised during construction, Tenant shall repair the assembly per all building codes and Landlord approval.

(i) Tenant is responsible for installing 5/8" Type X gypsum board to demising framing, full height to top of stud (as part of a rated assembly if required by code). Provide fated wall assemblies as required by code. Provide noncombustible blocking as necessary for fixtures if it is required.

(j) Construction should not interfere in any way with adjacent premises. All restaurant or assembly use, Tenant shall provide sound batt insulation, full depth of stud, full height of demising wall, tight to deck and completely seal all voids between wall and deck.

(k) Tenant is responsible to maintain a minimum sound transmission classification (STC) of 40 at demising wall. At all restaurant or assembly use tenants, provide a minimum STC of 45, including two layers of 5/8" gypsum board on Restaurant/Assembly tenant side of demising wall, but in no case should sound penetrate outside demising line. If additional gypsum board is required on adjacent tenant side of demising wall, responsibility shall be restaurant or assembly use. Tenant will be responsible to design demising walls to prevent sound transmission, based on Tenant's operation.

(l) Tenant restrooms: All first floor restrooms shall be designed and constructed by Tenant and shall comply with all applicable building codes and ADA, and approved by Landlord. Fixtures to be ADA compliant. Restroom doors to be 3' x 7', solid core, paint grade door in hollow metal frame, with appropriate hardware.

(m) Ceilings (first floor tenants): Tenant shall install hard surfaced, durable ceilings, such as gypsum board, or upgraded 2 x 2 suspended ceiling systems, in all public areas, unless otherwise approved in writing by Landlord. At second floor office tenants, a Landlord approved standard acoustical suspended 2 x 2 ceiling may be used.

(n) Flooring (first floor tenants): Tenant shall install hard surfaced, durable flooring, such as upgraded porcelain tile, wood, slate, etc., in all public areas within 10'0" from front lease line adjacent to a public entrance. Other proposed flooring must be approved in writing by Landlord.

(o) Awnings: At some exterior building facades, Landlord may incorporate awnings into the design of the building. At such locations, as deemed by the Landlord, Tenant shall provide and install any awnings which have been included in the building's design. Tenant shall be responsible for entire system, including any blocking or structural elements needed for adequate support. Awning design, color, size, configuration, and location to be approved by Landlord prior to installation and should reflect the building's original design intent. Graphics of any kind will not be allowed. Tenant shall be responsible for awning maintenance, as approved by Landlord. If awnings are installed prior to Tenant's construction, Tenant shall reimburse the Landlord for the cost of each awning.

(p) Tenant is responsible to install 5/8" gypsum board to all exterior walls, full height, unless approved in writing by Landlord.

8. Food Service Tenant Additional Criteria:

(a) It is suggested that each non-standard Tenant's HVAC design be submitted to the Landlord for preliminary review. Final design will need to be approved in advance, in writing, by Landlord. Design shall include all calculations necessary to properly analyze the system. System shall be designed by an engineer licensed in the State of West Virginia. All additional make-up air requirements shall be installed at the expense of Tenant.

(b) All food preparation exhaust duct systems shall be by Tenant and shall comply with all applicable building codes. Duct systems shall vent to the roof (unless approved otherwise in advance, in writing, by Landlord). Where there is a Tenant above the Demised Premises, Landlord shall provide a shaft, at location designated by Landlord, to the roof. Tenant shall provide all equipment, ductwork, curbs and frames, fire dampers, fans, etc., and any additional structural components required for proper installation. All locations shall require Landlord's prior written approval.

(c) Tenant shall provide all supply and return air ductwork required for the HVAC system.

(d) Exhaust fans on roof shall be up-blast type and be located a minimum of 20' away from all fresh air intakes or as approved by Landlord, provide exhaust to remove all hot food odors. Tenant shall not permit odors from within the Demised Premises to enter other areas of the building. Tenant shall provide TPO membrane 10' square around exhaust fan penetrations on the roof.

(e) Tenant shall provide their own system to condition the kitchen and provide make-up air to the exhaust hoods.

(f) Cutting and patching of roof openings shall be done by the Landlord's roofing contractor, paid for by Tenant, and approved by Landlord.

(g) Tenant's additional roof equipment shall be located in areas designated in advance, in writing, by the Landlord. Roof equipment shall be clearly identified with Tenant's name, and shall be factory painted according to Landlord's specifications.

(h) Kitchen, including equipment and exhaust system, shall consist of new, unused equipment and shall comply with all state and local codes, including local health authorities.

(i) Equipment must be installed allowing clear access for servicing.

(j) Tenant shall extend gas piping from their meter at the exterior of the building to their space as required Landlord shall approve in advance, in writing, location of gas piping Gas piping should not be exposed to public view.

(k) The curb and frame required for Tenant's hood exhaust system and make-up air system will be provided by Tenant. Tenant shall provide all equipment and make all connections at Tenant's expense.

(l) Tenant shall provide sound batt insulation at all demising wall locations, full height to deck, and full depth of stud.

(m) Tenant shall provide adequate isolation and drainage around and under all coolers, freezers, and other food service equipment to provide for elimination of condensation on any building surface. This is a Tenant design responsibility. If a condensation problem occurs, it shall be the Tenant's sole responsibility for corrective action to satisfy Landlord.

(n) All kitchen areas, toilet rooms, janitor closets, etc. in areas with floors below shall have a Landlord-approved waterproof membrane between the structural floor and the Tenant's finish floor and extend to 4" up each wall. Noble Seal TS, a composite sheet membrane manufactured from chlorinated polyethylene by The Noble Company, is an acceptable thin-bed waterproofing isolation sheet for ceramic tile installations (nominal thickness is 0.8 mm). Equal products may be used if approved in writing by Landlord during plan approval process. All installation procedures must be in accordance with manufacturer's recommendations with extra care being taken at all penetrations through the membrane.

9. Tenant Opening Requirements:

(a) At least five (5) days prior to the opening of the Demised Premises for business, Tenant shall deliver to the Landlord (i) insurance certificates with Landlord as an additional insured; (ii)

mechanic's or construction lien waivers as the case may be, as required by the Lease, including this Exhibit C; (iii) a permanent certificate of occupancy or its equivalent; (iv) certificate by Tenant's architect certifying that the construction of the Demised Premises has been completed in accordance with all plans and specifications approved by Landlord; and (v) all evidence typically required in the jurisdiction where the Property is located to provide evidence of compliance with all applicable building and fire codes and all other governmental requirements.

(b) Tenant shall give Landlord at least five (5) days' notice of the date of completion of Tenant's work in the Demised Premises and Landlord shall have inspected the Demised Premises to determine whether Tenant's work is complete in accordance with the requirements of the Lease and Landlord shall have approved all such work.

(c) No approval by Landlord shall make Landlord responsible for the condition of the Demised Premises or constitute a representation by Landlord of compliance with any applicable requirements or constitute a waiver of any rights and remedies that Landlord may have under this Lease or at law or in equity. If Tenant shall open the Demised Premises in violation of the requirements of this requirement, such action by Tenant shall constitute a material default under this Lease. On the date Tenant opens for business in the Demised Premises, Tenant shall be deemed to have accepted the Demised Premises and agrees that it is in the condition, with respect to any of Landlord's obligations, which is required under this Lease. The opening requirements shall apply not only to Tenant's initial construction, but to any subsequent opening after any temporary closure, casualty, damage, or permitted alteration.

(d) Upon completion of Tenant's work, Tenant shall deliver to Landlord the following:

(i) Tenant's final notarized original affidavit that Tenant's work has been completed to Tenant's satisfaction and in strict accordance with the final working drawings and Tenant's construction requirements, which affidavit may be relied on by Landlord. Any deliberate or negligent misstatement or any false statement made by Tenant therein shall constitute a breach of the Lease.

(ii) The final notarized original affidavit of Tenant's general contractor performing Tenant's work stating that Tenant's work has been completed in accordance with the final working drawings and that all subcontractors, laborers, and material suppliers engaged in furnishing materials or rendering services for Tenant's work have been paid in full.

(iii) A final notarized original, unconditional waiver of lien with respect to the Demised Premises executed by Tenant's general contractor and, if requested by Landlord, final notarized original, unconditional waiver of liens executed by each subcontractor, laborer, and material supplier engaged in or supplying materials or services for Tenant's work. All waiver of lien documentation must, in every circumstance, be totally unconditional releases.

10. Tenant's Plans and Specifications:

(a) In the event Tenant's plans to improve, renovate or alter the Demised Premises, Tenant shall within fifteen (15) days following the execution of this Lease, prepare at Tenant's sole cost and present to Landlord complete plans and specifications for work to be done to alter the Demised Premises in accordance with Tenant's requirements. Failure by Tenant to submit its plans and specifications as herein required to constitute an event of default under this Lease.

(b) With regard to Tenant's plans and specifications, Landlord may either (1) evidence its approval by endorsement to that effect by signature or initials on one (1) set of said plans and specifications and the return of such signed or initiated set to Tenant (whereupon such approved preliminary

plans and specifications shall then constitute the final plans and specifications), or (2) refuse such approval if Landlord shall determine that the same; (a) do not conform to the standards of design, motif and decor established or adopted by Landlord and/or other tenants in the Property, and/or (b) would subject Landlord to an additional cost, expense or liability or the Demised Premises to any violation, fine or penalty; and/or (c) would in any way adversely affect the reputation, character and/or nature of the Property, and/or (d) would provide for or require any installation or work which is, or might be, unlawful or create and unsound or dangerous condition or adversely affect the structural soundness of the Demised Premises and/or the building of which the Demised Premises are a part; and/or (e) interfere with or abridge the use and enjoyment of any adjoining space in the building in which the Demised Premises are located. If Landlord refuses approval, Landlord requires, and Tenant shall within ten (10) days thereafter submit revised plans and specifications to Landlord for its approval in accordance with this Section. In the event Tenant does not comply with the foregoing requirements, then Landlord may deem Tenant to be in Default.

(c) Tenant shall, at Tenant's cost and expense, obtain all necessary permits and approvals from any governmental authority or agency having jurisdiction which are required for the performance of the work shown on the approved plans and specifications and Tenant's occupancy of the Demised Premises. Tenant shall obtain all necessary permits, approvals, meters and hook-ups from the appropriate utility companies, and Tenants shall pay all fees, charges and deposits required in connection therewith.

(d) Tenant's plan and specifications shall be prepared and sealed by an architect or engineer duly licensed in the state in which the Property is located. If the drawings for Tenant's work are not prepared in accordance with the foregoing, Landlord shall have the right to cause the project architect to redraft, sign and seal Tenant's plans at Tenant's cost and expense.

(e) No construction work shall be commenced by Tenant until Tenant receives prior written approval of the final plans and specifications from Landlord. Approval of Tenant's plans and specifications by Landlord or Landlord's architect does not relieve Tenant of the responsibility to comply with the requirements of applicable codes and regulations. All changes after final approval are subject to Landlord's prior written approval. After approval by Landlord of Tenant's plans and specifications, tenant shall pay for any and all requested changes, substitutions or eliminations in such approved plans and specifications requested by Tenant. Tenant shall pay for any architectural costs incurred by Landlord in connection with a subsequent remodeling, alteration, repair or rebuilding of the Demised Premises.

(f) Nothing contained in this Lease or this Exhibit shall be deemed or construed in any way as constituting the consent or request of Landlord, expressed or implied, by inference or otherwise, to any Tenant's contractor, subcontractor, laborer, mechanic or material man, the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of the Demised Premises or any part thereof nor as giving Tenant a right, power of authority, as otherwise provided in this Lease or this Exhibit to contract for or permit the rendering of any services or the furnishing or any materialman's liens or claims against the Demised Premises, Tenant's interest therein, or the Property.

11. Insurance: Tenant shall require its Tenant's contractor and/or subcontractors to furnish Landlord evidence of the following insurance coverage terms and conditions:

(a) Commercial General Liability insurance

(i) Coverage must include contractual and products/ completed operations liability, Tenant's contractor's protective liability, and explosion, collapse, and underground property damage hazard.

(ii) Minimum acceptable limit of coverage \$1,000,000 per occurrence, \$3,000,000 aggregate (exception: higher limits may be required for hazardous non-routine building services).

