

-88-448500

LEASE AGREEMENT

BETWEEN

DEARBORN STATION ASSOCIATES,
LANDLORD

AND

LA MARGARITA AT DEARBORN STATION, INC.,
TENANT

March 4, 1988

DEPT-01 \$72.25
T11111 TRAN 7774 09/29/88 11:19:00
118777 # * -88-448500
COOK COUNTY RECORDER

88448500

7/00
mail

Property of Cook County Clerk's Office

UNOFFICIAL COPY

NO. 200-800

Property of Cook County Clerk's Office

APR 10 1968

RECEIVED

CLERK OF COURT

COURT HOUSE

CHICAGO

DEPT. OF
CLERK OF COURT
COURT HOUSE
CHICAGO

APR 10 1968

DEARBORN STATION
RETAIL LEASE AGREEMENT
INDEX

<u>Title</u>	<u>Page</u>
1. Basic Lease Provisions	1
2. Lease of Premises	2
3. Term	2
4. Rent	2
5. Adjustments to Monthly Base Rent	4
6. Commencement of Rent	8
7. Utilities	8
8. Acceptance of Premises and Building by Tenant	10
9. Assignment and Subletting	10
10. Use and Occupancy	13
11. Alterations and Additions by Tenant	17
12. Repair and Maintenance by Tenant	18
13. Mechanics' Liens	18
14. Liability of Landlord	19
15. Tenant's Indemnification of Landlord	19
16. Certain Rights Reserved by Landlord	21
17. Fire or Other Casualty	22
18. Condemnation	23
19. Taxes on Tenant's Property	24
20. Waiver of Subrogation	24
21. Surrender Upon Termination	25
22. Events of Default	25
23. No Implied Waiver	28
24. Attorneys' Fees and Legal Expenses	29
25. Landlord's Lien	29
26. Subordination	30
27. Quiet Enjoyment	31

-88-448500

UNOFFICIAL COPY

OFFICE OF THE CLERK OF THE CIRCUIT COURT
JUDICIAL BRANCH

CHIEF CLERK

CLERK

STATE OF ILLINOIS

IN AND FOR THE COUNTY OF COOK

VS.

IN RE

THE ESTATE OF [Name]

DECEASED

ET AL.

IN PROBATE

FILE NO. [Number]

FILED FOR RECORD

THIS [Date]

AT [City]

BY [Name]

CLERK

BY [Name]

DEPUTY CLERK

BY [Name]

CLERK

BY [Name]

DEPUTY CLERK

BY [Name]

CLERK

BY [Name]

DEPUTY CLERK

BY [Name]

CLERK

BY [Name]

DEPUTY CLERK

Property of Cook County Clerk's Office

90-50000

<u>Title</u>	<u>Page</u>
28. Notice to Landlord and Mortgagee	31
29. Holding Over by Tenant	32
30. Rules and Regulations	32
31. Estoppel Certificate	32
32. Covenant to Operate	33
33. Personal Liability	33
34. Notices	33
35. Severability	34
36. No Merger	34
37. Force Majeure	34
38. Gender	34
39. Joint and Several Liability	34
40. No Representations	34
41. Brokers	34
42. Reimbursement	35
43. Business Days, Etc.	35
44. Guarantor	35
45. No Offer	35
46. Covenant to Pay Rent and Other Amounts	35
47. Time	36
48. Approval of Plans	36
49. Entire Agreement	36
50. Section Headings	36
51. Binding Effect	36
52. Security Deposit	36
53. Merchant's Association	37
54. Workletter	37
55. Basement Space	37
56. Exclusive Use	38

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00001-84

DEARBORN STATION
Chicago, Illinois

-88-448500

LA MARGARITA AT DEARBORN STATION, INC.
LEASE AGREEMENT

1. BASIC LEASE PROVISIONS.

- (a) BUILDING ADDRESS: 47 Polk Street
Chicago, Illinois
- (b) FEE SIMPLE TITLE: Fee Simple title to the Project (as hereinafter defined) is held by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated May 6, 1986 and known as Trust Number 67319 ("Trust"). All references to Landlord (as hereinafter defined) made throughout this Lease shall be deemed to include the Trust.
- (c) LANDLORD AND ADDRESS:
Dearborn Station Associates
27 Maiden Lane Suite 250
San Francisco, California 94108
- (d) TENANT AND CURRENT ADDRESS:
La Margarita at Dearborn Station, Inc.
868 North Wabash
Chicago, Illinois
- (e) DATE OF LEASE EXECUTION: March 4, 1988.
- (f) COMMENCEMENT DATE OF TERM: March 4, 1988.
- (g) LEASE TERM: Ten (10) years.
- (h) EXPIRATION DATE OF TERM: March 3, 1998.
- (i) MONTHLY BASE RENT: See Schedule III attached hereto, subject to adjustment as herein provided.
- (j) LEASED AREA OF THE PREMISES: 4,800 Leasable Square Feet
- (k) TENANT'S PROPORTION: "Tenant's Proportion" for purposes of Rent adjustment shall be 7.5% (calculated by dividing the leased area contained in the Premises by 64,147 being the number of leasable square feet in the retail portion of the Building); Notwithstanding the foregoing, with regard to the payment of Taxes (as defined in Section 5(a)(5) herein) "Tenant's Proportion" shall be 5.2% (calculated by dividing the leased area contained in the Premises by 91,710 being the number of leasable square feet in the Building). Landlord reserves the right to adjust the number of leaseable square feet contained within the retail portion of the Building, and correspondingly in the Building itself, in which case the Tenant will be given

-88-448500

UNOFFICIAL COPY

000001-0000

Property of Cook County Clerk's Office

88-112200

UNOFFICIAL COPY

notice of its respective adjustment in the Tenant's Proportion for purposes of Rent adjustment and for Taxes.

- (1) SECURITY DEPOSIT: Five Thousand Two Hundred and Fifty Dollars (\$5,250.00).

2. LEASE OF PREMISES. Landlord hereby leases to Tenant, and Tenant hereby accepts and leases from Landlord the premises ("Premises") described in the plan attached hereto as Exhibit A in the building known as Dearborn Station ("Building"), located at the intersection of Dearborn and Polk Streets Chicago, Illinois, situated on the land described on Schedule I attached hereto (the "Land") (the Building and the Land being herein collectively referred to as the "Project") for the term and upon the conditions provided in this Lease ("Lease") to be occupied and used by the Tenant for restaurant food preparation and service, including indoor and outdoor seating and light, live music, and for no other purpose. The "retail portion of the Project" as said phrase is used herein is generally described on Exhibit B attached hereto and by this reference made a part hereof.

3. TERM. The Term of this Lease ("Term") shall commence on the date specified in Subsection 1(f) (the "Commencement Date") and shall expire on the date specified in Subsection 1(h) (the "Expiration Date") unless sooner terminated as otherwise provided in this Lease.

4. RENT. Tenant shall pay rent to Landlord during the Term as follows:

(a) No Monthly Base Rent (as hereinafter defined) shall be due and payable during the first Lease Year (as hereinafter defined). Notwithstanding anything to the contrary contained in this Lease, Tenant shall pay to Landlord during the first Lease Year the amount of the Tenant's Proportion of the first annual Projections of Taxes (as defined in Section 5(c)), in monthly installments, beginning on the Commencement Date.

(b) Commencing with the first day of the second Lease Year and continuing through the last day of the second Lease Year, Tenant shall make payments, as provided in Section 4(d), in an amount equal to seven percent (7%) of Tenant's Gross Sales (as hereinafter defined) (the "Percentage Rent"). In addition to the payment of Percentage Rent during the second Lease Year, Tenant shall pay to Landlord the amount of the Tenant's Proportion of the second annual Projection of Expenses and Taxes in monthly installments.

(c) Commencing with the first day of the third Lease Year and continuing through the last day of the Term, including any extension of the Term (as provided in Rider 101 hereto), Tenant shall make monthly payments of base rent at the initial monthly rate specified in Subsection 1(i) ("Monthly Base Rent") to Landlord at the Building or to such other person or at such other place as Landlord may direct in writing. Monthly Base Rent is subject to adjustment pursuant to Section 5, and as adjusted is hereinafter called "Adjusted Monthly Base Rent." Adjusted Monthly Base Rent shall be paid in advance on or before the first day of each month of the Term; provided, however, that notwithstanding anything to the

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000-00

contrary contained in this Lease, Tenant shall pay to Landlord the security deposit set forth in Section 1(1) hereof upon the submission of an executed copy of this Lease by Tenant to the Landlord for its execution. If, however, seven percent (7%) of Tenant's Gross Sales for each three (3) month period in the above-described Lease Years exceed the Monthly Base Rent for the same three (3) month period, then, as provided in subsection (d) below, this excess (the "Excess Percentage Rent") shall be paid by Tenant to Landlord as provided in Subsection (d) below.

(d) The term "Gross Sales" as used herein shall be taken and construed to mean the total dollar amount of all receipts from sales and rentals of all wares and merchandise of every short whatsoever (less refunds, sales tax receipts and customary credit card discounts) and all services in the operation of Tenant's store on the Premises.

1. Tenant shall cause to be kept, in accordance with generally accepted accounting principles, records of the Gross Sales made by Tenant in the operation of Tenant's store on the Premises. Landlord and Landlord's duly authorized representatives, at reasonable times during business hours, shall have access to such records at the place where the same are kept, for the purpose of inspecting and auditing the same. Landlord shall have the right, by its accountants or representatives, to audit, not more than four times annually, all statements of Gross Sales and in connection with such audits to examine all records (including all supporting data) of Gross Sales, and Tenant shall make or cause to be made all such records readily available for such examination. If any such audit discloses that the actual Gross Sales exceeded those reported, Tenant shall forthwith pay the Percentage Rent (or Excess Percentage Rent, if applicable) due of the excess, and if such audit discloses that said Gross Sales exceeded those reported by more than five percent (5%), Tenant shall pay the cost of such audit and examination. Tenant agrees that it shall fully cooperate with Landlord in connection with any audit or investigation by Landlord with respect to any such differences. Nothing herein contained shall be deemed to confer upon Landlord any interest in the business of Tenant in the Premises.

2. On or before the fifteenth (15th) day of each January, April, July and October during the Term and on or before the fifteenth (15th) day after the termination of the Term, Tenant shall deliver to Landlord its statement of Gross Sales together with payment of any Percentage Rent (or Excess Percentage Rent, if applicable) then due Landlord, as provided above. Any violation by Tenant of the terms of this section shall constitute an Event of Default, as hereinafter defined.