(b) Business Auto Liability insurance

(i) Coverage must include owned, hired, and non-owned vehicles.

(ii) Minimum acceptable limit of coverage of \$1,000,000 combined single limit of bodily injury and property damage, \$3,000,000 aggregate.

(c) Worker's Compensation insurance

(i) Must provide benefits as mandated by the state worker's compensation statute.

(ii) Minimum acceptable Employer's Liability limit is \$100,000 for bodily injury by accident and \$100,000 for bodily injury by disease.

(d) Excess Liability insurance

(i) Such coverage shall be excess of the general liability insurance, business auto liability insurance, and employers liability as required by this contract.

(ii) Minimum acceptable limit of coverage of \$3,000,000 (or the final limit decided to be appropriate) per occurrence and aggregate.

(e) If Tenant conducts a professional service, Tenant shall maintain errors and omissions (E&O) insurance in an amount not less than \$1,000,000 per claim, \$2,000,000 aggregate through the term of this agreement and for at least one (1) year after. E&O coverage may be written on a claims-made basis.

(f) Landlord must be named as additional insured with regards to general liability and auto liability insurance.

(g) A statement must be included in the description of the certificate of insurance, indicating that the insurance as stated on this certificate is primary to any and all other applicable/collectible insurance coverage.

(h) Shall contain a thirty (30) day notice of cancellation and the following wording must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

(i) If an "Insured vs. Insured" or "cross liability" exclusion is on the general liability, business auto, and/or the professional liability policies, it must be deleted.

(j) Tenant's contractor shall require all insurance policies that are in any way related to the work and that are secured and maintained by the Tenant's contractor, to include clauses providing that each underwriter shall waive all of its rights to recovery, under subrogation or otherwise, against Landlord.

(k) Tenant, for itself and for its contractor, waives all rights of recovery against Landlord which the Tenant or Tenant's contractor may have or acquired because of deductible clauses or inadequacy of limit of any policies of insurance that are in any way related to the Work and that are secured and maintained by Tenant or Tenant's contractor.

(l) Tenant's contractor must provide a certificate of insurance evidencing all insurance coverages, terms, and conditions as outlined to Landlord prior to the start of any work.

(m) All policies shall be issued by one or more responsible insurance companies satisfactory to Landlord with a financial rating of at least an A- as rated in the most recent edition of AM Best's Insurance Reports and in business for the past five years and licensed to do business in the state where the Property is located.

(n) Tenant shall indemnify and hold harmless Landlord from and against any claims, actions, or damages resulting from acts or neglects of Tenant, its agents, employees, contractors or subcontractors in the performance of Tenant's Build-Out.

LEASE AGREEMENT

Made as of the 21 day of MAY, 2025

by and between

Fair Mart, Inc., Lessor

and

Happy Smoke Vape, LLC Lessee.

Lessor and Lessee, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, agree as follows:

ARTICLE I
PREMISES

1.1. Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the rents and the prompt performance by Lessee of the covenants and agreements to be kept and performed by Lessee hereunder, Lessor does lease, let, and demise to Lessee and Lessee hereby leases from Lessor, the following described Premises situate at 803 Chestnut Ridge Road, Monongalia County, Morgantown, West Virginia:

A portion of the commercial building situate, containing 1,581 square feet, more or less, in addition to six (6) parking spaces to be assigned by Lessor at a later date, at Lessors discretion, lying and being at 803 Chestnut Ridge Road, Monongalia County, Morgantown, West Virginia (the specific property address for the 1,581 square feet to be designated and formally altered at a later date as 803 Chestnut Ridge Road, Suite 100, Morgantown, West Virginia). (the "Premises"). This description of the Premises specifically and purposely excludes any additional square footage of the commercial building situate at 803 Chestnut Ridge Road, any additional parking spaces, any additional paved/asphalted (other than as necessary for ingress and egress by Lessee or its invitees) at 803 Chestnut Ridge Road, and any area of 803 Chestnut Ridge Road which is not presently paved and/or asphalted. Photographs of the frontage of the Premises and demonstrative portions (but not the entirety) of the interior of the Premises which are subject to this Lease are attached hereto as Exhibit A. Lessor shall, at its discretion, reserve the right to amend Exhibit A to include photographs of the six (6) parking spaces assigned by Lessor at a later date.

Lessor additionally reserves the right to add square footage to the commercial building, including an additional floor above the current 1,581 square foot space (and all square footage of the commercial building situate at 803 Chestnut Ridge Road which is not subject to and specifically excluded by this Lease). This addition and construction of square footage above the current 1,581 square foot space shall not alter this Lease or be included in the square footage occupied by Lessee under this Lease. Further, this Lease

specifically excludes the billboard on the property at 803 Chestnut Ridge Road, a photograph attached hereto as Exhibit B. Lessee shall not alter, remove, block, obstruct in any manner, construct, or otherwise come into contact with the billboard at 803 Chestnut Ridge Road.

And being a portion of the same lot or parcel conveyed to the Lessor by deed dated March 24, 2021, of record in the Office of the Clerk of the County Commission of Monongalia County in Deed Book No. 1730, at Page 707.

1.2. Conditions. This Lease is made subject to the following:

(a) All existing reservations, conditions, easements, restrictions, and other limitations, if any, retained or created in prior deeds of record in the chain of title to the Premises; and in this Lease. Without waiving and subject to any other reservations, conditions, easements, restrictions, and other limitations, Lessor highlights easements of record contained in the Office of the Clerk of the County Commission of Monongalia County in Deed Book No. 604, at Page 248, which provides a 15' access easement on the Premises, and in Deed Book No. 406 at Page 214 which provides a 20' access easement adjacent to the Premises. For further ease of reference, a copy of a September 2018 Thrasher Survey is attached hereto as Exhibit C.

(b) Zoning ordinances any competent governmental body now existing or which may hereafter exist by reason of any legal authority during the term of this Lease; and

(c) The proper performance by Lessee of all the terms and conditions contained in this Lease.

ARTICLE II TERM OF LEASE

2.1. The initial term of this Lease shall commence on the 28 day of MAY, 2025, and shall continue for a period of five (5) years, ending on the 27 day of MAY, 2031, inclusive, unless terminated sooner as hereinafter provided.

2.2. The Lessee and Lessor may extend the term of this Lease for a successive period of five (5) year(s) commencing on the last day of the current lease, to be executed in a separate agreement, subject to the following terms and conditions:

(a) The option for each renewal term can be exercised only in the event that (i) all rents then due shall have been fully paid, and (ii) all terms, covenants and conditions of this Lease on the part of the Lessee to be performed, kept and observed are then being substantially performed, kept and observed;

(b) The renewal term shall be upon the same terms, covenants and conditions hereof, except, Lessor reserves the right to change, alter, or otherwise renegotiate the rental amount for any renewal term, including the square footage calculation and/or the annual fixed rental amount.

ARTICLE III RENT

3.1. During the initial term of this Lease, Lessee shall pay to the Lessor as rent for the Premises a total fixed rental in the amount of [REDACTED] per month for sixty (60) months.

Upon execution of this Lease, [REDACTED] The Security Deposit shall be held by Lessor in non-interest bearing form. Provided no event of default exists, the Security Deposit shall be applied to the last month's rent of the original term, or any renewal term. Upon the occurrence of an event of default, the Security Deposit may be credited against any deficiency of Lessee as provided for in Article XIV hereof.

3.2. The fixed rental to be paid to the Lessor during the initial term of this Lease and during each renewal term shall for convenience be paid by the Lessee in equal monthly rental installments of one-sixtieth (1/60th) of said fixed rent. The equal monthly rental installments shall be paid in advance, without notice or demand, on or before the 1st day of each calendar month during the current term.

3.3. Rent shall be payable to Fair Mart, Inc., and shall be sent to 2 Miller Hill Road, Osage, West Virginia 26543, or to such other person or place as the Lessor may designate in writing to the Lessee.

3.4. This is an absolute net lease and Lessor shall not be required to provide any services or do any act or thing with respect to the Premises, so that, except as hereinafter provided to the contrary, this Lease shall yield net to Lessor the rent to be paid to it during the sixty (60) month term of this Lease. Accordingly, Lessee shall pay all costs, expenses, and obligations of every kind or nature, relating to the Premises, which may arise or become due during the term of this Lease, and shall indemnify and hold harmless Lessor from and against the same. Nothing in this Lease shall be deemed to require Lessee to pay or discharge any liens or mortgages of any character which may be placed upon the Premises by Lessor's affirmative acts.

3.5 Taxes. In addition to rent to be paid, Lessee shall reimburse Lessor for taxes levied, imposed, or payable during each Lease year relating to the Premises. Lessee shall make such reimbursements every six (6) months and within thirty (30) days after the date Lessor provides Lessee with a statement setting forth in reasonable detail the taxes owed. Lessee's taxes shall be prorated on a per diem basis for any partial tax year included in the term of this Lease.

3.6 Lessee shall also be responsible for any and all timely payment of all income, unemployment compensation, business and occupation taxes, franchise fees, and all other miscellaneous business taxes assessed against Lessee, its business, or the Premises.

ARTICLE IV ALTERATIONS; MECHANICS' LIENS

4.1. Lessee shall not make or permit to be made any alterations, improvements or additions to the Premises or any part thereof without Lessor's prior written consent, and only if they are made in accordance with all applicable laws. All such alterations, improvements and additions shall immediately be deemed to have attached to the freehold and to have become Lessor's property, and shall remain for its benefit upon the expiration or sooner termination of this Lease, in as good order and condition as they were when installed, reasonable wear and tear excepted. However, if before the expiration hereof, or within 15 days thereafter, Lessor directs Lessee to remove any of its additions, improvements, fixtures or installations, Lessee shall promptly do so and repair any resulting damage. If Lessee fails to effect such removals or make such repairs, Lessor may do so at Lessee's expense. Lessee shall indemnify and hold harmless Lessor from all expense, liens, claims and damages to persons or property arising out of, or resulting from, the undertaking or the making of any alterations, additions or improvements hereunder.

4.2. Lessee shall not subject Lessor's interest in the Premises to any mechanics' or materialmen liens or other lien of any kind, except to the extent that the creation of such lien or liens is specifically authorized by a provision in this Lease.

4.3. Lessee shall not allow a lien or claim of any kind to be filed or claimed against Lessor's interest in the Premises during the continuance of this Lease. If such lien is claimed or filed, Lessee shall cause the Premises to be released from the claim within 30 days after Lessor is given written notice that a claim has been filed, or within 30 days after Lessor is given written notice of the claim and transmits written notice of its receipt to Lessee, whichever 30-day period expires earlier. Lessee will cause such release either by paying to the court the amount necessary, including costs of recording any document, to relieve and release the Premises from the claim, or in any other manner which, as a matter of law, will result, within the 30-day period, in releasing Lessor and its title to the Premises from the claim.

ARTICLE V USE OF PREMISES

5.1. Lessee may use and occupy the Premises **ONLY** for operation of its

business as an off premise Vape and tobacco retail location. If Lessee wishes to expand its use of the Premises at any time for any other use, it must get permission, in writing, from Lessor prior to any change or addition in use. Lessee shall not use or occupy or permit the Premises or any part thereof to be used or occupied for any other purpose nor for any unlawful business, use or purpose.

5.2 The Lessee shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way make void or voidable any insurance then in force with respect thereto, or which will make it impossible to obtain fire or other insurance required to be furnished by the Lessee hereunder, or which will cause or be likely to cause structural damage to any building on the Premises or any part thereof, or which will constitute a public or private nuisance and shall not use or occupy or permit the Premises to be used or occupied in any manner which will violate any present or future laws, or regulations of any governmental authority.

ARTICLE VI INDEMNIFICATION OF LESSOR

Lessee shall indemnify and save harmless Lessor from and against any loss, liability, cost, expense or claim, including, but not limited to, attorneys' fees and consultants' fees, which Lessor may sustain as a result of or arising from injury, or claim of injury during the term of this Lease to person or property of any and every nature, and from any matter or thing, growing out of the occupation, possession, use, management, improvement, construction, alteration, repair, maintenance or control of the Premises, or arising out of Lessee's failure to perform, fully and promptly, or Lessee's postponement of compliance with, each and every term, covenant, condition, and agreement herein provided to be performed by Lessee or arising from (including liens imposed on the Premises) the enforcement of any environmental protection laws by any federal, state or municipal authority, any and all easements, or by reason of Lessee's failure to perform any obligations imposed pursuant to any federal, state or municipal environmental protection laws, regulations and/or policies. Lessee at Lessee's own cost and expense, will defend by counsel of Lessee's choosing any and all suits that may be brought and claims which may be made, against Lessor, or in which Lessor may be impleaded with others, whether Lessor shall be liable or not, upon any such above-mentioned liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims, and judgments and shall satisfy, pay and discharge any and all judgments that may be recovered against Lessor in any such action or actions in which Lessor may be a party defendant, or that may be filed against the Premises, or the improvements thereon, or the appurtenances, or any interest therein, and in the event of the failure of Lessee to pay the sum or sums for which Lessee shall become liable as aforesaid, then Lessor may pay such sum or sums with all interest and charges which may have accrued thereon, and the amount so paid by Lessor shall be payable by Lessee to Lessor upon demand.

ARTICLE VII INSURANCE

7.1. Lessee will at all times during the term of this Lease maintain insurance on the Premises for the mutual benefit of Lessor and Lessee, which shall name Lessor as an additional insured, of the following character:

(a) Insurance against loss or damage by fire and other risks and perils from time to time included under standard extended coverage endorsements in an amount equal to not less than one hundred percent (100%) of the replacement value of the buildings and other improvements on the Premises, which shall name Lessor as an additional insured.

(b) General comprehensive public liability insurance (including coverage for elevators, if any, on the Premises) making Lessor as an additional insured, against claims for bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, such insurance to afford protection of not less than Two Million Dollars (\$2,000,000) with respect to bodily injury or death to all persons in any one accident, and not less than One Million Dollars (\$1,000,000) with respect to property damage in any one occurrence, or such other amounts in excess of the amounts set forth above as Lessor shall from time to time reasonably request.

(c) Adequate insurance on all equipment, parts thereof, and appurtenances attached or connected to the Premises, which by reason of their use or existence are capable of bursting, erupting, collapsing, or exploding.

(d) Such other insurance as may be required pursuant to any statute or rule of law of any authority now or hereafter exercising jurisdiction.

7.2. Such insurance shall be written by companies of recognized financial standing which are well rated by a national rating agency and are legally qualified to issue such insurance in the State of West Virginia, and such insurance shall name as the insured parties thereunder, Lessee and Lessor or their assigns, as their interests may appear. Lessor shall not be required to prosecute any claim against any insurer or to contest any settlement proposed by any insurer, provided that Lessee may, at its cost and expense, prosecute any such claim or contest any such settlement, and in such event Lessee may bring any such prosecution or contest in the name of Lessee, Lessor or both, and Lessor shall cooperate with Lessee and will join therein at Lessee's written request upon receipt by Lessor of an indemnity from Lessee against all costs, liabilities and expenses in connection with such cooperation, prosecution or contest.

7.3. Lessee shall deliver to Lessor promptly the original or duplicate policies or certificates of the insurers satisfactory to Lessor evidencing all the insurance which is then required to be maintained by Lessee hereunder, and Lessee shall, within 30 days prior to the expiration of any such insurance, deliver other original or duplicate policies or other certificates of the insurers evidencing the renewal of such insurance. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days notice to Lessor prior to cancellation or modification of any policy. Should Lessee fail to effect, maintain or renew any insurance provided for herein, or to pay the premium therefor, or to deliver

to Lessor any of such policies or certificates, Lessor, at its option, but without obligation so to do, may procure such insurance, and any sums expended by it to procure such insurance shall be additional rent hereunder and shall be repaid by Lessee within thirty (30) days following the date on which demand therefor shall be made by Lessor. Such insurance policy(ies) shall contain a provision that such policy(ies) shall not be cancelled or reduced in scope without thirty (30) days prior written notice to Lessor.

ARTICLE VIII CASUALTY

If the building on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee shall promptly notify Lessor of such destruction or damage. The parties hereto expressly waive the provisions of any present or future law relating to such damage or destruction and agree that the provisions of this Lease shall control the rights of Lessor and Lessee. Provided further, that rent shall not abate hereunder by reason of any damage to or destruction of any building, except if it restricts access to the Premises.

ARTICLE IX ASSIGNMENT; SUBLETTING

9.1. Lessee shall not, by operation of law or otherwise, assign this Lease or any interest herein without Lessor's prior written consent.

9.2. No assignment or subletting shall be valid or effective unless and until the assignor and the assignee of this Lease shall have delivered to Lessor a fully executed counterpart of the instrument of assignment executed by Lessee and assignee wherein Lessee has explicitly agreed to remain primarily liable for the performance of all such obligations. No such assignment or sublease shall be effective unless or until a duplicate original of it is delivered to Lessor. No assignment or sublease shall diminish Lessee's obligations to perform all of its agreements under this Lease.

9.3. If this Lease is assigned or if the Premises or any part thereof is sublet, the assignment or subletting shall be upon and subject to all the terms, covenants and conditions contained in this Lease and Lessee shall continue to remain liable thereunder. Upon any subsequent assignment, each subsequent assignor shall continue to be and remain liable hereunder. No assignment or sublease shall release the assigning or subletting party of any obligation or liability hereunder unless the Lessor specifically agrees in writing to such release.

9.4. No acceptance by Lessor of any performance or payment of money herein provided to be done or paid by Lessee from any person, firm or corporation other than Lessee shall discharge Lessee (except to the extent of the performance and payments so accepted by Lessor) from liability to pay all of the rent herein provided to be paid by Lessee or from liability to perform any of the terms, covenants, conditions and

agreements set forth in this Lease.

ARTICLE X CONDEMNATION

10.1. If the whole of the Premises shall be taken or condemned for a public or quasi-public use or purpose by a competent authority, or if such a portion of the Premises shall be so taken that as a result thereof the balance cannot be reasonably used for the use then being made of the Premises, then in either of such events, the Lease shall terminate upon delivery of possession to the condemning authority, and any award, compensation or damages (hereinafter sometimes called the "award"), shall be paid to and be the sole property of Lessor, but nothing herein shall preclude Lessee from proving (to the extent allowable by law) its damages with respect to moving expenses and loss of personal property, and receiving an award therefor. Lessee shall continue to pay rent until the Lease is terminated.

10.2. If only a part of the Premises shall be so taken or condemned, and, as a result thereof, the balance of the Premises can be used for the Lessee's then intended purpose, this Lease shall not terminate, but rent shall be equitably abated following such taking if such taking affects the area demised or access

ARTICLE XI HAZARDOUS MATERIALS

11.1. The term "Hazardous Materials" means any hazardous, toxic or dangerous substance, waste, contaminant, pollutant, gas or material, including, without limitation, gasoline, waste oil and other petroleum products and constituents thereof, which are now or may become regulated under any federal, state or local statute, regulation, ordinance or other law now or hereafter in effect, including, without limitation, any substance, waste or material which is now or hereafter (a) designated as a "hazardous substance" under the Federal Water Pollution Control Act and/or the Comprehensive Environmental Response, Compensation and Liability Act; (b) designated as a hazardous waste or regulated substance pursuant to the Resource Conservation and Recovery Act; (c) designated or listed as a hazardous material under the Hazardous Material Transportation Act; or (d) is in any way regulated as a hazardous material or toxic substance under the laws of the state wherein the Premises is located.

11.2. Lessee shall protect, indemnify, defend and hold harmless Lessor from and against all judgments, suits, proceedings, liabilities, losses, costs, judgments, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) arising out of or in any way relating to the existence of any Hazardous Material placed on, in or under the Premises by Lessee or any party acting for, by or through Lessee or with Lessee's permission or acquiescence. This indemnity includes, but is not limited to, remedial, removal, response, abatement, cleanup, legal, investigative, and monitoring costs, penalties, fines and disbursements (including,

without limitation, attorneys', consultants' and experts' fees) of any kind whatsoever, which may at any time be imposed upon or incurred by any indemnitee arising, directly or indirectly, (i) from requirements of any federal, state or local environmental law; (ii) in connection with claims by government authorities or third parties related to the condition of the Premises; and/or (iii) from the presence or existence of Hazardous Materials on, in or near the Premises, including all consequential damages.

11.3. In the event that any investigation, monitoring, containment, cleanup, removal, remediation, restoration or other work of any kind or nature ("Remedial Work") is required, reasonably necessary or desirable under any applicable federal, state or local law or regulation, any judicial order, or by any governmental or non-governmental entity or person because of, or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Material in or into the air, soil, groundwater, surface water or soil vapor at, in, about, under or within the Premises (or any portion thereof), the party who has an obligation to indemnify the other will, within 30 days after written demand for performance thereof by the indemnitee (or within a shorter period of time as may be required under any applicable law, regulation, order or agreement), commence to perform, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work will be performed by one or more contractors, approved in advance in writing by the indemnitee, and under the supervision of a consulting engineer approved in advance in writing by the indemnitee. All costs and expenses of such Remedial Work will be paid by the indemnitor, including without limitation, the charges of such contractor(s) and/or the consulting engineer, and the attorneys' fees and any costs incurred by the indemnitee in connection with the monitoring or review of such Remedial Work. In the event the indemnitor fails to timely commence or cause to be commenced, or fails to diligently prosecute to completion, such Remedial Work, the indemnitee may, but will not be obligated to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, will be reimbursed by the indemnitor.

11.4. Nothing contained in this indemnification will prevent or in any way diminish or interfere with any rights and remedies, including without limitation, the right to contribution, which either party may have against the other party or against any of its predecessors or successors in interest, or any other party under the federal Comprehensive Environmental Response, Compensation, and Liability Act, as it may be amended from time to time, or of other applicable federal, state or local laws.

ARTICLE XII REPAIR OBLIGATIONS

12.1 Lessee shall at all times during the term of this Lease, at Lessee's own costs and expense, keep and maintain (including, without limitation, to the extent applicable, grass maintenance, snow removal, common area maintenance, etc.) the Premises and assigned parking spaces on the Premises, and all, sidewalks, curbs, and grounds adjoining the Premises, and all appurtenances to the Premises, in good order, condition and repair, ordinary wear and tear excepted, and in such condition as may be required by law and by the terms of the insurance policies furnished pursuant to this

Lease, whether or not such repair shall be interior or exterior (including, without limitation, the electrical, heating, air conditioning, utilities, sewer, and plumbing systems) and whether or not such repair shall be of a structural nature, and whether or not the same can be said to be within the present contemplation of the parties hereto.

12.2 CONSTRUCTION IMPROVEMENTS. It is mutually agreed and understood that Lessee may want to undertake construction or otherwise make improvements. Lessee is required to provide a description of any construction or improvements to Lessor, with any plans, drawings, diagrams, estimates, or any other documentation related to any way construction or improvements. Authority for such construction must be granted by Lessor, in writing. Such construction includes but is not limited to modifications to the building or any part of the Premises and construction of signage or advertising in any manner. Lessee will undertake any construction or improvements at its sole cost and expense, to construct certain improvements to the Premises. Lessee, at its own cost and expense, shall procure all necessary permits, licenses and governmental approvals for the erection of the construction or improvements aforesaid, including without limitation, all required permits, including, without limitation, all building environmental water discharge, and other permits as may be required by law or regulation from any local, state or federal agency or governmental subdivision. If Lessee vacates the Premises for any reason, including non-renewal, it shall, at its own cost and expense, remediate the Premise to its condition prior to any construction or other improvements unless advised in writing by Lessor otherwise.

Nothing in this Lease shall preclude Lessor from making improvements to the Premises if it, in its sole discretion, chooses to do so. Such improvements may include, but are not limited to, the addition of a second floor to the subject Premises. Any second-floor additions or other improvements are NOT subject to this Lease and Lessor is not entitled to access to such improvements. Lessor reserves the right and Lessee agrees that Lessor, its agents, anyone authorized by Lessor, or anyone acting on Lessor's behalf, may enter the Premises, as needed and upon Lessor's discretion, to conduct any improvements, construction, building, erection, or any other work.