(e) All charges, costs and sums required to be paid by Tenant to Landlord under this Lease in addition to Adjusted Monthly Base Rent and Percentage Rent shall be deemed additional rent ("Additional Rent"), and Adjusted Monthly Base Rent and Additional Rent shall hereinafter be

88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000244440

collectively called "Rent." Unless otherwise set forth in this Lease, all Rent due under this Lease shall be paid in advance on or before the first day of each month of the Term. If the Term commences other than on the first day of a month or ends other than on the last day of the month, the Adjusted Monthly Base Rent for such month shall be prorated, and the prorated rent for the portion of the month in which the Term commences shall be paid at the time of execution of this Lease in addition to the Rent for the first full month. Time is of the essence of this Lease. All such Rent shall be paid without any set-off or deduction. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

5. ADJUSTMENTS TO MONTHLY BASE RENT. (a) For the purpose of this Lease, the following words and phrases shall have the following meanings:

1. "Adjustment Date" shall mean the Commencement Date and each subsequent January 1 falling within the Term of this Lease.

2. "Adjustment Year" shall mean each calendar year during which an Adjustment Date falls.

3. "Lease Year" shall mean each twelve (12) month period throughout the Term of this Lease beginning with the Commencement Date.

4. "Expenses" shall mean and include all those costs and expenses of every kind and nature associated with the management, maintenance, repair, replacement, ownership and operation of the retail portion of the Project, and including costs and expenses relating to the Project as a whole as set forth in subsection (1) below, including but not limited to the following:

(A) Wages and salaries of all employees reasonably necessary and directly engaged in the operation, repair, replacement, maintenance, and security of the retail portion of the Project, including taxes, insurance and benefits relating thereto.

(B) All supplies and materials used in the operation, maintenance, repair, replacement and security of the retail portion of the Project.

(C) Annual cost of all capital improvements made to the retail portion of the Project which, although capital in nature, can reasonably be expected to reduce the normal operating costs of the Project, as well as capital improvements made in order to comply with any statutes, rules, regulations or directives hereafter promulgated by any governmental authority relating to energy, conservation, public safety or security, as amortized over the useful life of such improvements by Landlord for federal income tax purposes.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

012345-88

(D) Cost of all maintenance and service agreements on equipment, including alarm service, window cleaning and elevator maintenance.

(E) Cost of all insurance applicable to the retail portion of the Project and Landlord's personal property used in connection therewith.

(F) Cost of all repairs, replacements and general maintenance of the retail portion of the Project.

(G) Cost of service or maintenance contracts with independent contractors for the operation, maintenance, repair, replacement or security of the retail portion of the Project.

(H) Costs and expenses of every kind and nature associated with the management, maintenance, repair, replacement, ownership and operation, including, but not limited to, the cost of all utilities, of the common areas of the retail portion of the Project.

(I) Where any costs and expenses, including but not limited to those described above, are allocable solely to either the retail or office portion of the Project, as reasonably determined by Landlord, such allocation shall be made by Landlord when calculating Expenses, provided, however, with regard to those costs and expenses of every kind and nature incurred in connection with the management, maintenance, repair, replacement, ownership and operation of the Project, which benefit both the retail and office portions of the Project, including, by way of example, but not limitation, all costs and expenses associated with the landscaping, capital improvements, roof, exterior facade, exterior lighting, exterior maintenance, boiler room, main lobby, entry vestibule, elevator lobby, basement lobby, Building insurance and Building systems, Landlord shall make an allocation of such costs and expenses between the retail and office portions of the Project, such allocation shall be made in a manner determined solely by Landlord, but which in any event shall be fair and reasonable.

Excluded from Expenses are the costs of alterations to prepare the premises of tenants of the Building for occupancy; depreciation charges; interest and principal payments on mortgages; capital expenditures which are not covered by Section 5(a)(4)(C) hereof; leasing commissions; income, excess profits or franchise taxes or other such taxes imposed on or measured by the income of Landlord from the operation of the Project; and expenditures for which Landlord has been reimbursed, including payment from other tenants or insurance proceeds (other than pursuant to rent adjustment provisions in leases). If the Building is less than 95% occupied during all or a portion of any year, then Landlord shall make

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

90024-00

appropriate adjustment of the Expenses for such year, employing sound accounting and management principles to determine the amount of Expenses that would have been paid or incurred by the Landlord had such Building been 95% occupied, and the amount so determined shall be deemed to have been the amount of Expenses for such year.

5. "Taxes" shall mean real estate taxes, assessments, sewer rents, rates and charges, taxes based upon the receipt of rent, and any other federal, state or local government charge, general, special, ordinary or extraordinary (but not including income or franchise taxes or any other taxes imposed upon or measured by the Landlord's income or profits, unless the same shall be imposed in lieu of real estate taxes and other ad valorem taxes), which may now or hereafter be levied or assessed against the Project. In case of special taxes or assessments which may be payable in installments, only the amount of each installment paid during a calendar year shall be included in Taxes for that year. Taxes shall also include any leasehold Taxes imposed upon Landlord in connection with the leasing and operation of the Building or the Land. Taxes shall also include any personal property taxes imposed upon the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances used in connection with the Project for the operation thereof. Taxes shall also include amounts paid to anyone hired by Landlord to contest the amount of any assessment of the Project, the rate of taxation or the legality of the imposition of any component of the Taxes upon the Project. The Taxes "attributable to" or "for" a calendar year, for the purposes of this Lease, shall be those assessed for such year, even though not due and payable until a subsequent year.

In the event that Landlord is required by federal, state or local statute or ordinance to collect taxes imposed upon Tenant in connection with this Lease, Tenant shall cooperate with Landlord in the collection and payment of same, shall execute deliver such forms and other documents as shall be required to enable Landlord to collect and pay such taxes and shall remit to Landlord all required payments, including interest and penalties prior to the date said taxes are due and payable. In the event that such taxes may be paid directly by Tenant, Tenant shall cooperate with Landlord in making any requests or applications to enable Tenant shall pay such tax directly to the appropriate governmental authorities after the required approvals are obtained.

(b) On each Adjustment Date, Monthly Base Rent shall be increased by an amount equal to 1/12 of the sum of (i) Tenant's Proportion of the amount of Expenses for the current Adjustment Year, as estimated by Landlord in accordance with Subsection (c), plus (ii) Tenant's Proportion of the amount of Taxes for the current Adjustment Year, as estimated by Landlord in accordance with Subsection (c). The rental as computed hereunder including adjustments for pro-

88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/01/10

jections under Section 5(c) hereinbelow shall be referred to as Adjusted Monthly Base Rent. The Adjusted Monthly Base Rent shall never be less than the Monthly Base Rent specified in Subsection 1(i) herein. The amount payable for increases in Expenses and Taxes shall be subject to readjustment based on actual experience as provided in Subsection (d).

(c) For purposes of estimating Expenses and Taxes for any Adjustment Year, (including the first Adjustment Year) Landlord shall make reasonable estimates, forecasts or projections (collectively, the "Projections") of Expenses and Taxes for each Adjustment Year. Landlord shall deliver to Tenant a written statement (i) setting forth the Projections of Expenses and Taxes for the Adjustment Year in which such Adjustment Date falls, and (ii) providing a calculation of the adjustment to installments of Monthly Base Rent based on such Projections, to become effective as of said Adjustment Date, provided, however, that the failure of Landlord to provide any such statement shall not relieve Tenant from its obligation to continue to pay Adjusted Monthly Base Rent at the rate then in effect under this Lease, and if and when Tenant receives such statement from Landlord, Tenant shall pay any increase in Adjusted Monthly Base Rent reflected thereby effective retroactively to the most recent preceding Adjustment Date. If any unexpected increase or decrease in Expenses for the Building occurs after preparation of the Projections which results in a projected increase or decrease of five percent (5%) or more in such Expenses, the Projections shall be revised and the estimated Expenses payments shall be recalculated based upon the revised Projections. After the end of the Adjustment Year, the actual Expenses and Taxes shall be calculated and an appropriate adjustment made as provided herein.

(d) On or about April 1st following the end of each Adjustment Year, or at such later time as Landlord shall be able to determine the actual amounts of Expenses and Taxes for such Adjustment Year, Landlord shall notify Tenant in writing of such actual amounts. If the total Adjusted Monthly Base Rent paid by Tenant during such Adjustment Year exceeded the amount thereof payable for such Adjustment Year based upon actual Expenses and Taxes for such Adjustment Year, then Landlord shall credit such excess to installments of Adjusted Monthly Base Rent payable after the date of Landlord's notice until such excess has been exhausted, or if this Lease shall expire prior to full application of such excess, Landlord shall pay to Tenant the balance thereof not theretofore applied against Rent. If the Adjusted Monthly Base Rent based on actual Expenses and Taxes exceeds the projected Adjusted Monthly Base Rent paid by Tenant during such Adjustment Year, then Tenant shall, within thirty (30) days after the date of written notice from Landlord, pay to Landlord an amount equal to the additional Adjusted Monthly Base Rent payable for the Adjustment Year last ended based upon actual Expenses and Taxes for such year over the total Adjusted Monthly Base Rent paid by Tenant during such Adjustment Year. The obligation to make such payments shall survive the expiration or earlier termination of the Term.

(e) The Tenant or its representative may examine the Landlord's books and records with respect to the items in the foregoing statement during normal business hours upon reasonable prior notice to Landlord at any time within thirty

88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000-20

(30) days following the furnishing by the Landlord to the Tenant of such statement.

(f) If the first month of the Term of this Lease commences on any other than the first day of such month, or if the last month of the Term of this Lease ends on any day other than the last day of such month, any payment due to the Landlord by reason of Tenant's Proportion of Taxes or Expenses shall be prorated, for the first month of the Term and the last month of the Term and the Tenant shall pay any amount due to the Landlord within thirty (30) days after being billed therefor. This covenant shall survive the expiration or termination of this Lease.

6. COMMENCEMENT OF RENT. If for any reason the Premises are not ready for occupancy by Tenant on the Commencement Date, this Lease and the obligations of Tenant shall nonetheless commence and continue in full force and effect and the same shall not be construed in any way to extend the Term of this Lease.