ARTICLE XIII COMPLIANCE WITH LAW

13.1. Lessee shall at all times during the term of the Lease, at Lessee's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated, of every governmental authority and municipality having jurisdiction over the Premises, and of any agency thereof, relating to the Premises or the facilities or equipment therein, or the appurtenances to the Premises, or the franchises and privileges connected therewith, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Premises, replacements or repairs, extraordinary as well as ordinary, and Lessee shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or

requirements shall now exist or shall hereafter be enacted or promulgated and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplations of the parties hereto.

13.2. Lessee shall have the right, provided it does so with due diligence and dispatch, to contest by appropriate legal proceedings, without cost or expense to Lessor, the validity of any law, order, ordinance, regulation or requirement of the nature hereinabove referred to in this Article. Lessee may postpone compliance with such law, rule, order, ordinance, regulation or requirement until the final determination of such proceedings, only so long as such postponement of compliance will not subject Lessor to any criminal prosecution, or any other liability of any kind against the reversion of the Premises which may arise by reason of postponement or failure of compliance with such law, rule, order, ordinance, regulation or requirement and Lessee shall indemnify and hold Lessor harmless from the same. No provisions of this Lease shall be construed so as to permit Lessee to postpone compliance with such law, rule, order, ordinance, regulation or requirement if any sovereign, municipal or other governmental authority shall threaten to carry out any work to comply with the same or to foreclose or sell any lien affecting all or any part of the Premises which shall have arisen by reason of such postponement or failure of compliance.

ARTICLE XIV DEFAULT; TERMINATION

14.1. The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

(a) Any failure by Lessee to pay the rent by the date or make any required payment hereunder. Written notice thereof by Lessor to Lessee is not required;

(b) Failure by Lessee to make any other payment (not including rent) or perform or observe any other obligation or condition to be performed or observed by Lessee under this Lease, and failure by Lessee to correct such default within five (5) days, or if because of the nature of such default it cannot be corrected within such five (5) days period, failure by Lessee to commence correction within such five (5) days period and thereafter to expeditiously and continuously prosecute the correction to completion. ;

(c) Sublease of Lessee's interest or rights under this Lease, except as expressly permitted under an Article hereof;

(d) There shall be filed by or against Lessee in any court or other tribunal pursuant to any statute or other rule of law, either of the United States or of any state or of any other authority now or hereafter exercising jurisdiction, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Lessee's property, and the appointment, petition for an arrangement or reorganization, in proceedings instituted by the Lessee, is not vacated

within thirty (30) days after it is made, or if in proceedings instituted by any other person, is not vacated within one hundred twenty (120) days after it is made (if during the respective 30-day and 120-day periods Lessee continues to perform all of its covenants under this Lease, including payment of the rent); or

(e) Pursuant to any other default or breach of this Lease by Lessee, Lessor obtains a money judgment against Lessee in a court of competent jurisdiction, and such judgment is not paid to Lessor within sixty (60) days after such judgment becomes final.

14.2. In the event of any such default and breach by Lessee, then in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the immediate option to terminate this Lease and all rights of Lessee hereunder, by giving written notice of such termination. Upon such termination, Lessee shall immediately surrender possession of the Premises to Lessor and Lessor shall be entitled to maintain exclusive use and possession of the Premises. In the event that Lessor shall elect to so terminate this Lease, then Lessor may recover from Lessee:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

(c) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom including the terms of this Lease or any breach thereof; plus

(d) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable West Virginia law.

14.3. Upon a default or breach of any term of this Lease by Lessor hereunder, Lessee shall have all of the rights and remedies provided by law or equity.

14.4 In the event of the vacation or abandonment of the Premises by Lessee, Lessor shall have right to re-enter the Premises and take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Lessor does not elect to terminate this Lease, Lessor may, from time to time, without terminating this Lease, either recover all rental as it becomes due, or relet the Premises or any part thereof for such term or terms and at such rental rentals and upon such other terms and conditions as Lessor, in its sole discretion, may deem advisable.

14.5 In the event that Lessor shall elect to so relet, then rentals received by Lessor from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; second, to the payment of any cost of such

reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor immediately upon demand therefore by Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as ascertained, any costs, and expenses incurred by Lessor in such reletting.

14.6 Upon a default or breach of any term of this Lease by Lessor hereunder, Lessee shall have all of the rights and remedies provided by law or equity.

ARTICLE XV SURRENDER

15. Lessee shall, on the last day of the term of this Lease or upon any termination of this Lease pursuant to Article XIV (Default; Termination) hereof, or upon any other termination of this Lease, immediately surrender and deliver up the Premises into the possession and use of Lessor, without fraud or delay and in good order, condition, and repair, free and clear of all lettings and occupancies, free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Lessor, without any payment or allowance whatever by Lessor on account of or for the improvements erected or maintained on the Premises at the time of surrender or for the contents thereof or appurtenances thereto. Provided, however, that Lessee's trade fixtures, personal property and other belongings of Lessee or of any subtenant or other occupant of space in the Premises shall be and remain the property of Lessee and if not then in default, Lessee shall have a reasonable time after the expiration of the term of this Lease to remove the same.

ARTICLE XVI GOVERNING LAW; CUMULATIVE REMEDIES

16.1. All of the rights and remedies of the parties under this Lease shall be construed and resolved according to the laws of the State of West Virginia.

16.2. Each right or remedy of the parties under this Lease shall be cumulative and concurrent and shall be in addition to every other right or remedy, and neither the existence availability nor exercise of any one or more of such rights or remedies shall preclude or otherwise affect the simultaneous or later exercise of any or all of such other rights or remedies.

ARTICLE XVII UTILITIES

17.1 Lessee shall pay a prorated share of charges for all utilities, including but not limited to sewer, water, electric, and garbage removal ("Utilities") at the commercial building situate at 803 Chestnut Ridge Road. Lessee's prorated share of utilities is calculated based upon Lessee's use as a tenant occupying 1,581 square feet, or 70.7% of the total 2,237 square foot commercial space at 803 Chestnut Ridge Road. Such prorated calculation shall begin upon the commencement of this Lease. No other calculation shall be used for Lessee's prorated share of utilities (such as a calculation based upon wattage used, gallons used, etc.)

At the time of entering this lease, 656 of the 2,237 square feet of commercial space at 803 Chestnut Ridge Road is presently occupied (said 656 square foot occupied space to be formally designated as Suite 102 in the future). While the occupant of the 656 square foot occupied space currently pays for the entirety of the Utilities at the commercial building situate at 803 Chestnut Ridge Road, such obligation shall terminate upon the commencement of this Lease. Any occupant of the 656 square foot space shall be responsible for its prorated share of utilities calculated based upon said occupant's use as a tenant occupying 656 square feet, or 29.3% of the total 2,237 square foot commercial space at 803 Chestnut Ridge Road.

17.2 Lessee and Lessor further agree that at such time when any Utilities at 803 Chestnut Ridge Road are formally separated between the 1,581 square feet occupied by Lessee and the remainder of the commercial space at 803 Chestnut Ridge Road (a separation performed by any entity responsible for such Utilities or by the Lessor), then Lessee will be responsible for the entirety of the Utilities which have been separated and designated for the space occupied by Lessee. By way of example, if the 1,581 square feet occupied by Lessee is designated as 803 Chestnut Ridge Road, Suite 100, for purposes of calculating and billing water, sewer, and electric usage, while the remaining 656 square feet is designated at 803 Chestnut Ridge Road, Suite 102, Lessee will be responsible for all Utilities which have been designated as 803 Chestnut Ridge Road, Suite 100. Lessee shall maintain its obligations to pay for any Utilities not formally separated and designated, as outlined in section 17.1, as applicable.

ARTICLE XVIII MISCELLANEOUS

18.1 Lessor and its agents may enter upon the Premises and any building located thereon at all reasonable times to examine their condition and use, so long as that right is exercised in a manner that does not interfere with Lessee in the conduct of its business on the Premises.

18.2 Lessor and its agents may enter upon the Premises at any time to access the billboard located on the Premises.

18.3 In no event shall the leasehold interest, estate or rights of Lessee hereunder, or of the holder of any mortgage upon this Lease, merge with any interest, estate or rights of Lessor in or to the Premises, it being understood that such leasehold interest, estate and rights of Lessee hereunder, and of the holder of any mortgage upon this Lease, shall be deemed to be separate and distinct from Lessor's interest, estate and rights in or to the Premises.

18.4 If Lessor or Lessee is delayed, hindered, or prevented from performing any act required hereunder by reason of failure of power, restrictive government laws or regulations, riots, insurrection, or war, then performance of the act shall be excused for the period of the delay. In that event, the period for the performance of the act shall be extended for a period equivalent to the period of the delay.

18.5 Either party shall, without charge, at any time and from time to time hereafter, within ten days after the other's written request of the other, certify by instrument duly executed and acknowledged to any mortgagee or purchaser or proposed mortgagee or proposed purchaser, or any other person, firm, or corporation specified in the request as to:

(a) whether this Lease has been supplemented or amended, and, if so, the substance and manner of the supplement or amendment;

(b) the validity and force and effect of this Lease, in accordance with its tenor as then constituted;

(c) the existence of any default thereunder;

(d) the existence of all counterclaims or defenses thereto on the part of the other party;

(e) the commencement and expiration dates of the term of this Lease; and

(f) all other matters that may reasonably be so requested.

Any such certificate may be relied upon by the party who requested it and any other person, firm or corporation to whom it may be exhibited or delivered, and the contents of the certificate shall be binding on the party executing it.

18.6 Either party shall, at any time, at the other's request, promptly execute duplicate originals of an instrument, in recordable form, which shall constitute a short form of lease. This will set forth a description of the Premises, the term of this Lease, and any other portion thereof requested by either party.

unenforceable, or otherwise inoperative, the valid and enforceable provisions will continue to be given effect and bind the parties.

Headings in this Lease are for convenience and reference only and shall not be used to interpret or construe its provisions.

This Lease consisting of nineteen (19) typewritten pages, including the signature page, contains the entire agreement by Lessors and Lessee with regard to the matters set forth in it and shall be binding.

A copy of this Lease shall be as effective as an original.

[Signature and Notary Certification on Following Page]

In witness whereof Lessor and Lessee have hereunto set their hands and seals, the day and year above written.

LESSOR:

FAIR MART, INC.

BY: Russ Bonasso
Russell F. Bonasso, II

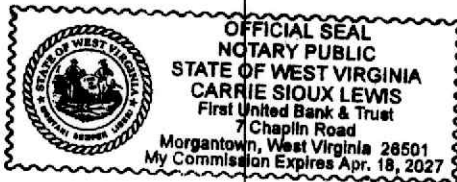
Its President

STATE OF WEST VIRGINIA,

COUNTY OF Monongalia, to-wit:

The foregoing instrument was acknowledged before me this 21st day of May, 2025, by Russell F. Bonasso, II.

My commission expires April 18 2027



Carrie Sioux Lewis
Notary Public

LESSEE:

Happy Smoke Vape, LLC

By: Zakaria Nasir Isa

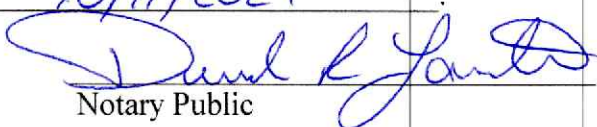
Zakaria Nasir Isa
1 Pineview Place
Morgantown, WV 26505

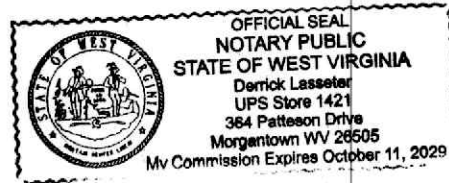
STATE OF West Virginia,

COUNTY OF Monongalia, to-wit:

The foregoing instrument was acknowledged before me this 21st day of May, 2025, by Zakaria Nasir Isa.

My commission expires 10/11/2029


Notary Public



LESSOR: ELM GROVE PLAZA, LLC

TENANT: Abdulgabar A. Nasser dba Tobacco & Vape, LLC

**PREMISES: Elm Grove Plaza, Suite
Elm Grove Crossing, Wheeling, WV 26003**

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LEASE AGREEMENT

ARTICLE I PARTIES

1.1 This lease ("Lease") is made on or as of this **1st** day of **March, 2022** by and between **Abdulgabar A Nasser dba Tobacco & Vape, LLC** ("Tenant") and **Elm Grove Plaza, LLC**, ("Lessor")

1.2 The parties hereto, for and in consideration of the mutual covenants contained herein and with specific intention of being legally bound hereby and of so binding their respective heirs, administrators, executors, successors and assigns, jointly and severally, agree as follows:

ARTICLE II DEFINED TERMS

2.1 Any word or combination of words set forth herein within quotation marks and with the first letter(s) of the word(s) capitalized shall be a defined term, and when thereafter used herein with the letters(s) capitalized shall have the meaning first indicated.

2.2 "Shopping Center": The property known as Elm Grove Plaza situate in Wheeling, West Virginia.

2.3 "Premises": **1,500 square feet**, more or less, outlined on Exhibit "A" attached hereto, as further described in Article III.

2.4 "Term": As further defined in Article IV, **three (3) years**, commencing on **March 1, 2022**

2.5 "Expiration Date": The date set forth in a supplemental "Term Rider" to be executed and attached hereto in accordance with Section 4.1, or if there is no Term Rider then **February 28, 2025**.

2.6 "Use": **Tobacco Vape Shop and Sales**

2.7 "Fixed Rent": for each "Rental Year" (as defined in Section 8.4):

Rental Years 1-3 1,500 Square Feet \$1,500 per month (\$18,000 per annum)

Tenant shall have the right to **one (1) three year option** at the end of the initial term, with rent increase to \$13.00 per square foot.

2.8 "Tenant's Share of Taxes": The Proportionate Share of:

- (a) All "Taxes" (as defined in Section 9.2).
- (b) Tenant agrees to pay Landlord each month in advance, during the first calendar year of this Lease, the estimated sum of \$ 1.02 per square foot and the total amount of said monthly payments accumulated in Tenant's account shall be applied toward Tenant's proportionate share of Real Estate Taxes pertaining to the Elm Grove Plaza, when said real estate taxes are billed to the Tenant. **After the first year and any time thereafter, Landlord may advise Tenant of any increase in said monthly payment which increased payment shall be one twelfth (1/12) of the estimated real estate taxes for the current year.** Tenant shall thereafter pay said increased amount to Landlord each month in advance. The increased payment shall be applied toward Tenant's proportionate share of real estate taxes pertaining to the Shopping Center.

2.9 "Tenant's Share of Insurance": The Proportionate Share of:

- (a) All "Insurance" (as defined in Section 10.2).
- (b) Tenant agrees to pay to Landlord each month in advance, during the first calendar year of this Lease, the estimated sum of \$.84 per square foot and the total amount of said monthly payments accumulated in Tenant's account shall be applied toward Tenant's proportionate share of Insurance pertaining to the Elm Grove Plaza when said insurance premiums are billed to the Tenant. **After the first year and any time thereafter, Landlord may advise Tenant of any increase in said monthly payment which increased payment shall be one twelfth (1/12) of the estimated insurance premiums for the current year.** Tenant shall thereafter pay said increased amount to Landlord each month in advance. The increased payment shall be applied toward Tenant's proportionate share of insurance premiums pertaining to the Shopping Center.

2.10 "Tenant's Share of Lessor's Operating Costs of Common Area Maintenance": Amount equal to:

- (a) Proportionate Share of Lessor's Operating Costs" (as defined in Article XII).
- (b) Tenant agrees to pay Landlord each month in advance, during the first calendar year of this Lease, the estimated sum of \$.57 per square foot and the total amount of said monthly payments accumulated in Tenant's account shall be applied toward Tenant's proportionate share of Lessor's Operating Costs pertaining to the Elm Grove Plaza, when said Lessor's Operating Costs are billed to the Tenant. **After the first year and anytime thereafter, Landlord may advise Tenant of any increase in said monthly payment which increased payment shall be one twelfth (1/12) of the estimated Lessor's Operating Costs for the current year.** Tenant shall thereafter pay said increased amount to Landlord each month in advance. The increased payment shall be applied toward Tenant's proportionate share of Lessor's Operating Costs pertaining to the Shopping Center.

2.11 "Tenant's Share of Alarm/Fire Service":

Amount equal to:

- (a) Proportionate Share of Lessor's Alarm/Security & Fire Fees"
- (b) Tenant agrees to pay Landlord each month in advance, during the first calendar year of this Lease, the estimated sum of \$.07 per square foot and the total amount of said monthly payments accumulated in Tenant's account shall be applied toward Tenant's proportionate share of Lessor's Alarm/Security & Fire Fees pertaining to the Shopping Center when said Lessor's Fees are billed to the Tenant. **After the first year and anytime thereafter, Landlord may advise Tenant of any increase in said monthly payment which increased payment shall be one twelfth (1/12) of the estimated Lessor's Alarm/Security & Fire Fees for the current year.** Tenant shall thereafter pay **said increased amount to Landlord each month in advance.** The increased payment shall be applied toward Tenant's proportionate share of Lessor's Alarm/Security & Fire Fees pertaining to Shopping Center.

2.12 "Tenant's Trade Name": **Tobacco & Vape, LLC**

2.13 "Tenant's Notice Address": **Tobacco & Vape, LLC
107 Conner Grant Road
New Bern, NC 28562**

2.14 "Lessor's Notice Address": **Elm Grove Plaza
P. O. Box 679
Morgantown, WV 26507-0679**

2.15 "Exhibits": The following are attached hereto, incorporated herein and made a part hereof by reference thereto;

A) Site Plan

ARTICLE III PREMISES

3.1 Lessor hereby leases to Tenant, and Tenant hereby rents from Lessor, the Premises as defined in Section 2.3, including all Improvements, as herein defined, and together with all appurtenances, including use with others of the Common Areas, as hereinafter defined, to have and to hold unto Tenant for and during the term hereinafter set forth.

3.2 Lessor reserves the sole and exclusive right, from time to time, to change the Shopping Center in any way it may desire, including, but not limited to, construction of additions, removal of building or parts of building and alteration of Common Areas.

3.3 Lessor reserves the sole and exclusive right to use all or any part of the roof of the Premises for any purpose; to erect additional stories or other structures over all or any part of the Premises; to erect in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises, provided that access to the premises shall not be denied; to install, maintain, use repair and repair within the Premises pipes, ducts, conduits, wires and all other mechanical equipment servicing other parts of the Shopping Center, the same to be in locations within the Premises as will not deny Tenant's use thereof; and to make any use it desires of the side or rear walls of the Premises, provided that such use shall not encroach on the interior of the Premises.

3.4 The Premises have been inspected by Tenant, and Tenant agrees to accept the same in their present "as is" condition and in the condition in which the Premises may be on the commencement date of this Lease, with the understanding that the Premises will be subject to ordinary wear and tear from the date hereof until commencement of the term.

3.5 *Exceptions/Exclusion:*

3.6 *Build-out information: Space to be delivered in "as is condition".*

3.7 Lessor shall have the right and at Lessors expense to relocate Tenant to another suite ("Substituted Suite") in the Shopping Center or any addition thereto, upon reasonable notice. In the event of relocation the Substituted Suite shall be the Premises instead of the area specified in Section 2.3.

ARTICLE IV
TERM AND POSSESSION

4.1 The term of this Lease shall commence on **March 1, 2022** shall be for a period of time set forth in Section 2.4. If the Term commences on a date other than the date set forth in Section 2.4, the parties will execute a separate instrument ("Term Rider") for attachment hereto stating the commencing and ending dates of the Term.

4.2 Lessor, its agents, employees and contractors, shall have the right to enter all parts of the Premises during Tenant's operating hours to inspect the same, to enforce and carry out any provision of this Lease, and, without assuming responsibility to do so, to make repairs or alterations. In the event of an emergency endangering life or property or in the event of desertion of the Premises, Lessor shall have the right to enter by force.

4.3 Renewal Option- Tenant shall have the option to renew the term of this lease for following the expiration of the original term, provided that this Lease is in full force and effect and free of defaults by Tenant on the day the renewal option is exercised and on the day the renewal term begins. The renewal term shall be on the same terms, covenants and conditions as the original term, except that the annual rent shall be adjusted as provided in Section 2.7, and there shall be no further right of renewal after the renewal term provided for herein. **Such right of renewal must be exercised by delivery to Landlord of an unequivocal written notice of election to renew at least ninety (90) days prior to notice** and without any further instrument, this Lease shall be deemed to be renewed, subject to the conditions hereinbefore provided in this Section.

4.4 Holding Over- Should the Tenant, with or without the express or implied consent of the Lessor, continue to hold and occupy the Premises after the expiration of the term of this Lease, such holding over beyond the term and the acceptance or collection of rent by Lessor, shall operate and be construed as creating a tenancy from month to month and not for any other term whatsoever, but the same may be terminated by the Lessor by giving the Tenant ten (10) days written notice thereof, and at any time thereafter the Lessor may re-enter and take possession of the Premises, any rule in law or equity to the contrary notwithstanding. The Tenant shall pay to the Lessor one and one half the rent paid at Lease expiration, each month Tenant holds over beyond the original expiration term of the Lease.

ARTICLE V LESSOR'S WARRANTY

5.1 Lessor hereby warrants that it and no other person or corporation has the right to lease the Premises. Tenant shall have quiet and peaceful possession of the Premises without hindrance on the part of Lessor, and Lessor shall warrant and defend Tenant in such quiet and peaceful possession against the claims of all persons claiming by, through and under Lessor, so long as Tenant shall not be in default hereunder.

ARTICLE VI USE

6.1 Tenant shall use the Premises only in a safe and lawful manner for the purpose set forth in Section 2.6.

6.2 At all times and in all respects Tenant shall comply with all statutes, laws, ordinances and regulations of every governmental authority having jurisdiction.

6.3 Tenant will conduct business on the Premises only in the Tenant's Trade Name as specified in Section 2.11, unless the use of some other name is approved in writing by Lessor.

6.4 Lessor reserves the right to completely close the entire Shopping Center to all traffic for a period of 24 hours once every ten years after 30 days notice to all tenants.

ARTICLE VII ASSIGNMENT OR SUBLETTING

7.1 Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease departments therein, without first obtaining the written consent of Lessor. Such consent shall not be unreasonably withheld. Any attempts at assigning or subletting without Lessors consent shall be null and void. Consent by Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition includes any subletting or assignment, which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure.

7.2 If Tenant is a corporation and if at any time during the Term, any part or all of the corporate shares shall be transferred by sale, assignment, bequest, inheritance, operation of law

or other disposition so as to result in a change in the present control of said corporation by the person or persons now owning a majority of said corporate shares, Tenant shall notify Lessor of this event within fifteen (15) days from the date of such transfer and if Lessor's financial risk is increased or if the operation of the business is significantly altered as a result of such change in control Lessor may terminate this Lease at any time after such change by giving Tenant sixty (60) days written notice.

7.3 If Lessor consents to assignment or sublease the following shall be applicable:

- i. The proposed Tenant will not be violating any prohibitive use in this lease or with any existing Tenant in the Shopping Center at the time of said assignment; and
- ii. The new Tenant assumes in writing, in a form satisfactory to the Lessor, the obligations under this lease on behalf of Tenant; and
- iii. Tenant and any guarantor shall remain fully liable as the primary obligor under this lease; and
- iv. The Tenant has not violated any terms or conditions of this Lease Agreement.

ARTICLE VIII RENT

8.1 Tenant covenants and agrees to pay to Lessor, as rent for the Premises the Fixed Rent as set forth in Section 2.7.

8.2 Fixed Rent shall be payable in equal monthly installments in advance on the first day of each full calendar month during the Term, the first such payment to include any prorated Fixed Rent for the period from the date of commencement of the Term to the first day of the first calendar month in the Term. The first such payment of the Fixed Rent shall be due and payable upon the Lease Commencement Date or Date of Occupancy, whichever occurs first.