7. UTILITIES. (a) Tenant shall cause to be installed electrical risers or wiring and water lines from the points at which such utilities are furnished to the Building to the Premises, at Tenant's expense. Tenant shall purchase and have installed at its expense any equipment required to distribute throughout the Premises all utilities from the point at which the utilities are brought to the Premises. All such work described in this Section may be done by a contractor chosen by Tenant, so long as Landlord shall have given prior written approval of such contractor, such approval not being unreasonably withheld. Any contractor performing any work on the Premises, or delivering any material to the Premises, will have payment and performance bonds in place in form, substance, amount and with such companies satisfactory to Landlord. All such bonds shall be at the sole cost and expense of Tenant and shall contain a dual obligee rider containing coverage to Landlord. Tenant shall pay Landlord on a monthly basis as Additional Rent the cost of all water and gas supplied to the Premises and Tenant's proportionate share of the cost of all water, gas and electricity used in providing heating, ventilating and cooling to the common areas of the Building. The amount of electrical power consumed by Tenant per month and used in the Premises shall be determined through separate meters to be installed, maintained and read at Tenant's sole cost and expense. Tenant shall arrange for the billing for such electrical services to be made directly to Tenant. The amount of water and gas consumed in the Premises shall be based upon a survey and analysis to be performed by a reputable independent consultant selected by Landlord (or by such other means as the Landlord may reasonably determine) at the cost and expense of Tenant. For the purposes hereof, month or monthly shall include any other billing period used by the utility companies supplying such services to the Building. Except as otherwise provided herein, or except as may be otherwise determined by Landlord in its reasonable discretion, the rate to be charged to Tenant for its usage of a particular utility shall be the average rate paid by Landlord (net of any charges for the failure to pay promptly the bills rendered by the appropriate utility company) but including all other adjustments, charges, taxes and the like. Landlord shall not be liable in any way to Tenant for any

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00001-88

failure or defect in the supply or character of electric energy furnished on the Premises by reason of any requirement, act or omission of the public utility serving the Building with electricity. All installations of electrical fixtures, appliances and equipment within the Premises, including the equipment installed to distribute all utilities, shall be subject to Landlord's prior approval, which approval shall not unreasonably be withheld. Tenant shall use a contractor chosen by Landlord in Landlord's sole discretion for installation of all such equipment; provided that the cost of such work to be done by the contractor chosen by Landlord is competitive with the cost charged by other contractors. If such contractor is not competitive, Tenant may use its own contractor upon the approval of Landlord, which approval shall be in Landlord's sole discretion. In any event, any contractor performing any work on the Premises, or delivering any material to the Premises, will have payment and performance bonds in place in form, substance, amount and with such companies satisfactory to Landlord. All such bonds shall be at the sole cost and expense of Tenant and shall contain a dual obligee rider containing coverage to Landlord. The provision of electrical service shall be subject to the rules and regulations of the supplier of such electricity and of any municipal or other governmental authority regulating the business of providing electrical utility service. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of existing feeders to the Building or the risers or wiring installations. Any riser or rewiring to meet Tenant's excess electrical requirements upon written request of Tenant will be installed by Landlord at the sole cost and expense of Tenant (if, in Landlord's sole judgment, the same are necessary and will not cause permanent damage or injury to the Building or the Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants).

(b) Tenant shall be solely responsible for any cleaning within the Premises, and Landlord shall not provide any maid or janitor service. Tenant shall keep the Premises, all windows, doors, and signs neat, clean, and reasonably free from dirt and rubbish at all times, and shall store all trash and garbage within the Premises, arranging for the regular pick-up of such trash and garbage at Tenant's expense. Receiving and delivery of materials and removal of trash and garbage shall be made only in the manner and areas prescribed by Landlord.

(c) Landlord does not warrant that the utilities provided for above will be free from any slowdown, interruption, or stoppage pursuant to voluntary agreement by and between Landlord and governmental bodies and regulatory agencies or in connection with any rule, regulation or order of any governmental body or regulatory agency or caused by the maintenance, repair, substitution, renewal, replacement or improvement of any of the equipment involved in the furnishing of any such services or caused by changes of services, alterations, strikes, picketing, whether legal or illegal, lock-outs, labor, controversies, fuel or supply shortages, accidents, acts of God or the elements or any other cause beyond the reasonable control of Landlord, and specifically no such slow-down, interruption or stoppage

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

007213-00

of any of such services shall ever be construed as an eviction, actual or constructive, of Tenant nor shall same cause any abatement of the Rent payable hereunder or in any manner or for any purpose relieve Tenant from any of its obligations hereunder, and in no event shall Landlord be liable for damage to persons or property, or in default hereunder, as a result of such slow-down, interruption or stoppage.

(d) Landlord shall be deemed to have observed and performed the obligations to be performed by Landlord under this Lease if in so doing it acts in accordance with any direction, policy or request of a governmental or quasi-governmental authority serving the public interest in the fields of energy, conservation or security. Notwithstanding anything to the contrary in this Section 7 or elsewhere in this Lease, Landlord shall have the right to institute such policies, programs and measures as may be necessary or desirable, in Landlord's discretion, for the conservation and/or preservation of energy or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

8. ACCEPTANCE OF PREMISES AND BUILDING BY TENANT.

The taking of possession of the Premises by Tenant shall be conclusive evidence (i) that it accepts the Premises as suitable for the purposes for which same are leased; (ii) that it accepts the Building and the Land and each and every part and appurtenance thereof as being in a good and satisfactory condition; and (iii) that Tenant waives any defects in the Premises and its appurtenances and in all other parts of the Building and the Land and the appurtenances thereof. With the exception of damage due to the negligence or intentional act of Landlord or its agent, Landlord shall not be liable to Tenant or any of its agents, employees, licensees, servants or invitees for any injury or damage to person or property due to the condition or design of or any defect in the Building or its mechanical systems and equipment which may exist or occur, and Tenant, with respect to itself and its agents, employees, licensees, servants and invitees, hereby expressly assumes all risks of injury or damage to person or property, either proximate or remote, by reason of the condition of the Premises or the Building or the Land and so releases Landlord from any claim therefore. Tenant agrees that the Premises is delivered in "as is" condition.

9. ASSIGNMENT AND SUBLETTING.

(a) Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, (i) assign, mortgage, pledge, hypothecate or in any other manner transfer this Lease or any estate or interest herein, or any interest in any fixtures in the Premises, or (ii) permit any assignment of this Lease or any estate or interest herein by operation of law, or (iii) sublet the Premises or any part thereof, or (iv) grant any license, concession or other right of occupancy of any portion of the Premises, or (v) permit the use of the Premises by any parties other than Tenant, its agents or employees. If Tenant is a corporation, any dissolution, merger, consolidation or reorganization of Tenant or the sale or transfer of a controlling percentage of the capital stock of Tenant, whether by a single transaction or event or by cumulative transactions or events shall be deemed an assignment of this Lease. If Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of

-88-448500

any partner or partners owning 51% or more of the partnership interest, whether by a single transaction or event or by cumulative transactions or events, or the dissolution of the partnership shall be deemed an assignment of this Lease. Consent by Landlord to one or more assignments or subletting shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Notwithstanding the consent of Landlord to any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this Lease, if any, shall at all times remain fully responsible and liable for the payment of the Rent herein specified and for compliance with all of Tenant's other obligations under this Lease. If an Event of Default (as hereinafter defined), should occur while the Premises or any part thereof are then assigned or sublet, Landlord, in addition to any other remedies herein provided or provided by law, may at its option collect directly from such assignee or sublessee all rents becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to Landlord by Tenant hereunder, and Tenant hereby authorizes and directs any such assignee or sublessee to make such payments of rent direct to Landlord upon receipt of notice from Landlord. No direct collection by Landlord from any such assignee or sublessee shall be construed to constitute a novation or a release of Tenant under this Lease. Landlord is authorized and empowered, on behalf of Tenant, to endorse the name of Tenant upon any check, draft, or other instrument payable to Tenant evidencing payment of rent, or any part thereof, and to receive and apply the proceeds therefrom in accordance with the terms hereof.

(b) In the event Tenant intends to assign all or sublease any portion of the Premises, Tenant shall take the following actions:

(i) Tenant shall first notify Landlord in writing of its intention prior to any advertising of same, hiring of brokers or contacting of potential subtenants or assignees (the "New Tenant"). If Tenant intends to sublease, such notice shall identify the space proposed to be sublet, which space must be a legally leaseable unit in compliance with all applicable ordinances and codes. The notice shall state the date on which Tenant requests that the sublet or assignment commence, which date shall be no less than one hundred eighty (180) days from the date of Tenant's notice.

(ii) Landlord shall have thirty (30) days following the receipt of such notice to notify Tenant whether it elects to recapture the space Tenant has proposed to sublet or assign. Landlord's failure to send such notice within such thirty (30) day period shall be deemed to mean Landlord has not elected to recapture the space.

(iii) In the event the Landlord elects to recapture the space, it shall notify Tenant of its intent by service of a written notice of cancellation terminating that portion of the Lease covering the space Landlord has chosen to recapture, which may include all or any lesser portion of the space Tenant has proposed to assign or sublet. In such

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-03-28

event Landlord agrees that the space not recaptured by Landlord shall be a legally leaseable unit, Tenant shall pay all costs of any construction necessary to accomplish the division of the space. The termination of the Lease as to the recaptured space shall be effective on the date specified by Landlord in its notice.

(iv) In the event that Landlord elects to recapture any proposed space under these provisions, the Monthly Base Rent and Tenant's Proportion shall be adjusted as of the termination date designated in the cancellation notice on the basis of the number of square feet of Leased Area retained by Tenant, if any, in proportion to the number of square feet of Leased Area contained in the Premises, as described in this Lease, and this Lease as so amended shall continue thereafter in full force and effect.

(v) In the event that Landlord elects not to recapture part or all of the proposed sublet or assigned space, Landlord shall so notify Tenant as set forth in (ii) above. Provided Tenant is not in default under the Lease and has fully complied with all of the terms of this Section 9, Tenant may then proceed to contact potential subtenants and shall have the option to assign or sublet the non-captured space in accordance with the following provisions:

(A) Tenant shall bear all costs and expenses associated with the assignment or subletting, including, without limitation, any and all costs and expenses incurred by Landlord (if any).

(B) Upon locating a suitable potential New Tenant, Tenant shall notify Landlord in writing. Such notice shall state the name and address of the proposed New Tenant and shall include a true and correct copy of the proposed assignment or sublease. Tenant also shall deliver to Landlord copies of all financial statements, credit reports and other such information in its possession relating to the prospective New Tenant. At Landlord's request, Tenant shall promptly secure and deliver any additional information Landlord deems necessary in order to evaluate the potential New Tenant.

(C) Landlord shall have thirty (30) days from the date of its receipt of the last information provided by Tenant on the proposed New Tenant during which to evaluate such New Tenant and decide whether to consent to the assignment or sublease. Landlord shall notify Tenant of its decision in writing, and, in the event that Landlord does not consent to the sublease or assignment, its notice thereof to Tenant shall include an explanation of its reasons for denying consent. Landlord's failure to respond to Tenant's request within

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000-00

such thirty day period shall be deemed to mean that Landlord has not consented to such sublease or assignment. In the event that Landlord consents to any sublease or assignment, Tenant may execute the sublease or assignment and collect all rents due thereunder subject to the provisions of subparagraph (D) below.

(D) Following the execution of any sublease or assignment to which Landlord has consented and throughout the term thereof, Tenant shall pay Landlord eighty percent (80%) of all amounts received by Tenant in connection with such subletting or assignment in excess of the Rent Tenant is obligated to pay Landlord hereunder.

(E) Notwithstanding anything to the contrary contained within this Section 9, uses for which the Premises or any part thereof may not be sublet or assigned shall include but not be limited to the following (i) any use which is prohibited by any zoning ordinance imposed by the State of Illinois or the City of Chicago or any other applicable municipality or governing body, (ii) any illegal or immoral use, (iii) any use which is inconsistent with the present tenant mix and general character of the Building, (iv) any use which would violate any covenants or representations made by Landlord to any other tenants in the building, (v) any use which is not a lawful retail use and (vi) any use which is not normally found in a first class retail building in downtown Chicago.