8.3 A rental year shall consist of twelve (12) calendar months, beginning on the first day of the first full calendar month of the Term ("Rental Year"). The First Rental Year shall include the period from the date of commencement of the Term to the first day of the first full calendar month in the Term. Any portion of the Term remaining at the end of the last full Rental Year shall constitute the final Rental Year, and rentals and all other charges shall be apportioned therefor.

8.4 It is understood and agreed that the basic consideration for this Lease is Tenant's covenant to pay the total sum of the Fixed Rent set forth in Section 2.7 for the original Term, and other amounts payable by Tenant hereunder. The reason that the rates of installments may differ is to defer payment of some of the rent from the early part of the Term to the latter part for the convenience of the Tenant. Under these circumstances, it is not contemplated that any

governmental rent control or freeze will excuse Tenant from paying any part of the rent as agreed.

8.5 All rent and other amounts payable by Tenant hereunder shall be paid to Lessor without demand or deduction at the Lessor's Notice Address set forth in Section 2.13 or such other place as Lessor from time to time may designate.

8.6 Anything in this Lease to the contrary notwithstanding, at Lessor's option, **Tenant shall pay, as additional rent, a late charge in the amount of fifty dollars (\$50.00) for any rent payment not made within seven (7) days after the due date thereof to cover the extra expense involved in handling delinquent payments.**

ARTICLE IX TAXES

9.1 Tenant shall pay monthly, in addition to rent hereunder, Tenant's Share of Taxes (as specified in Section 2.8 and as defined in Section 9.3).

9.2 "Taxes" include all real estate and other ad valorem taxes and assessments applicable to the Shopping Center and any other tax imposed against Lessor with respect to the Shopping Center by federal, state or local taxing authorities as a substitution for or in addition to the current method of property taxation used for the funding of governmental services and the cost, including attorneys and appraisers' fees, of any contest or appeal pursued by the Lessor in an effort to reduce the amount of tax or assessment with respect to the Shopping Center.

9.3 "Tax Year" means each twelve (12) month period (deemed, for the purpose of this Article, to have 365 days) established as the real estate Tax Year by the taxing authorities having lawful jurisdiction over the Shopping Center.

9.4 The tax payment required hereunder shall be paid by Tenant monthly.

9.5 Within sixty (60) days after the Lessor's receipt of tax bills for each Tax Year, or within a reasonable time thereafter in Lessor's determination, Lessor will certify to Tenant:

- (a) The amount of Taxes as specified above, and
- (b) The amount of Tenant's share of Taxes.

9.6 The failure of Lessor to provide such certification within the above-prescribed time frame shall not relieve Tenant of its obligations generally or for the specified Tax Year in which such failure occurs.

9.7 For the Tax Year in which the Term commences or terminates, the provisions of this Article shall apply, but Tenant's liability for its proportionate share of any Taxes for such year shall be subject to a pro-rata adjustment based upon the number of days of such Tax Year falling within the Term.

9.8 It is the intention of the parties hereto that Lessor shall receive the rents and other charges required to be paid to Lessor by Tenant pursuant to this lease on an absolutely net basis and the Tenant shall, except as specifically provided in this lease to the contrary, pay all costs expenses and obligations of every kind or nature whatsoever relating to the Premises or any improvements thereon or to the tenancy therein created by this lease, which costs, expenses and obligations may arise or become due during the term of this lease (including any extensions thereof). Therefore, Tenant alone shall be responsible for payment of any type of tax, excise or assessment (regardless of label or whether in the form of rental tax, gross receipts tax, sales tax, business or occupation tax, use assessment, privilege tax, franchise tax, or otherwise, except any tax, excise or assessment which in substance is a net income or franchise tax that is based solely on Lessor's net income) levied, assessed or imposed at any time by any governmental authority upon or against the Premises, use or occupancy of the Demise Premises, the rents and other charges payable by the Tenant to Lessor, or otherwise with respect to the Lessor-Tenant relationship. Tenant shall pay the full amount of such tax, excise, or assessment directly to the appropriate governmental authority, unless the applicable law expressly imposes solely on Lessor the duty to pay or collect such tax, excise or assessment, in which case Tenant shall pay the full amount of such tax, excise or assessment as additional rent under this lease to Lessor, on or before the date when any fine, penalty or interest would be added thereto fore nonpayment. Notwithstanding that the applicable law may impose on Tenant the duty to pay or collect such tax, excise or assessment, Lessor shall in no event be obligated to pay such tax, excise or assessment and Lessor shall be indemnified against and saved harmless from the same by Tenant. In the event (i) Tenant fails to timely pay such tax, excise or assessment and Lessor pays same, or (ii) Lessor elects in its sole discretion to pay the same in advance, Tenant shall promptly reimburse Lessor for the amount thereof (including fine, penalty or interest if any) as additional rent under this lease, and such additional rent shall be deemed to be due as of the last date before any fine, penalty or interest would be added to such tax, excise or assessment for nonpayment. The provisions of this paragraph shall also apply to any such tax, excise or assessment described in this clause.

ARTICLE X SECURITY DEPOSIT

10.1 Security Deposit. As additional security for the full and prompt performance and observation by Tenant of all obligations hereunder, Tenant has upon execution of this Lease, paid to Lessor, **one (1) month's rent** which sum may be applied by Lessor for the purpose of curing any default or breach of Tenant under this Lease. In the event of any such application of this security deposit by Lessor, Tenant shall immediately upon receiving demand from Lessor pay to Lessor an amount sufficient to restore this security deposit to its original amount. If Tenant has not defaulted hereunder or if Lessor has not applied said sum, or any additional amounts paid to restore said sum, to any default, then said security deposit or any portion thereof

not so applied by Lessor shall be paid in cash to Tenant at the termination of this Lease and surrender of possession of the premises by Tenant.

10.2 Tenant acknowledges that Lessor has the right to transfer its interest in the Premises or portions thereof, and in this Lease, and, in the event of any such transfer; Lessor shall have the right to transfer the security deposit to any such transferee. Upon such transfer, Lessor shall thereby be released from all liability or obligation to Tenant for the return of such security deposit and Tenant agrees to look solely to such transferee for the return of such security deposit.

ARTICLE XI INSURANCE

11.1 Tenant shall pay monthly, at its sole cost and expense, in addition to rent hereunder, Tenant's Share of Insurance (as defined in Section 2.9).

11.2 "Insurance" includes all insurance premiums and costs of any kind or payable by the Lessor under or for any insurance policies applicable during the Term in any respect to the Shopping Center and the Common Area Maintenance.

11.3 "Insurance Period" means each period established by Lessor or its insurers as the period during which any insurance policies may be in effect.

11.4 The insurance payment required hereunder shall be paid by Tenant monthly.

11.5 Within sixty (60) days after Lessor's receipt of insurance bills for each Insurance Period, Lessor will certify to Tenant:

- (a) The amount of insurance; and
- (b) The amount of Tenant's Share of Insurance; and
- (c) The Insurance Period for which such Insurance is paid or payable.

ARTICLE XII COMMON AREA MAINTENANCE

12.1 The Common Area Maintenance which may be furnished by Lessor in or near the Shopping Center for the general common use of Tenants, their officers, agents, employees and customers including without limitation, all parking areas, access roads, employee parking areas, the truck way or ways, driveways, pedestrian sidewalks, landscaped and planted areas, retaining walls, stairways, bus stops, lighting facilities and other areas and improvements, shall at all times be subject to the exclusive control and management of Lessor. Lessor shall have the right to

establish, modify and enforce reasonable rules and regulations with respect to the Common Area Maintenance; to change the areas, locations and arrangement thereof; to enter into, modify and terminate easement and other agreements pertaining to the use and maintenance thereof; to restrict parking by Tenants, their officers, agents, and employees to employee parking areas; to close all or any portion of said parking areas or other Common Area Maintenance to such extent as may, in the opinion of Lessor be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; to close temporarily any or all portions of the said areas or facilities ; to discourage non customer parking; and to do and perform such other acts in and to said areas and improvements as, in the exercise of good business judgement, Lessor shall determine to be advisable with a view to the improvement of the convenience and use thereof by Tenants, their officers, agents, employees and customers.

12.2 Lessor will operate and maintain the Common Area Maintenance, which may be provided pursuant to this Section.

12.3 Intentionally left blank.

12.4 Lessor reserves the right in its sole discretion to change, rearrange, alter, modify, reduce or supplement any or all of the Common Area Maintenance so long as adequate facilities in common are made available to the Tenant herein.

12.5 The "Lessor's Operating Costs" shall be the cost and expense of operating and maintaining the Common Area Maintenance which may be provided whether or not located on land within the Shopping Center in a manner deemed by Lessor to be reasonable and appropriate and for the best interests of the Shopping Center; including, without limitation: all costs and expense of operating, repairing, lighting, cleaning, painting, striping, policing and providing security (including the cost of uniforms, equipment and all employment taxes); operating, maintenance, management, repairs and replacement of signs, displays, and decorations; removal of snow, ice and debris; regulation of traffic; inspections and depreciation of machinery and equipment used in the operation and maintenance of the Common Area Maintenance and personal property taxes and other charges incurred in connection with such equipment; replacement of paving, curbs, sidewalks, landscaping, drainage, pipes, ducts, conduits and similar items, and lighting facilities; planting, replanting and replacing flowers, shrubbery and planters; rental of music program services and loudspeaker systems, including furnishing electricity.

12.6 Tenant shall pay to Lessor, in addition to the rent hereunder, Tenant's share of Lessor's Operating Costs of Common Area Maintenance (as specified in Section 2.10) for and during each calendar year.

12.7 The charge required hereunder shall be paid by Tenant monthly.

12.8 If Tenant's Share of Lessor's Operating Costs of Common Area Maintenance is specified under Subsection 2.10 (a), then within ninety (90) days after Lessor's calculation of such costs, or within a reasonable time thereafter in Lessor's determination, Lessor will certify to Tenant:

- (a) The amount of Lessor's Operating Costs;
- (b) The amount of Tenant's Share of Lessor's Operating Costs; and
- (c) The calendar year for which such Operating Costs are paid or payable.

12.9 The failure of Lessor to provide such certification under Section 11.8 or to provide bills under Section 11.7 within the time prescribed therefor shall not relieve Tenant of its obligations generally or for the specific calendar year for which any failure occurs.

12.10 For the calendar year in which the Lease commences or terminates, the provisions of this Article shall apply, but Tenant's liability for Lessor's Operating Costs of Common Area Maintenance for such calendar year shall be subject to a pro-rata adjustment based upon the number of days of such calendar year falling within the Term.

ARTICLE XIII UTILITIES AND SERVICE

13.1 Tenant shall pay at its sole cost and expense, **in addition to rent hereunder, all charges for gas, electricity, water, sewage, waste disposal, other utilities and services to or for the Premises.** Lessor shall incur no liability whatsoever should any utility become unavailable from any public utility company, public authority or any other person, firm or corporation, including Lessor, supplying such utility. Discontinuance of any service shall not constitute an eviction, constructive or otherwise.

13.2 In the event that the charges for water, sewage, waste disposal, any utilities or services to or for the Premises are included in a charge for property of which the Premises are only a part and allocation of which charge or charges is not readily ascertainable, the determination of the portion thereof applicable to the Premises shall be made by Lessor on the basis of its best estimate of the amount of use by respective users and such other factors as may be pertinent for a reasonable division and allocation of the same.

13.3 If Tenant fails to pay any charge for water, sewage or other utility or service payable by Tenant hereunder, Lessor may elect to pay the same and shall have the right to collect the same and any expense incurred by Lessor in connection therewith from Tenant by exercising all remedies provided by law and provide herein for collection of rent. In addition to other remedies, Lessor reserves and shall at all times have the right to cut off and discontinue, without notice to Tenant, water, electricity, heating and air conditioning, or other utilities and services whenever Tenant has failed to pay in accordance with the terms of this Lease any amounts due by Tenant for rent or otherwise. Lessor shall not be liable for any such discontinuance and the same shall not constitute a termination of this Lease, or eviction, constructive or otherwise.

ARTICLE XIV
ALTERATIONS, IMPROVEMENTS, AND CONSTRUCTION

14.1 Tenant shall not make any alterations or improvements to, erect any sign on, or remove anything except Tenant's Property (as herein defined) from the Premises without first obtaining the approval in writing of Lessor. Plans and specifications for alterations, improvements and exterior signs shall be submitted to the Lessor, and the Lessor's approval thereof shall not be withheld unreasonably.

14.2 All construction work and materials attached to, affixed to, or installed in, the Premises by any party or person, including but not limited to heating, air conditioning, ventilating, plumbing and electrical equipment and facilities, floor, wall and ceiling covering, store fronts, additions, renovations and replacements (separately and collectively the "Improvements") immediately shall become part of the Premises and property of the Lessor. However, improvements made by Tenant that do not become permanent fixtures shall remain the property of the Tenant.

14.3 All plans and specifications required hereunder shall be prepared by, and the Improvements to be made pursuant thereto shall be performed by, persons duly qualified to do the work in the jurisdiction wherein the Premises are situate and shall comply with all applicable codes, rules, regulations and ordinances.

14.4 Tenant shall secure all permits and licenses necessary or required for construction, operation, signage and occupancy of the Improvements. Lessor shall cooperate with the Tenant but shall not be obligated to obtain or be responsible for failure to obtain such permits and licenses.

14.5 All contracts for labor and/or material in excess of Two Thousand Dollars (\$2,000.00) shall be in writing, and shall contain a waiver of lien provision. Tenant shall not permit mechanic lien to be placed upon the Premises.

14.6 All improvements approved by Lessor shall be made at the sole cost of Tenant.

14.7 Nothing contained in this Lease shall authorize Tenant to do any act which shall in any way encumber Lessor's title to the Shopping Center or the Premises, nor in any way subject Lessor's title to any claims by way of lien or encumbrance whether claimed by operation of law or by virtue of any expressed or implied contract of Tenant. If Tenant has not removed any such lien or encumbrance within fifteen (15) days after written notice to Tenant by Lessor, Lessor may pay the amount necessary to remove such lien or encumbrance, without being responsible for making any investigation as to the validity thereof, and the amount so paid shall be deemed additional rent reserved under this Lease due and payable forthwith.

**ARTICLE XV
REPAIRS**

15.1 Tenant shall at its sole cost and expense be responsible for all routine maintenance.

15.2 Tenant shall, at its sole cost and expense, keep and maintain the Premises and every part thereof clean and in good order and condition. Tenant shall maintain HVAC systems, affecting the Premises on a monthly preventative maintenance basis. Lessor expressly warrants the HVAC system shall be in good working order on the Commencement of Lease.

15.3 Tenant shall, at its sole cost and expense, install and replace such signs, decorations, lettering, advertising matter and other things as may be approved by Lessor and keep and maintain same in good condition and repair and in keeping with the image, character and standards as may be established from time to time by Lessor for the Shopping Center and all make such replacements as may be necessary.

15.4 In the event that Tenant shall fail, within thirty (30) days after notice in writing by Lessor, to make repairs or replacements to Premises, the Improvements, the signs or any part thereof which may be necessary or required, Lessor may make the same and collect the costs thereof and expenses incurred in connection therewith, together with interest thereon at the then prevailing commercial rate from Tenant, by exercising all remedies provided by law and provided herein for collection of rent.

15.5 In the event that the portion of the Premises which Tenant has agreed to maintain, if any, shall be damaged or destroyed as a result of fire, casualty or other occurrence, Tenant shall remove any resulting debris and repair or replace such damaged structure promptly, and if Tenant fails to commence required restoration work within ninety (90) days from the date of such damage or destruction or fails to diligently proceed to complete the same, Lessor's remedy shall be the right and option to terminate the Term of this Lease by giving Tenant written notice of Lessor's election to do so at any time prior to completion of the repairs or replacements if Tenant shall not then be actively undertaking such restoration work.

ARTICLE XVI
RULES AND REGULATIONS

16.1 In regard to use and occupancy of the Premises and Common Area Maintenance, Tenant shall at its expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) keep all exterior store surfaces of the Premises clean; (c) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality; (d) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests; (e) keep any garbage, trash, rubbish, or refuse in rat-proof containers within the interior of the Premises until removed; (f) have such garbage, trash, rubbish and refuse removed on a daily basis; (g) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; (h) comply with all laws, ordinances rules and regulations of governmental authorities and all recommendations of the Fire Underwriters Rating Bureau now or hereafter in effect; (i) maintain window displays, advertising matter, signs, merchandise and store fixtures in keeping with the image, character and standards of the Shopping Center, as determined by Lessor; (j) maintain such regular service contracts with professionals for air conditioning maintenance, pest extermination, refuse removal, cleaning, etc. as may be required by and subject to the approval of Lessor; and (k) conduct its business in all respects in a dignified manner in accordance with high standards of store operations consistent with the quality of operations of the Shopping Center as determined by Lessor and to provide an appropriate mercantile quality within the entire Shopping Center.

16.2 In regard to use and occupancy of the Premises and Common Area Maintenance, Tenants shall not: (a) use or permit the use of any objectionable advertising medium such as, without limitation; loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Shopping Center which is in any manner audible or visible outside of the Premises; (b) permit accumulations of garbage, trash, rubbish or other refuse within or without the Premises; (c) cause or permit objectionable odors to emanate or be dispelled from the Premises; (d) solicit business in the parking or other Common Area Maintenance; (e) distribute handbills or other advertising matter to, in or upon any automobiles parked in the parking area or in any other Common Facility; (f) permit the parking of delivery vehicles so as to interfere with the use of any driveway, foot walk, parking area or other Common Facility in the Shopping Center; (g) place or suffer to be placed or maintain on the exterior of the Premises any sign, advertising matter or any other thing of any kind or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises, or paint or decorate any part of the exterior of the Premises, or any part of the interior visible from the exterior thereof, without first obtaining Lessor's written approval; under no circumstances are handwritten signs displayed in the windows permissible; (h) use of foot walk or any other Common Facility adjacent to the premises for the sale or display of any merchandise for any other business, occupation, or undertaking; (i) conduct or permit to be conducted any action, fire, going out of business, bankruptcy, or other similar type sale in or connected with the Premises; or (j) use or permit the use of any portions of the Premises for any unlawful purpose.

16.3 Tenant shall comply with other rules and regulations, which may be adopted by Lessor from time to time and which, are reasonably and uniformly applied.

16.4 Tenant shall at all times fully comply with the Americans With Disabilities Act, as the same may be amended from time to time or any successor statute and any rules and regulations promulgated thereunder (collectively, the "Act") and shall, at its sole cost and expense, make any and all alterations and improvements to the Premises necessary to comply with the Act. However, before Tenant shall make any alterations or improvements to the Premises in order to comply with the Act, Tenant shall first obtain the approval in writing of Lessor for such alterations or improvements, which approval shall not be unreasonably withheld. Tenant shall further comply with Sections 15.1, 15.2, 15.3, and 15.4 with respect to any alterations or improvements made pursuant to this Section. Tenant shall fully indemnify Lessor from and against any and all claims or demands of any person or entity (including, but not limited to, any governmental entity) arising out of the Tenant's failure to fully comply with the terms of the Act. Lessor states that to the best of its knowledge the Premises is in compliance with the Act as of the beginning of the term. Any material changes that may be required to bring the Premises into compliance with the Act, that are not a result of material changes made by the Tenant, shall be at the sole cost and responsibility of the Lessor. The Tenant shall be solely responsible for compliance and costs resulting from any material changes it makes to the Premises.

ARTICLE XVII MORTGAGES

17.1 This Lease and the rights of Tenant hereunder shall be subordinate to the lien of any mortgage or security interest on the Premises or any part thereof or on the property of which the Premises are a part, and shall be subordinate to the Lessor; provided, however, that subordination to liens created hereafter shall be contingent upon agreement by the holder or holders of any subsequent liens that his Lease shall not be divested by foreclosure or execution on such subsequent mortgage or security interests and that Tenant's possession of the Premises shall not be disturbed so long as Tenant should not be in default hereunder.

ARTICLE XVIII
TENANT'S PROPERTY

18.1 All property, other than Improvements (as defined in this Lease) placed on the Premises by Tenant, including signs, inventory, furniture, trade fixtures, appliances, expendable, books, records, cash and personal items of clothing and sundries, shall be deemed to be "Tenant's Property."

18.2 So long as Tenant is not in default under this Lease, Tenant may remove any of Tenant's Property without Lessor's consent, provided such removal does not damage the Premises.

ARTICLE XIX
INSURANCE AND INDEMNIFICATION

19.1 Tenant shall maintain and keep in force policies of public liability insurance against claims for personal injury, death and property damage occurring in or about the Premises or arising out of the use or occupancy thereof, with coverage in the amounts of not less than One Million Dollars (\$1,000,000.00) for bodily injury or death to one person, not less than Two Million Dollars (\$2,000,000.00) for bodily injuries or deaths arising out of one occurrence and not less than One Hundred Thousand (\$100,000.00) Dollars for property damage. Landlord will be named as Additional Insured. Also the limits of liability, (\$2M arising out of one occurrence) can be satisfied by a combination of the General Liability and Umbrella Liability policy limits.

19.2 Tenant shall maintain and keep in force policies of insurance against loss to the contents on the Premises, including but limited to Tenant's Property as a result of fire, theft or other insurance casualty, in adequate amounts.

19.3 Tenant shall maintain and keep in force policies of insurance against loss by vandalism, malicious mischief or breakage of glass in adequate amounts.

19.4 All policies of insurance required to be maintained by Tenant hereunder shall be obtained from insurance companies authorized to engage in business in the Commonwealth or State in which the Premises are located. Copies of the policies and certificates evidencing the effective dates and that they will not be canceled without at least ten (10) days notice in writing shall be delivered to Lessor.

19.5 All losses resulting from vandalism, malicious mischief or broken glass not covered by insurance shall be the sole responsibility of Tenant.

19.6 Tenant hereby waives any right of subrogation that Tenant's insurance carrier at any time may have against Lessor or Lessor's agents and employees, and shall release Landlord from any liability for any loss of or damage to any property or person on the Premises. Landlord hereby waives any right of subrogation that Landlord's insurance carrier at any time may have against Tenant or Tenant's agents and employees, and shall release Tenant from any liability for any loss of or damage to any property or person on the Premises.

19.7 Tenant shall keep and save Lessor harmless from any penalty, claim, demand, loss damage, charge, cost of expense including but not limited to attorneys' fees imposed or incurred for violation of any ordinance or law, whether occasioned due to the neglect of Tenant or any agent of or contractor under Tenant then upon or using the Premises, or otherwise howsoever, or arising or allegedly arising out of any accident or other occurrence causing injury to any person or property and due directly or indirectly to the condition of or the use or occupancy of the Premises.

19.9 Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Lessor's policies insuring against loss or damage by fire or other hazards (including, without limitation, public liability) or which will prevent Lessor from procuring such policies in companies acceptable to Lessor. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause rate of fire or other insurance upon the Premises or on other property of Lessor or of others within the Shopping Center to be increased beyond the minimum rate from time to time applicable thereto, Tenant will pay, as additional rent, the amount of any such increase upon Lessor's demand.

ARTICLE XX ENVIRONMENTAL

20.1 In the event Tenant will be using any materials in the operation of its business of the Premises which are or may be deemed to be toxic or hazardous materials, Tenant's storage and use of such materials on the Premises shall be subject to all laws and regulations now in effect or hereafter enacted which deal with or relate to the regulation or protection of the environment (Environmental Laws), including the ambient air, ground water, surface water, and land use, including substrata land. In addition, Tenant agrees to the following.

(a) Tenant shall, at Tenant's own expense, comply with all present and hereafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's use or occupancy of the Premises or any operation of Tenant thereon or therefrom.

(b) Tenant shall immediately notify Landlord of any of the following:

(i) Receipt of any correspondence or any other communication from any governmental entity regarding the application of any Environmental Laws to the Premises or Tenant's use or occupancy of or operation on the Premises.