(c) Landlord shall have the right to transfer, assign and convey, in whole or in part, the Building and any and all rights under this Lease, and, in the event Landlord assigns its rights under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations.

10. USE AND OCCUPANCY. The Tenant shall occupy and use the Premises during the Term for the purpose specified in Section 2 and none other;

(a) the Tenant will not make or permit to be made any use of the Premises which directly or indirectly is forbidden by public law, ordinance or governmental regulation or which may be dangerous to persons or property and will comply with all laws, ordinances, orders, rules and regulations relating to the use, condition or occupancy of the Premises: the Tenant will not make or permit to be made any use of the Premises which may invalidate or increase the premium costs of any policy of insurance carried on the Project or covering its operations; the Tenant shall not do, or permit to be done, any act or thing upon the Premises which will be in conflict with fire insurance policies

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00001-00-100000

covering the Building of which the Premises form a part. The Tenant, at its sole expense shall comply with all rules, regulations or requirements of the local inspection and Rating Bureau, or any other similar body, and shall not do, or permit anything to be done upon said Premises, or bring or keep anything thereon in violation of rules, regulations or requirements of the Fire Department, local Inspection and Rating Bureau, Fire Insurance Rating Organization or other authority having jurisdiction and then only in such quantity and manner of storage as not to increase the rate of fire insurance applicable to the Building. If by reason of failure of Tenant to comply with the provisions of this subsection 10(a), any insurance coverage is jeopardized or insurance premiums are increased, Landlord shall have the option either to terminate this Lease or to require Tenant to make immediate payment of the increased insurance premium;

(b) any sign installed in the Premises shall be installed by Landlord at Tenant's cost and in such manner, character and style as Landlord shall approve in writing, which approval shall be in Landlord's sole discretion;

(c) the Tenant shall not advertise the business, profession or activities of the Tenant conducted in the Building in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining to such business, profession or activities, and shall not use the name of the Building for any purpose other than that of business address of the Tenant, and shall never use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence without the Landlord's express consent in writing;

(d) the Tenant shall not obstruct, or use for storage, or for any purpose other than ingress and egress, the entrances, passages, courts, corridors, vestibules, halls, elevators and stairways of the Building;

(e) no bicycle or other vehicle and no dog, other than seeing-eye dogs, or other animal or bird shall be brought or permitted to be in the Building or any part thereof;

(f) the Tenant shall not make or permit any noise or odor that is reasonably objectionable to other occupants of the Building to emanate from the Premises, and shall not create or maintain a nuisance thereon, and shall not disturb, solicit or canvass any occupant of the Building, and shall not do any act tending to injure the reputation of the Building;

(g) the Tenant shall not install any musical instrument or equipment in the Premises, or any antennas, aerial wires or other related equipment inside or outside the Premises, without, in each

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/15/2011

UNOFFICIAL COPY

and every instance, prior approval in writing by the Landlord;

(h) the Tenant shall not waste water by tying, wedging or otherwise fastening open any faucet;

(i) no additional locks or similar devices shall be attached to any door. No keys for any door other than those provided by the Landlord shall be made. If more than two keys for one lock are desired by the Tenant, the Landlord may provide the same upon payment by the Tenant. Upon termination of this Lease or of the Tenant's possession, the Tenant shall surrender all keys of the Premises and shall make known to the Landlord the explanation of all combination locks on safes, cabinets and vaults;

(j) the Tenant shall be responsible for the locking of doors in and to the Premises. Any damage resulting from neglect of this clause shall be paid for by the Tenant;

(k) if the Tenant desires telegraphic, telephonic, burglar alarm or signal service, the Landlord will, upon request, direct where and how connections and all wiring for such service shall be introduced and run. Without such directions, no boring, cutting or installation of wires or cables is permitted;

(l) shades, draperies or other forms of inside window covering visible from the exterior of the Premises or the Building must be of such shape, color and materials as reasonably approved by the Landlord;

(m) the Tenant shall not overload any floor. Safes, furniture and all large articles shall be brought through the Building and into the Premises at such times and in such manner as the Landlord shall direct and at the Tenant's sole risk and responsibility. The Tenant shall list all furniture, equipment and similar articles to be removed from the Building, and the list must be approved at the Office of the Building or by a designated person before building employees will permit any article to be removed;

(n) unless the Landlord gives advance written consent in each and every instance, the Tenant shall not install or operate any steam or internal combustion engine, boiler, machinery or air-conditioning apparatus in or about the Premises, or carry on any mechanical business therein, or use the Premises for housing accommodations or lodging or sleeping purposes, or install or permit the installation of vending machines not incidental to the permitted use set forth in Section 2 hereof, or use any illumination other than electric light (except that Tenant may use enclosed table candles), or use or permit to be brought into the Building

-88-448560

UNOFFICIAL COPY

any inflammable oils or fluids such as gasoline, kerosene, naphtha and benzene, or any explosive or other articles hazardous to persons or property;

(o) the Tenant shall not place or allow anything to be against or near the glass partitions, doors or windows of the Premises which may diminish the light in, or be unsightly from the exterior of the Building, public halls or corridors;

(p) the Tenant shall not install in the Premises any equipment which uses a substantial amount of electricity without the advance written consent of the Landlord. The Tenant shall ascertain from the Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electric wiring in the Building and the Premises and the needs of the other tenants in the Building and shall not use more than such safe capacity. The Landlord's consent to the installation of electric equipment shall not relieve the Tenant from the obligation not to use more electricity than such safe capacity;

(q) Tenant may not install carpet padding or carpet by means of mastic, glue or cement. Such installation shall be by tackless strip or double-faced tape only

(r) Tenant shall not at any time sell, purchase or give away, or permit, except with Landlord's prior written approval, the sale, purchase or gift of lottery tickets, cigars, cigarettes or other smoking materials in any form by or to any of Tenant's agents or employees or any other parties on the Premises.

(s) Tenant will conduct its business and occupy the Premises and will control its agents, employees, licensees and invitees in such a manner so as not to create any nuisance or interfere with, annoy or disturb any of the other tenants in the Building or Landlord in its management of the Building and so as not to injure the reputation of the Building.

(t) Tenant shall not erect, place or allow to be placed any sign, advertising matter, stand, booth, or showcase in or upon the doorsteps, vestibules, halls, corridors, doors, outside walls, outside windows, or pavement of the Building or the Land (except for lettering on the door or doors to the Premises as allowed by the Rules and Regulations forming a part of this Lease) without the prior written consent of Landlord, which shall be in Landlord's sole discretion.

(u) All window displays facing on the street and on the lobby of the Building shall be subject to the approval of the Landlord, it being understood that the consent or approval of window displays as long as they are in good taste will not be unreas-

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

onably withheld by the Landlord. The Tenant agrees immediately to remove any display not previously approved to which the Landlord objects in writing, and in no event shall there be more than twenty-four (24) hours delay in effecting such removal.

(v) in addition to all other liabilities for breach of any covenant of this Section 10, the Tenant shall pay to the Landlord all damages caused by such breach and shall also pay to the Landlord as Additional Rent an amount equal to any increase in insurance premium or premiums caused by such breach. Any violation of this Section 10 may be restrained by injunction. The Tenant shall be liable to the Landlord for all damages resulting from violation of any of the provisions of this Section 10. The Landlord shall have the right to make such reasonable rules and regulations as the Landlord or its agent may from time to time adopt on such reasonable notice to be given as the Landlord may elect. Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce provisions of this Section 10 or any rules and regulations hereafter adopted, or the terms, covenants or conditions or any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

11. ALTERATIONS AND ADDITIONS BY TENANT. The Tenant shall not, without the Landlord's prior written consent in each and every instance (such consent shall not be unreasonably withheld), erect any partitions or make any electrical, mechanical or structural alterations or repairs in or additions to the Premises or do any nailing, boring or screwing into the ceilings, walls or floors which do not constitute incidental maintenance or repairs. The Landlord's decision to refuse such consent shall be conclusive. Unless otherwise agreed by Landlord and Tenant in writing, all such work shall be performed by the Landlord's contractor, but at the cost of Tenant and said contractor shall have payment and performance bonds in place in form, substance, amount and with such companies satisfactory to Landlord and said bonds will contain a dual obligee rider containing coverage to Landlord. Tenant agrees to pay Landlord its customary administrative charges for such work. If the Landlord consents to such repairs, alterations or additions, before commencement of the work or delivery of any materials on the Premises or into the Building, the Tenant shall furnish the Landlord for approval:

- (a) plans and specifications;
- (b) necessary permits;
- (c) indemnification and evidence of payment or evidence of ability to make payment (which may include, if requested by Landlord, Tenant posting a bond with Landlord) in form and amount satisfactory to Landlord, contractors statements, lien waivers and certificates of insurance from all contractors

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00711-20

performing labor or furnishing materials, insuring against any and all claims, costs, damages, liabilities and expenses which may arise in connection with the repairs, alterations or additions.

Whether the Tenant furnishes the Landlord the foregoing or not, the Tenant hereby agrees to hold the Landlord, its beneficiaries, and their respective agents and employees harmless from any and all liabilities of every kind and description which may arise out of or be connected in any way with said alterations or additions. All alterations and additions shall comply with all insurance requirements and with all ordinances and regulations of any pertinent governmental authority. All alterations and additions shall be constructed in a good and workmanlike manner and good grades of materials shall be used.

All additions, decorations, fixtures, hardware, non-trade fixtures and all improvements, temporary or permanent in or upon the Premises, whether placed there by the Tenant or by the Landlord, shall, unless the Landlord requests their removal, become the Landlord's property and shall remain upon the Premises at the termination of this Lease by lapse of time or otherwise without compensation or allowance or credit to the Tenant. If, upon the Landlord's request, the Tenant does not remove said additions, decorations, fixtures, hardware, non-trade fixtures and improvements, the Landlord may remove the same and the Tenant shall pay the cost of such removal to the Landlord upon demand.

12. REPAIR AND MAINTENANCE BY TENANT. Tenant shall keep the Premises, including all mechanical, electrical, heating, air conditioning and ventilating systems, and all other equipment and all fixtures installed by Tenant in good and tenantable condition and repair and shall promptly make all necessary repairs and replacements thereto (except those caused by fire or other casualty covered by insurance on the Building under policies naming Landlord as the insured), all at Tenant's sole expense. Such repairs and replacement shall be in quality and class equal to the original work. Landlord shall not be responsible for any repair or maintenance of any portion of the Premises or of any electrical or mechanical systems serving the Premises whatsoever. Without diminishing such obligation of Tenant, if Tenant fails to make such repairs and replacements, Landlord may at its option make such repair and Tenant shall pay Landlord the cost thereof upon demand, plus a percentage of such cost of repair sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements, within 10 days of being billed for same. In addition, Tenant shall pay the cost of repair and replacement due to damage or injury done to the Building (other than the Premises) or the Land or any part thereof by Tenant or Tenant's agents, employees or invitees. Such amount shall be paid by Tenant to Landlord upon demand, plus interest thereon as provided in this Lease from demand until payment.

13. MECHANICS' LIENS. Tenant will not permit any mechanic's lien or liens to be placed upon the Premises or improvements thereon or the Building during the term hereof caused by or resulting from any work performed, materials furnished or obligations incurred by or at the request of

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Tenant and nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvements, alteration or repair of or to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' or other liens against the interest of Landlord or Tenant in the Premises. In the case of the filing of any lien on the interest of Landlord or Tenant in the Premises, Tenant shall cause the same to be discharged of record within twenty (20) days from the filing of same. If Tenant shall fail to discharge such mechanic's lien within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or bonding. Any amount paid by Landlord for any of the aforesaid purposes, or for the satisfaction of any other lien, not caused or claimed to be caused by Landlord, and all reasonable legal and other expenses of Landlord, including reasonable attorneys' fees, in defending any such action or in or about procuring the discharge of such lien, with all necessary disbursements in connection therewith, and with interest thereon as provided in this Lease from the date of payment, shall be paid by Tenant to Landlord on demand.

14. LIABILITY OF LANDLORD. Except for claims and damages resulting from the negligence of Landlord, Tenant hereby releases Landlord, its agents and employees from any and all liability to Tenant or to Tenant's employees, agents, licensees, or visitors, or to any other person whomsoever, for (i) any injury or damage to person or property due to the Building or the Land or any part thereof becoming out of repair or by defect in or failure of pipes or wiring, or by the backing up of drains or by the bursting or leaking of pipes, faucets and plumbing fixtures or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, or (ii) any loss or damage that may be occasioned by or through the acts or omissions of other tenants in the Building or for any other persons whatsoever or (iii) for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, insurrection, war, court order, requisition or order of governmental authority, or any other matter beyond the control of Landlord, or (iv) any loss or damage, however caused, to books, records, files, money, securities, negotiable instruments, instruments, documents or papers in or about the Premises. Tenant agrees that all personal property upon the Premises shall be at the risk of Tenant only, and that Landlord shall not be liable for any damage thereto or theft thereof.

15. TENANT'S INDEMNIFICATION OF LANDLORD. Tenant shall, at its sole cost and expense, procure and maintain through the Term of this Lease a policy or policies of insurance insuring Tenant against any and all liability for injury to or death of a person or persons and for damage to or destruction of property (including plate glass insurance) occasioned by or arising out of or in connection with the use

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

012-11-2010

or occupancy of the Premises or by the condition of the Premises (including the contractual liability of Tenant to indemnify Landlord contained herein), the limits of such policy or policies to be in an amount not less than \$1,000,000 in respect of injuries to or death of any one person, and in an amount not less than \$5,000,000 in respect of any one accident or disaster, and in an amount not less than \$5,000,000 in respect of property damaged or destroyed, or with such other limits as may be required by Landlord, and to be written by an insurance company or companies satisfactory to Landlord and licensed to do business in the State of Illinois with Landlord named as an additional insured party. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least ten (10) days prior to the cancellation of such insurance. Such policies or duly executed certificates of insurance relating thereto shall be promptly delivered to Landlord and renewals thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms. If Tenant fails to comply with the foregoing requirements relating to insurance, Landlord may obtain such insurance and Tenant shall pay to Landlord on demand the premium cost thereof, plus Landlord's customary administrative charge.

Notwithstanding any such insurance so carried by Tenant, and in addition to Tenant's obligation to procure and maintain such insurance, Tenant agrees that it will indemnify and hold and save Landlord, its agents and employees whole and harmless of, from and against any and all liabilities, including, but not limited to, (i) all fines, suits, loss, cost, liability, claims, demands, any and all liabilities, including but not limited to, actions and judgments of every kind and character by reason of any breach, violation or nonperformance of any term, provision, covenant, agreement or condition on the part of Tenant hereunder and (ii) all claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments suffered by, recovered from or asserted against Landlord, its agents or employees on account of any matter described in Section 14 of this Lease or on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by any act, omission, negligence or misconduct on the part of Tenant or any of its agents, servants, employees, contractors, patrons, guests, licensees or invitees or of any other person entering upon the Premises under or with the express or implied invitation or permission of Tenant or when any such injury or damage is the result, proximate or remote, of the violation by Tenant or any of its agents, servants, employees, contractors, patrons, guests, licensees or invitees of any law, ordinance or governmental order of any kind or of any of the Rules and Regulations included in this Lease (as such Rules and Regulations may hereafter at any time or from time to time be amended or supplemented), or when any such injury or damage may in any other way arise from or out of the occupancy or use by Tenant, its agents, servants, employees, contractors, patrons, guests, licensees or invitees of the Premises. Tenant covenants and agrees that in case Landlord shall be made a party to any litigation commenced by or against Tenant or relating to this Lease or to the Premises, then Tenant shall and will pay all costs and expenses, including attorneys' fees and court costs, incurred by or imposed upon Landlord by virtue of any such litigation and

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

the amount of all such costs and expenses, including attorneys' fees and court costs, shall be a demand obligation owing by Tenant to Landlord.

16. CERTAIN RIGHTS RESERVED BY LANDLORD. Landlord shall have the following rights, exercisable by Landlord, its agents and employees without notice and without liability to Tenant for damage or injury to property, persons or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession or giving rise to any claim for setoff or abatement of Rent:

(a) To change the Building's name or street address.

(b) To install, affix and maintain any and all signs on the exterior and interior of the Building.

(c) To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, and to control all internal lighting that may be visible from the exterior of the Building.

(d) To enter upon the Premises at all reasonable hours (or, in an emergency, at any hour) to inspect or test the same, or to provide, or effect the provision of, any service which Landlord is now or hereafter obligated to furnish to tenants of the Building, or to utilize the areas in, over or adjacent to the Premises expressly reserved to Landlord under this Lease, or to claim or make repairs or alterations (but without any obligation to do so, except as expressly provided for herein), or to show the Premises to prospective lenders or purchasers, and, during the last twelve (12) months of the term, to show them to prospective tenants at reasonable hours and, if they are vacated, to prepare them for re-occupancy.

(e) To retain at all times, and to use in appropriate instances, keys to all doors within and into the Premises. No locks shall be changed or added without the prior written consent of Landlord.

(f) To decorate and to make repairs, alterations, additions, changes or improvements, whether structural or otherwise, in and about the Building, or any part thereof, and for such purposes to enter upon the Premises and, during the continuance of any of such work, to temporarily close doors, entryways, public space and corridors in the Building, to interrupt or temporarily suspend Building services and facilities and to change the arrangement and location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets, or other public parts of the Building, all without abatement of Rent or affecting any of Tenant's obligations hereunder, so long as the Premises are reasonably accessible.

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

03/01/2010

(g) To have and retain a paramount title to the Premises free and clear of any act of Tenant purporting to burden or encumber them.

(h) To grant to anyone the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to exclude Tenant from its permitted use.

(i) To approve the weight, size and location of safes and other heavy equipment and articles in and about the Premises and the Building, and to require all such items and furniture and similar items to be moved into and out of the Building and Premises only at such times and in such manner as Landlord shall direct in writing. Movements of Tenant's property into or out of the Building and within the Building are entirely at the risk and responsibility of Tenant and Landlord reserves the right to require permits before allowing any such property to be moved into or out of the Building.

(j) To prohibit the placing of vending or dispensing machines of any kind in or about the Premises without the prior written permission of Landlord.

(k) To have access for Landlord and other tenants of the Building to any mail chutes located on the Premises according to the rules of the United States Postal Service.

(l) To take all such reasonable measures as Landlord may deem advisable for the security of the Building and its occupants, including without limitation, the search of all persons entering or leaving the Building, the evacuation of the Building for cause, suspected cause, or for drill purposes, the temporary denial of access to the Building, and the closing of the Building after normal business hours and on Saturdays, Sundays and holidays, subject, however, to Tenant's right to admittance when the Building is closed after normal business hours under such reasonable regulations as Landlord may prescribe from time to time which may include by way of example but not of limitation, that persons entering or leaving the Building, whether or not during normal business hours, identify themselves to a security officer by registration or otherwise and that such persons establish their right to enter or leave the Building.

17. FIRE OR OTHER CASUALTY. If the Premises or any part thereof shall be damaged by fire or other casualty Tenant shall give prompt written notice thereof to Landlord. In case the Building shall be so damaged by fire or other casualty that substantial alteration or reconstruction of the Building shall, in Landlord's sole opinion, be required (whether or not the Premises shall have been damaged by such fire or other casualty) or in the event any mortgagee under a mortgage or deed of trust covering the Building should

-98-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0204-00

require that the insurance proceeds payable as a result of such fire or other casualty be used to retire the mortgage debt, Landlord may, at its option, terminate this Lease and the Term and estate hereby granted by notifying Tenant in writing of such termination within sixty (60) days after the date of such damage, in which event the Rent hereunder shall be abated as of the date of the termination of the Lease if the Premises remain tenantable after the fire or casualty, or, if the Premises are no longer tenantable, as of the date of such damage. If Landlord does not thus elect to terminate this Lease, Landlord shall within seventy-five (75) days after the date of such damage, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Landlord's reasonable control, commence to repair and restore the Building and shall proceed with reasonable diligence to restore the Building to substantially the same condition in which it was immediately prior to the happening of the casualty, except that Landlord shall not be required to rebuild, repair or replace any improvements made to the Premises at the expense of Tenant, or any part of Tenant's furniture or furnishings or fixtures and equipment removable by Tenant under the provisions of this Lease. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage or the repair thereof, except that, subject to the provisions of the next sentence, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unfit for occupancy and such diminution shall continue for ninety (90) days beyond the date that the Premises become fit for occupancy. If the Premises or any other portion of the Building be damaged by fire or other casualty resulting from the fault or negligence of Tenant or any of Tenant's agents, employees or invitees, the rent hereunder shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Building caused thereby to the extent such cost and expense is not covered by insurance proceeds. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Premises shall be for the sole benefit of the party carrying such insurance and under its sole control.

18. CONDEMNATION. If the whole or substantially the whole of the Building or of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or should be conveyed to the condemning authority in lieu of condemnation, then this Lease shall terminate as of the date when physical possession of the Building or the Premises is taken by the condemning authority. Landlord shall be entitled to receive all of the compensation awarded for such a partial taking including any award for the value of any unexpired Term of this Lease and Tenant shall not be entitled to and expressly waives all claim to any portion of such award. If less than the whole or substantially the whole of the Building or the Premises is thus taken or sold, Landlord (whether or not the Premises are affected thereby) may terminate this Lease by giving written notice thereof to Tenant within sixty (60) days after the right of election accrues, in which event this Lease shall terminate as of the date when physical possession of such portion of the Building or Premises is taken by the condemning authority. If upon any such taking or sale of less than the whole or substant-

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

000000

ially the whole of the Building or the Premises this Lease shall not be thus terminated, the Rent payable hereunder shall be diminished by an amount representing that part of such Rent as shall properly be allocable to the portion of the Premises which was so taken or sold and Landlord shall, at Landlord's expense, restore and reconstruct the Building and the Premises to substantially their former condition to the extent that the same, in Landlord's judgment, may be feasible, but such work shall not exceed the scope of the work in the original construction of the Building and installation of tenant improvements in the Premises, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for damages less the amounts going to the mortgagee of the property taken. Landlord shall be entitled to receive all of the compensation awarded upon a taking of all of the Building or the Premises including any award for the value of any unexpired Term of this Lease and Tenant shall not be entitled to and expressly waives all claim to any such portion of such award. Notwithstanding the foregoing, Tenant shall have the right to make a separate claim for compensation as long as said claim shall not have the effect of reducing or modifying any award to Landlord.