(ii) Any change in Tenant's operation on the Premises which will change or has the potential to change Tenant's or Landlord's obligations or liabilities under any of the Environmental Laws.

(c) Tenant shall indemnify, protect, defend, and hold Landlord, its partners, officers, directors, employees, and agents, and their successors and assigns, harmless from and against any and all losses, liabilities, damages, expenses (including, but not limited to, reasonable investigation and legal fees and expenses), or damage to persons or property; and any and all claims or actions brought by any person, firm, governmental body, or other entity alleging or resulting or arising from or in connection with contamination or adverse effects on the environment, or violation of any Environmental Law or other statute, law, ordinance, rule, regulation, judgment, or order of any governmental or judicial entity; and from and against any and all damages, liabilities, costs, fines, and penalties assessed as a result of any activity or operation on the Premises during the term of this Lease, except for damage or injury caused by Landlord or Landlord's agents. Tenant's obligations and liabilities under this section shall continue as long as Landlord bears any liability or responsibility under the Environmental Laws or any other statute or law for any act which occurred on the Premises during the term of this Lease. Tenant's failure to abide by the terms of this Section 35 shall be restrainable by injunction. The obligations set forth in this section shall survive the expiration or sooner termination of this Lease. Tenant shall require all of its subtenants and licensees to agree to the provisions of this Section in favor of Landlord and the other persons set forth above.

20.2 Landlord has received no written notice from any governmental authority having jurisdiction over the Premises that the Premises are in violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1989, as amended (CER-CLA(c)), the Resources Conservation and Recovery Act of 1976, as amended (ARCRA(c)), the Toxic Substance Control Act, as amended, the Hazardous Materials Transportation Act, as amended, or any statute governing underground storage tanks or asbestos. Landlord shall indemnify and hold Tenant harmless from and against any and all claims, demands, or losses in connection with the release of hazardous materials caused by Landlord.

ARTICLE XXI CONDEMNATION

21.1 If the whole or any part of the Premises shall be taken under the power of eminent domain, this Lease shall terminate as to the part so taken on the date Tenant is required to yield possession thereof to the condemning authority. Lessor shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition and Annual Basic Rental shall be reduced proportionately as to the portion of the Premises so taken. If the portion of the Premises so taken substantially impairs the usefulness of the Premises for the purposes set forth in Section 2.6 in the opinion of either party, may terminate this Lease as of the date when Tenant is required to yield possession. Tenant shall not be entitled to any portion of the award for the fee or lease hold of the Premises, the property of Lessor of which the Premises are a part or any part thereof, and the entire award shall belong to Lessor; provided, however, Tenant may apply for reimbursement from the condemning authority for moving expenses, dislocation damages and other special benefits, if any allowed by law, with the understanding that Lessor's portion of any award shall not be diminished by any claim on behalf of Tenant to a bonus value as a result of the amount of rent payable hereunder being less than the fair market rental value of the Premises or by any other claim of Tenant.

21.2 If the Premises are destroyed or damaged by fire or other casualty, and such damage can be repaired or restored within one hundred and twenty (120) days from the receipt of insurance proceeds, Landlord shall promptly repair or restore Landlord's improvements as provided subject, however, to zoning laws and building codes then in force. Landlord shall pursue all such work diligently to completion. If Landlord determines in its sole discretion that such damage or casualty cannot be repaired or restored within one hundred and twenty (120) days from receipt of insurance proceeds, Landlord shall have the right to terminate this Lease effective as of the date of such damage or destruction upon written notice to Tenant.

ARTICLE XXII

DEFAULTS

22.1 If Tenant shall fail at any time to make any payment or to perform any act on its part to be made or performed under this Lease in accordance with the terms hereof, Lessor, at its sole discretion, without notice or demand, and without waiving or releasing Tenant from any obligation of Tenant hereunder may make such payment or perform such act to the extent that Lessor may deem desirable, and in connection therewith may employ attorneys and pay expenses. All sums so paid by Lessor and all reasonable expenses in connection therewith and all rent and other charges payable by Tenant hereunder shall bear interest thereon at the then prevailing commercial rent from the date of such payment by Lessor or the date such payment by Tenant was due, as the case may be, and shall be deemed to be payable by Tenant to Lessor and may be collected by exercising all remedies provided by law and provided herein for collection of rent.

22.2 If Tenant shall default in the payment of any installment of rent, additional rent or other amount provided for under this Lease as the same becomes due and payable, or should an execution be issued against the Tenant and a levy made upon the Tenant's interest in the Premises or any part thereof, or bankruptcy proceedings be commenced by or against Tenant, or an assignment be made by Tenant for the benefit of creditors, or a receiver be appointed for Tenant, then and in such event the entire rent for the balance of the term, at option of Lessor, shall become due and payable at once as if by the terms of this Lease it were all payable in advance.

22.3 Lessor shall have the right to distrain upon any property on the Premises for unpaid rent, additional rent and other amounts payable by Tenant hereunder.

22.4 If Tenant shall default in the payment of any installment of rent, additional rent or other amount provided for under this Lease or in the performance of any covenant or condition of this Lease and fail to cure or commence and diligently proceed to cure such default within ten (10) days after written demand by Lessor that the default be cured, Lessor, at its option, may enter upon the Premises without process of law and take possession thereof, together with all improvements and appurtenances.

22.5 No waiver by Lessor of any breach by Tenant of any covenants or conditions contained herein shall be construed to be a waiver of any other covenant or condition or any succeeding breach of the same covenant or condition. Termination of the Term, or the receipt of rent after default or after judgement or after execution shall not deprive Lessor of any other actions against Tenant for possession or for rent or for damages. Lessor may use the remedies herein given or other prescribed by law, or both, as often as it may deem necessary.

22.6 Bankruptcy of Tenant

a. Insolvency - If, at or before the commencement date of the term of this lease, or if at any time during the term, there shall be filed by or against TENANT in any court pursuant to any statute, either of the United States or of any state, petition in bankruptcy or insolvency or for reorganization for the appointment of a receiver or trustee of all or a portion of the TENANT'S property, and if within sixty (60) days thereof TENANT fails to secure a discharge thereof, or if TENANT makes an assignment for the benefit of creditors or petitions for or enters into an arrangement, then this lease, at the option of LESSOR, may be terminated, in which event neither TENANT nor any person claiming through or under TENANT by virtue of any statute or of an order of any court, shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and LESSOR, in addition to the other rights and remedies it has by virtue of any other provision herein or else where in this lease contained, or by virtue of any statute or rule of law, may retain as liquidated damages any rent or monies received by LESSOR from TENANT or others in behalf of TENANT.

b. Acceleration - It is agreed that in the event of the termination this lease pursuant to paragraph (a) of this Section 21.6 a., Lessor shall forthwith, notwithstanding any other provisions of this lease to contrary, be entitled to recover from TENANT as and for liquidated damages an amount equal to the cash value of the rent and other charges payable by TENANT hereunder for the unexpired portion of the term demised, less the cash rental value of the Premises for the same period. Nothing herein contained shall limit or prejudice the right of LESSOR to prove for and obtain as liquidated damages by reason such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount is greater, equal to, or less than the amount of the difference referred to above.

ARTICLE XXIII SURRENDER

23.1 Tenant may, and at Lessor's request shall, remove all Tenant's Property as defined herein, and Tenant agrees to repair any damage caused by such removal promptly and at its sole cost and expense. Any property not removed from the Premises at the expiration or earlier termination of this Lease, at the option of Lessor, may forthwith become the property of Lessor.

**ARTICLE XXIV
MISCELLANEOUS**

24.1 Tenant shall permit the LESSOR and its agents to enter upon the Premises at all reasonable times to examine the condition thereof.

24.2 All notices, demands and requests which may be or are required to be given hereunder shall be given in writing and shall be deemed to have been duly given if sent by United States Registered or Certified Mail addressed to Tenant as set forth in Section 2.13 and to Lessor as set forth in Section 2.14 or to such other places as the parties hereto may for themselves designate in writing from time to time for the purpose of receiving notices hereunder.

24.3 This Lease shall be deemed to be executed and delivered at the County in which the Premises are situate, and the laws of the State or Commonwealth in which the Premises are situate shall be applicable thereto. The division of this Lease into Articles and Sections and the use of headings for said Articles is for the purpose of convenience only and not for the purpose of construing the Lease.

24.4 If any term or provision, or any portion thereof, of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

24.5 Tenant shall, at any time and from time to time upon not less than ten (10) days prior written request by Lessor execute, acknowledge and deliver to Lessor an estoppel certificate stating whether or not 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 and stating the modifications), and, if the Lease is in full force and effect, the dates to which the rent and other charges have been paid in advance, and such other matters relating to this Lease as reasonably may be requested by Lessor, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, assignee or encumbrancer of the Premises or the property of which the Premises are a part.

24.6 Tenant agrees to attorn to any successor in interest to Lessor whether by purchase, foreclosure, sale in lieu of foreclosure, power of sale, termination of ground lease or otherwise, if so requested or required by such successor in interest, and Tenant agrees, upon demand, to execute agreements in confirmation of such attornment.

24.7 All provisions of this Lease shall apply during the Term of this Lease, during any and all extensions hereof and during all periods before and after the Term hereof while Tenant occupies or has right to occupy the Premises.

24.8 If two or more individuals, corporations, partnerships, or other business associates (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business associate to pay rent and perform all

other obligations hereunder shall be deemed to be joint and several. In like manner, if the Tenant named in this lease shall be a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.

24.9 This Lease constitutes the entire contract between the parties hereto, and there are no other understandings, oral or written, relating to the subject matter hereof. This Lease may not be changed, modified or amended, in whole or in part, except in writing signed by the parties.

24.10 The submission of this Lease to Tenant for examination does not constitute a reservation of any rights to Tenant or option and this Lease becomes effective only upon execution and delivery thereof by Lessor.

24.11 Advertisement of Premises - In the event the parties hereto have not executed a renewal lease within one hundred eighty (180) days prior to the termination of this lease, then the LESSOR or its agents shall have the right to enter Premises at all reasonable times for the purpose of exhibiting the same to others.

24.12 Sale of Property by LESSOR - In event of the sale of the real estate by LESSOR, it shall be sold subject to this lease, but the original LESSOR shall then be released of all obligations under this lease and the new owner shall be responsible, as the new LESSOR, under the terms and conditions of this lease. It is the intent that this lease shall run with the land and not be personal to the landowners.

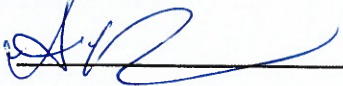
24.13 Limitation of LESSOR'S Liability - Notwithstanding anything to the contrary contained herein, any liability incurred by the either party shall not be of a personal nature and the parties sole means of recovery shall be against the real estate owned by the parties at the location herein leased, it being the specific intention to not encumber other assets of the parties.

24.14 Force Majeure - In the event that there is a strike, riot, shortage of material or other thing or item beyond the control of the LESSOR or LESSEE preventing the LESSOR or LESSEE from performing under this Lease, it shall not constitute a breach or other violation of this Lease for so long as the LESSOR or LESSEE is disabled by such act or governmental regulation from performing hereunder.

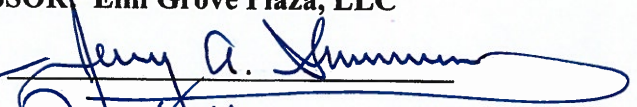
24.15 Relationship of Parties - Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create a relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Lessor and Tenant, it being expressly understood and agreed that neither the computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Lessor and Tenant other than the relationship of landlord and tenant.

IN WITNESS WHEREOF, the parties have duly executed and sealed this Lease as of the date first above written.

WITNESS:



LESSOR: Elm Grove Plaza, LLC

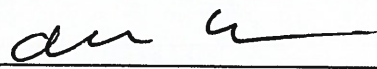
By: 

Its: Property Manager, EGP, LLC

WITNESS:

Abdulgabar Nasser

TENANT:

By: 

Its: Owner

WITNESS:

Akram Al-Shaabi

By: Sarah Al-Shaabi

Its: Manager

Exhibit A) Site Plan

Elm Grove Crossing Mall