19. TAXES ON TENANT'S PROPERTY. Tenant shall be liable for all taxes levied or assessed against personal property, furniture or fixtures placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property, furniture or fixtures placed by Tenant in the Premises, and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is liable hereunder.

20. WAIVER OF SUBROGATION. Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term of this Lease or any extension or renewal hereof for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom such other party may be responsible), which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recovered under such insurance policies. Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to property of the parties hereto. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of such mutual waivers, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

99-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

21. SURRENDER UPON TERMINATION. At the termination of this Lease, whether caused by lapse of time or otherwise, Tenant shall at once surrender possession of the Premises and deliver such Premises to Landlord in as good repair and condition as at the commencement of Tenant's occupancy, reasonable wear and tear excepted, and shall deliver to Landlord all keys to the Premises. All alterations, additions or improvements (whether temporary or permanent) made in or upon the Premises, either by Landlord or by Tenant which Landlord has not requested to be removed from the Premises, shall be Landlord's property on termination of this Lease and shall remain on the Premises without compensation to Tenant. All furniture, movable trade fixtures and equipment installed by Tenant may be removed by Tenant at the termination of this Lease. All such removals shall be accomplished in a good and workmanlike manner so as not to damage the Premises or the primary structure or structural qualities of the Building or the plumbing, electrical lines or other utilities. All furniture, movable trade fixtures and equipment installed by Tenant not promptly removed after such termination shall thereupon be conclusively presumed to have been abandoned by Tenant and Landlord may, at its option, either (i) declare same to be the property of Landlord by written notice thereof to Tenant, or (ii) at the sole cost and expense of Tenant remove and store the same or any part thereof in any manner that Landlord shall choose without incurring liability to Tenant or any other person for the value, preservation or safekeeping thereof.

22. EVENTS OF DEFAULT. (a) Each of the following events shall be deemed to be an event of default ("Event of Default") by Tenant under this Lease:

(i) Tenant shall fail to pay any Rent as and when the same shall be due and payable, and shall not cure such failure within ten (10) days after written notice thereof to Tenant.

(ii) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of Rent, or of the Work Letter Agreement of even date herewith between Landlord and Tenant, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant.

(iii) Tenant or any guarantor of Tenant's obligations hereunder (hereinafter called "Guarantor") shall become insolvent, or shall make a transfer in fraud of creditors, or shall commit any act of bankruptcy or shall make an assignment for the benefit of creditors, or Tenant or any Guarantor shall admit in writing its inability to pay its debts as they become due.

(iv) Tenant or any Guarantor shall file a petition under any section or chapter of the Federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State hereof, or Tenant or any Guarantor shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any Guarantor; or a petition or answer proposing the adjudication of Tenant or any

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000

Guarantor as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar laws shall be filed in any court and such involuntary petition or answer shall not be discharged or denied within one hundred twenty (120) days after the filing thereof.

(v) A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any Guarantor or of the Premises or any of Tenant's property located thereon in any proceeding brought by Tenant or any Guarantor, or any such receiver or trustee shall be appointed in any proceeding brought against Tenant or any Guarantor and shall not be discharged within one hundred twenty (120) days after such appointment or Tenant or such Guarantor shall consent to or acquiesce in such appointment.

(vi) The Leasehold hereunder shall be taken on execution or other process of law in any action against Tenant.

(vii) Tenant shall abandon any substantial portion of the Premises.

(viii) Tenant shall fail to move into or take possession of the Premises within fifteen (15) days after the Commencement Date.

(b) If an Event of Default shall have occurred, Landlord shall have the right at its election then or at any time thereafter while such Event of Default shall continue, to pursue any one or more of the following remedies:

(i) Terminate this Lease by giving notice thereof to Tenant, in which event Tenant shall immediately surrender the Premises to Landlord and if Tenant fails so to do, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying Premises, or any part thereof, without being liable for prosecution or any claim of damages therefor and Tenant hereby agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise, specifically including, but not limited to (A) all reasonable expenses necessary to relet the Premises which shall include the cost of renovating, repairing and altering the Premises for a new tenant or tenants, advertisements and brokerage fees and (B) any increase in insurance premiums caused by the vacancy of the Premises. If such termination is caused by the failure to pay Rent and/or the abandonment of any substantial portion of the Premises, Landlord may elect, by sending written notice thereof to Tenant, to receive liquidated damages in an amount equal to twelve times the Rent payable hereunder for the month during which

88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

001241-02

the Lease is terminated, which shall be in lieu of the payment of loss and damage Landlord may suffer by reason of such termination as provided in the preceding sentence but which shall not be in lieu of or reduce in any way any amount (including accrued rent) of damages due to breach of covenant (whether or not liquidated) payable by Tenant to Landlord which accrued prior to the termination of this Lease. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, 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, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(ii) Enter upon and take possession of the Premises and expel or remove Tenant or any other person who may be occupying such premises, or any part thereof, without having any civil or criminal liability therefor, and, without terminating this Lease, Landlord may relet the Premises or any part thereof, without notice to Tenant for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) and for such uses as Landlord in its absolute discretion may determine and Landlord may collect and receive any rents payable by reason of such reletting; and Tenant agrees to pay Landlord on demand all reasonable expenses necessary to relet the Premises which shall include the cost of renovating, repairing and altering the Premises for a new tenant or tenants, advertisements and brokerage fees, and Tenant further agrees to pay Landlord on demand any deficiency that may arise by reason of such reletting. Tenant agrees that Landlord shall have no obligation to re-let the premises (A) before Landlord rents other vacant space in the Building or consents to a sublease or an assignment of the space of tenants who are not in default under their leases; (B) if the nature of the new tenant's business is not consistent with the tenant mix of the Building or with any other tenant leases containing provisions against the Landlord leasing space in the Building for certain uses; or (C) if the nature of the substitute tenant's business may have an adverse impact upon the first-class, high-grade manner in which the Building is operated or upon the reputation of the Building, even though in each of the aforesaid circumstances the new tenant may have a good credit rating equal to or better than Tenant's. No such re-entry or taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such termination is given to Tenant pursuant to subsection (b)(i) above.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

(iii) Enter upon the Premises by force if necessary without having any civil or criminal liability therefor, and do whatever Tenant is obligated to do under the terms of this Lease and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus affecting compliance with Tenant's obligations under this Lease.

(c) No repossession of or re-entering on the Premises or any part thereof pursuant to subsections (b)(ii) and (iii) above or otherwise and no reletting of the Premises or any part thereof pursuant to subsection (b)(ii) shall relieve Tenant or any Guarantor of its liabilities and obligations hereunder, all of which survive such repossession or re-entering. In the event of any such repossession or re-entering on the Premises or any part thereof by reason of the occurrence of an Event of Default, Tenant will pay to Landlord the Rent required to be paid by Tenant.

(d) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the other covenants, of any of the agreements, condition or provisions of this Lease, to recover the unamortized costs of any improvements made to the Premises by Landlord, or to any other remedy allowed to Landlord at law or in equity.

(e) Tenant hereby grants to Landlord a first lien upon the interest of Tenant under this Lease and all of Tenant's furniture, fixtures and equipment located in the Premises, including all personal property of Tenant, to secure the payment of moneys due under this Lease, which lien may be enforced in equity; and Landlord shall be entitled as a matter of right to have a receiver appointed to take possession of the Premises and relet same under order of court.

23. NO IMPLIED WAIVER. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. The waiver of or redress for any violation of any term, covenant, agreement or condition contained in this Lease or contained in the Rules or Regulations attached to and forming a part of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. A receipt by Landlord of any Rent with knowledge of the breach of any covenant or agreement contained in this Lease shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing

-88-448560

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000

and signed by Landlord. No payment by Tenant or receipt by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent due under this Lease shall be deemed to be other than on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

24. ATTORNEYS' FEES AND LEGAL EXPENSES. If Landlord and Tenant become opposing parties in litigation to enforce any of the obligations under this Lease, the prevailing party, either Landlord or Tenant, shall be entitled to all reasonable attorneys' fees and all expenses and court costs of the prevailing party incurred by the prevailing party in said litigation from the other party upon demand.

25. LANDLORD'S LIEN. In order to secure payment of all rentals and other sums of money becoming due hereunder from Tenant, and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained herein, Tenant hereby grants unto Landlord a security interest in and an express contractual lien upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant presently or which may hereafter be situated on the Premises (except such part of such property as may be exchanged, replaced or sold from time to time in the ordinary course of Tenant's operations) and all proceeds therefrom, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in Rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by Tenant. Upon the occurrence of an Event of Default by Tenant, Landlord may, in addition to any other remedies provided herein, enter upon the Premises and take possession of any and all such goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant situated on the Premises, without liability for trespass or conversion (and Tenant hereby waives any right to notice or hearing prior to such taking of possession by Landlord) and sell the same at public sale or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale Landlord or its assigns may purchase unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving Tenant reasonable notice, the requirement of reasonable notice shall be met if such notice is given in the manner prescribed in this Lease at least five (5) days before the day of sale. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held in the Premises after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper in Cook County, Illinois

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

for five (5) consecutive days prior to the date of sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and other expenses) shall be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus shall be paid to Tenant or as otherwise required by law, and Tenant shall pay any deficiency forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord a financing statement in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of Illinois. The statutory lien for rent, or any portion thereof, is not hereby waived, the security interest herein granted being in addition and supplementary thereto.

26. SUBORDINATION. This Lease and all rights of Tenant hereunder are subject and are hereby made subordinate (i) to each mortgage or deed of trust (blanket or otherwise), security agreement, collateral assignment of lease and/or rentals, and similar security device (each of which is hereinafter called a "Security Document") and to each ground or underlying master lease covering the Land and/or the Building, if any, (each of which is hereinafter called an "Underlying Lease") which is in existence at the date hereof or may hereafter be executed and which does now or may hereafter affect the Land and/or the Building (whether or not such Security Document or Underlying Lease also affects other property), and (ii) to any and all supplements, increases, renewals, modifications, consolidations, replacements and extensions of any such Security Document or Underlying Lease. This provision is hereby declared by Landlord and Tenant to be self-operative and no further instrument shall be required to effect such subordination of this Lease within ten days after written request of Landlord. Tenant shall, however, within 10 days' written request of Landlord, execute acknowledge and deliver to Landlord any and all instruments and certificates that may be necessary or proper to more effectively subordinate this Lease and all rights of Tenant hereunder to any such Security Document or Underlying Lease or to confirm or evidence such subordination. In the event Tenant shall fail or neglect to execute, acknowledge and deliver any such subordination agreement or certificate, Landlord, in addition to any other remedies it may have, may, as the agent and attorney-in-fact of Tenant, execute, acknowledge and deliver the same, and Tenant hereby irrevocably nominates, constitutes and appoints Landlord as Tenant's proper and legal agent and attorney-in-fact for such purposes. Such power of attorney shall not terminate on disability of the principal. Tenant covenants and agrees, in the event any proceedings are brought for the foreclosure of any such Security Document or if the Land and/or the Building be sold pursuant to any such Security Document or if any such Underlying Lease is terminated, to attend to the purchaser upon any such foreclosure sale or trustee's sale or to the lessor under the Underlying Lease, as the case may be, if so requested by such purchaser or such lessor, as the case may be, and to recognize such purchaser or such lessor, as the case may be, as the Landlord under this Lease. Tenant agrees to execute and deliver, within ten days after delivery to Tenant, at any time and from time to time, upon the request of Landlord or of any holder(s) of any of the indebtedness or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

99-112000

other obligations secured by any Security Document or of any lessor under an Underlying Lease, any instrument or certificate prepared by Landlord or by such lessor or holder which, in the sole judgment of Landlord or of such holder(s) or lessor, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment. Tenant hereby irrevocably appoints Landlord, the holder(s) of the indebtedness or other obligations secured by any Security Document and the lessor under any Underlying Lease, jointly and severally, the agent and attorney-in-fact of Tenant to execute and deliver for and on behalf of Tenant any such instrument or certificate. Such power of attorney shall not terminate on disability of the principal. Tenant further waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event any such foreclosure proceeding is brought or trustee's sale occurs or Underlying Lease terminates, and agrees that this Lease shall not be affected in any way whatsoever by any such foreclosure proceeding or trustee's sale or such termination unless the holder(s) of the indebtedness or other obligations secured by such Security Document or the lessor under such Underlying Lease, as the case may be, shall declare otherwise. This Lease and all rights of Tenant hereunder are further subject and subordinate, to the extent that the same relate to the Premises, (i) to all applicable ordinances of the City of Chicago, Illinois now or hereafter in effect relating to easements, franchises and other interests or rights upon, across or appurtenant to the Building or any of the Land, (ii) all reservations and restrictions of record and (iii) all easements and agreements.

27. QUIET ENJOYMENT. Provided Tenant pays the Rent payable hereunder as and when due and payable and keeps and fulfills all of the terms, covenants and agreements and conditions to be performed by Tenant hereunder, Tenant shall at all times during the Term peacefully and quietly enjoy the Premises without any disturbance from Landlord or from any other person claiming by, through or under Landlord, subject to the terms, provisions, covenants, agreements and conditions of this Lease and to the Security Documents, Underlying Leases, restrictions, reservations, ordinances, easements and agreements to which this Lease is subject and subordinate, as hereinabove set forth.

28. NOTICE TO LANDLORD AND MORTGAGEE. In the event of any act or omission by Landlord which would give Tenant the right to damages from Landlord or the right to terminate this Lease by reason of a constructive or actual eviction from all or part of the Premises or otherwise, Tenant shall not sue for such damages or exercise any such right to terminate until (i) it shall have given written notice of such act or omission to Landlord, to any mortgagee of the Building, to the holder(s) of any indebtedness or other obligations secured by any Security Document (as defined in Section 27 of this Lease) and to the lessor under any Underlying Lease (as defined in Section 27 of this Lease), if notice of the name and address of such mortgagee, holder(s) and/or lessor(s) shall previously have been furnished to Tenant, and (ii) a reasonable period of time for remedying such act or omission shall have elapsed following the giving of such notice, during which time Landlord and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000

such holder(s) and lessor(s), or any of them, their agents or employees, shall be entitled to enter upon the Premises and do therein whatever may be necessary to remedy such act or omission; provided, however, that Tenant shall not be entitled to sue for damages or exercise any rights to terminate the Lease so long as Landlord is diligently attempting to cure such act or omission.

29. HOLDING OVER BY TENANT. Tenant shall be liable to Landlord for all damages which Landlord shall suffer by reason of any holding over by Tenant and Tenant shall indemnify Landlord against all claims made by any other tenant or prospective tenant against Landlord resulting from delay by Landlord in delivering possession of the Premises to such other tenant or prospective tenant. If the Tenant retains possession of the Premises or any part thereof after the termination of the Term or any extension thereof, by lapse of time or otherwise, the Tenant shall pay the Landlord all actual damages, consequential as well as direct, sustained by reason of the Tenant's retention of possession. Tenant shall also pay the Landlord the monthly Rent, at the higher of (i) market rent for comparable space; or (ii) double the rate payable for the month immediately preceding said holding over (including increases for Expenses and Taxes which Landlord may reasonably estimate), computed on a per month basis, for each month or part thereof (without reduction for any such partial month) that the Tenant thus remains in possession. Alternatively, at the election of Landlord expressed in a written notice to the Tenant and not otherwise, such retention of possession shall constitute a renewal of this Lease from one (1) year (or less if specified by Landlord at Landlord's option) on the same terms and conditions, except that the Rent shall be the greater of market or 125% of the latest monthly Rent plus all adjustments applicable for such year in accordance with Section 5 hereof. The provisions of this Section do not exclude Landlord's rights of re-entry or any other right hereunder.

30. RULES AND REGULATIONS. Tenant and Tenant's agents, employees and invitees will comply with all requirements of the Rules and Regulations (as amended from time to time as hereinafter provided) which are attached hereto as Schedule II, and made part hereof as though fully set out herein. Landlord shall at all times have the right to change such Rules and Regulations or to promulgate other Rules and Regulations in such reasonable manner as may be deemed advisable for safety, care, or cleanliness of the Building and related facilities or premises, and for preservation of good order therein, provided, however, that such changes shall not become effective and a part of this Lease until a copy thereof shall have been delivered to Tenant. Tenant shall further be responsible for the compliance with such Rules and Regulations by the employees, servants, agents, visitors and invitees of Tenant.

31. ESTOPPEL CERTIFICATE. Tenant will, at any time and from time to time, upon not less than ten (10) days' prior request by Landlord, execute, acknowledge and deliver to Landlord a statement in writing prepared by Landlord and executed by Tenant certifying that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, and setting forth such modifications) and the dates to which the

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

Rent has been paid, and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer may have knowledge; it being intended that any such statement by Tenant may be relied upon by any prospective purchaser or mortgagee or lessor of the Land and/or the Building. Tenant hereby agrees that its failure to furnish an estoppel certificate to Landlord pursuant to this Section 32 within ten (10) days after written request therefor is given by Landlord to Tenant shall constitute its unconditional acknowledgement by Tenant that, as of the expiration date of such twenty-day period, this Lease is unmodified and in full force and effect and that Landlord is not in default, and that no condition or event has occurred which with notice or passage of time or both would constitute a default by Landlord under this Lease, and any prospective purchaser or mortgagee or lessor of the Land and/or the Building may conclusively rely on the truth and accuracy thereof. In the event that Tenant shall fail or neglect to execute, acknowledge and deliver any such estoppel letter, Landlord, in addition to any other remedies it may have, may, as the agent and attorney-in-fact of Tenant, may execute, acknowledge and deliver the same, and Tenant hereby irrevocably nominates, constitutes and appoints Landlord as Tenant's proper and legal agent and attorney-in-fact for such purposes. Such power of attorney shall not terminate on disability of the principal.

32. COVENANT TO OPERATE. Throughout the Term of this Lease Tenant shall conduct the business set forth in Section 2 of this Lease in the Premises, with due diligence and without interruption during normal business hours (as defined in Section 44 of this Lease). If Tenant shall fail to conduct such business during normal business hours it shall be, in addition to any other remedy of Landlord, an Event of Default within the meaning of Section 22, upon the happening of which Landlord shall be entitled to any or all of the remedies provided in the Lease in Landlord's favor upon the happening of any Event of Default hereunder.

33. PERSONAL LIABILITY. The liability of Landlord under this Lease shall be limited to the interest of Landlord in the Building and the Land, and neither Landlord nor any of its partners shall be personally liable for any deficiency. A deficit capital account of any partner of Landlord shall not be deemed an asset or property of Landlord. This clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord or its partners.

34. NOTICES. Each provision of this Lease, or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or with reference to the making of any payment by Tenant to Landlord, shall be deemed to be complied with when and if the following steps are taken:

(a) All Rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the Landlord's address as set forth in Section 1(c), or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith.

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

003641-24-

(b) Any notice or document required to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Landlord at Landlord's address as set forth in Section 1(c) with a copy to: Marvin Lazar, 7241 North Cobblestone Road, Tucson, Arizona 85718, and to Tenant at Tenant's Address as set forth in Section 1(d) or personally delivered to Tenant at the Premises, with a copy to: Eugene T. Sherman, Sherman, Gray & Lloyd, 25 E. Washington Street, Suite 604, Chicago, Illinois 60602, or at such other address as the parties may direct in writing.

35. SEVERABILITY. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and 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 invalid or unenforceable, shall not be affected thereby.

36. NO MERGER. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises or any interest in such fee estate.

37. FORCE MAJEURE. Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, inclement weather, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other cause of any kind whatsoever which are beyond the control of Landlord.

38. GENDER. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

39. JOINT AND SEVERAL LIABILITY. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several.

40. NO REPRESENTATIONS. Neither Landlord nor Landlord's agents have made any representations or promises with respect to the Premises, the Building or the Land except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease.

41. BROKERS. Tenant warrants that it has had no dealings with any broker or agent (other than Landlord's

-88-445500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00014-93

broker) in connection with the negotiation or execution of this Lease, and Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any and all costs, expenses or liability for commissions or other compensation or charges claimed by any broker or agent (other than Landlord's broker).

42. REIMBURSEMENT. Wherever in this Lease Tenant is required to pay or reimburse Landlord for the cost of any item, such cost will be the reasonable and customary charge therefor established by Landlord from time to time. Such charge shall include Landlord's customary administrative charges for overhead, administrative and related costs associated with the ownership and operation of the Building. Failure to pay any such cost will be treated hereunder as a failure to pay Rent, and Landlord shall be entitled to all applicable rights and remedies.

43. BUSINESS DAYS, ETC. For the purposes of this Lease, business days means Monday through Saturday (except for holidays); normal business hours means 11:00 a.m. to 7:00 p.m. on Mondays through Saturdays and 11:00 a.m. to 5:00 p.m. on Sunday; and holidays means January 1, Memorial Day, July 4, Labor Day, Thanksgiving and December 25 and any other days which Landlord may set forth in a written notice to Tenant on or before January 1 of each year.

44. GUARANTOR. If there be a guarantor of Tenant's obligations hereunder, the obligations hereunder imposed upon Tenant shall be joint and several obligations of Tenant and such guarantor, however, Landlord must proceed against both any such guarantor and Tenant hereunder. Any such guarantor shall not be released from its guarantee for any reason whatsoever, including (without limitation) any amendment of this Lease, any forbearance by Landlord or waiver of any of Landlord's rights, the failure to give Tenant or such guarantor any notices, or the release of any party liable for the payment of Tenant's obligations hereunder.

45. NO OFFER. The submission of this Lease to Tenant shall not be construed as an offer, nor shall Tenant have any rights with respect thereto unless and until Landlord shall execute a copy of this Lease and deliver the same to Tenant.

46. COVENANT TO PAY RENT AND OTHER AMOUNTS. Tenant agrees to pay all Rent and other sums provided to be paid by Tenant hereunder at the times and in the manner herein provided. The obligation of Tenant to pay Rent is an independent covenant, and no act or circumstance whatsoever, whether such act or circumstance constitutes a breach of covenant by Landlord or not, shall release Tenant of the obligation to pay Rent or any other amount due and payable hereunder as and when the same becomes due. Any amount which becomes owing by Tenant to Landlord under this Lease shall bear interest at the lower of one percent over the prime rate announced by The First National Bank of Chicago or the maximum contractual rate of interest which could be charged legally by Landlord in the event of a loan of such Rent or other amount by Landlord to Tenant under the then applicable laws of the State of Illinois.

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000-00

47. TIME. Time is of the essence in the performance of all of Tenant's obligations hereunder.

48. APPROVAL OF PLANS. Any approval by Landlord or Landlord's architects and/or engineers of any of Tenant's drawings, plans and specifications which are prepared in connection with any construction of improvements in the Premises shall not in any way be construed or operate to bind Landlord or to constitute a representation or warranty of Landlord as to the adequacy or sufficiency of such drawings, plans and specifications, or the improvements to which they relate, for any use, purpose, or condition, but such approval shall merely be the consent of Landlord as may be required hereunder in connection with Tenant's construction of improvements in the Premises in accordance with such drawings, plans and specifications under the terms of this Lease.

49. ENTIRE AGREEMENT. This Lease sets forth the entire agreement between the parties and no amendment or modification of this Lease shall be binding or valid unless expressed in a writing executed by both parties hereto.

50. SECTION HEADINGS. The section headings contained in this Lease are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections hereof.

51. BINDING EFFECT. All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective heirs, personal representatives, successors and, to the extent assignment is permitted hereunder, their respective assigns.

52. SECURITY DEPOSIT. Tenant has deposited the security deposit with Landlord as security for the full and faithful performance by Tenant of Tenant's covenants and obligations hereunder. Such security deposit shall not bear interest and shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. In the event Tenant defaults in the performance of any of the covenants and obligations to be performed by it hereunder, including but not limited to the payment of all Rent to be paid hereunder, Landlord may, from time to time, without prejudice to any other remedy, use such security deposit to the extent necessary to make good any arrearages in Rent or any sum as to which Tenant is in default, and any other damage, injury, expense or liability caused to Landlord by such default, including any damages or deficiency in the reletting of the Premises, whether such damages or deficiency may accrue before or after termination of this Lease. Following any such application of the security deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount. If Tenant is not then in default hereunder, any remaining balance of the security deposit shall be returned by Landlord to Tenant upon termination of this Lease and after delivery of the entire possession of the Premises to Landlord in accordance with this Lease. If Landlord assigns its interest in the Premises during the Term of the Lease Landlord may assign the security deposit to the assignee and thereafter Landlord shall have no further liability for the return of such security deposit and Tenant agrees to look

88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

solely to the new landlord for the return of such security deposit. The provisions of the preceding sentence shall apply to every transfer or assignment made of the security deposit to a new landlord. Tenant agrees that it will not assign or encumber or attempt to assign or encumber the moneys deposited herein as security and that Landlord and its successors and assigns shall not be bound by any such actual or attempted assignment or encumbrance. Regardless of any assignment of this Lease by Tenant, Landlord may return the security deposit to the original Tenant, in the absence of evidence satisfactory to Landlord of an assignment of the right to receive such security deposit or any part of the balance thereof.

53. MERCHANT'S ASSOCIATION. (a) Tenant agrees to join, maintain membership in, and cooperate with any Merchant's Association, if and when established by Landlord, at any time such association exists. Nothing in the by-laws or regulations of the Merchant's Association shall be in conflict with the provisions of this Lease or any of the rules or regulations from time to time adopted by Landlord, and Tenant shall not consent, approve, or vote for any by-law, rule, or regulation of the Merchant's Association which would conflict with the provisions of this Lease or with any of the rules or regulations from time to time adopted by Landlord, and Tenant shall not consent, approve, or vote for any by-law, rule or regulation of the Merchant's Association which would conflict with the provisions of this Lease or with any of the rules or regulations from time to time adopted by Landlord. Tenant further agrees to join with other members of the Merchant's Association in any joint promotional sales campaign put on by the Merchant's Association or such other tenants for the good and welfare of all tenants, and to pay its just and proportionate share of such promotional expenses, based on the total leased area as allocated by the Merchant's Association, in addition to any dues payable as herein provided.

(b) Tenant agrees to promptly pay to Landlord upon demand all dues imposed by the Merchant's Association and Landlord shall turn over all such sums to the Association. In addition, Landlord may demand from time to time the payment of monthly sums which shall be due and payable on the first day of each calendar month during the Lease Term. The Promotional Sums paid by Tenant shall be expended for promotional and advertising activities by or under the direction of Landlord or by such persons, firm, corporation or association to whom Landlord may delegate such authority.

54. WORKLETTER. Landlord and Tenant agree to execute a Work Letter Agreement in the form set forth on Schedule IV attached hereto. The terms and conditions of such Work Letter Agreement are incorporated herein by this reference and made a part hereof.

55. BASEMENT SPACE. (a) Tenant agrees that approximately 3,600 square feet of the Premises shall be used solely as retail sales space (the "Retail Space") and that approximately 1,200 square feet of the Premises shall be used solely for storage of Tenant's HVAC unit and compressors (the "Basement Space").

(b) Provided that the Basement Space is used by Tenant solely for the purpose described in Subsection (a)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

82-412200

above and provided further that access to the Basement Space is limited to Tenant and employees of Tenant, then the Monthly Base Rent shall be calculated only upon the Retail Space.

(c) In the event Tenant uses the Basement Space for a purpose other than solely for storage or, more particularly, uses the Basement Space as a selling area permitting customers and patrons of the Tenant's business to enter the Basement Space, then the Monthly Base Rent shall be calculated upon the total square footage in both the Retail Space and Basement Space, at the rate then in effect for the Retail Space during the lease year in which the Basement Space is no longer used solely for storage purposes.

56. EXCLUSIVE USE. (a) Landlord consents that during the Term, or any extension thereof, it will not use, rent, lease or permit to be used in the Project any other premises as a Mexican restaurant.

(b) Tenant covenants that as long as Landlord is entitled to receive Percentage Rent or Excess Percentage Rent from Tenant, Tenant will not use, rent, or cause a restaurant to be operated within a six-block radius of the Project.

IN WITNESS WHEREOF, this Lease is hereby executed in multiple originals as of the day and year first above set forth.

LANDLORD:

DEARBORN STATION ASSOCIATES,
an Illinois general partnership,
as beneficiary of Trust

By: [Signature]
A/General Partner

TENANT:

LA MARGARITA AT DEARBORN STATION,
INC. an Illinois corporation

By: [Signature]
Its: _____

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00121-88

SCHEDULE 1DESCRIPTION OF LAND

THAT PART OF BLOCK 2 LYING NORTH OF A STRAIGHT LINE DRAWN PERPENDICULAR TO THE EAST LINE OF SAID BLOCK 2 AT A POINT WHICH IS 302.88 FEET (MEASURED ALONG SAID EAST LINE) SOUTH OF THE NORTHEAST CORNER THEREOF, IN DEARBORN PARK UNIT NUMBER 1, BEING A RESUBDIVISION OF SUNDRY LOTS AND VACATED STREETS AND ALLEYS IN AND ADJOINING BLOCKS 127 TO 134, BOTH INCLUSIVE, IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/01/10

SCHEDULE II

Rules and Regulations

1. Sidewalks, doorways, vestibules, halls, stairways and similar areas shall not be obstructed by tenants or their officers, agents, servants or employees, or used for any purpose other than ingress and egress to and from the Premises and for going from one part of the Building to another part of the Building.

2. Plumbing fixtures and appliances shall be used only for the purposes for which constructed, and no sweeping, rubbish, rags or other unsuitable material shall be thrown or placed therein. The cost of repairing any stoppage or damage resulting to any such fixtures or appliances from misuse on the part of a tenant or such tenant's officers, agents, servants, and employees shall be paid by such tenant.

3. No signs, posters, advertisements, or notices shall be painted or affixed on any of the windows or doors, or other part of the Building, except of such color, size and style and in such places, as shall be first approved in writing by the Building Manager. No nails, hooks or screws shall be driven into or inserted in any part of the Building, except by Building maintenance personnel.

4. Directories will be placed by the Landlord, at Landlord's own expense, in conspicuous place in the Building. No other directories shall be permitted.

5. Tenants shall not do anything, or permit anything to be done, in or about the Building, or bring or keep anything therein, that will in any way increase the possibility of fire or other casualty or obstruct or interfere with the rights of, or otherwise injure or annoy, other tenants, or do anything in conflict with the valid pertinent laws, rules or regulations of any governmental authority.

6. Landlord shall have the power to prescribe the weight and position of safes or other heavy equipment, which may overstress any portion of the floor. All damage done to the Building by the improper placing of heavy items which overstress the floor will be repaired at the sole expense of the tenant. If Landlord, in its sole discretion, determines that such safe or heavy equipment is too heavy, Landlord may prohibit or may require Tenant to pay for such structural modifications to the Building which Landlord, in its sole discretion, feels are necessary to support such weight.

7. A tenant shall notify the Building Manager when safes or other equipment are to be taken into or out of the Building. Moving of such items shall be done under the supervision of the Building Manager, after receiving written permission from him.

8. Corridor doors, when not in use, shall be kept closed.

9. All deliveries must be made during normal business hours in accordance with procedures from time to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000-0000

time promulgated by Landlord. Prior approval must be obtained from Landlord for any deliveries that must be received after normal business hours.

10. Each tenant shall cooperate with Building employees in keeping the premises neat and clean.

11. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds, animals or reptiles, or any other creatures, shall be brought into or kept in or about the Building.

12. Should a tenant require telegraphic, telephonic, annunciator or any other communication service, Landlord will direct the electricians and installers where and how the wires are to be introduced and placed, and none shall be introduced or placed except as Landlord shall direct.

13. Tenants shall not make or permit any unseemly, disturbing or improper noises in the Building, or otherwise interfere in any way with other tenants, or persons having business with them.

14. No equipment of any kind shall be operated on the Premises that could in any way annoy any other tenant in the Building without the prior written consent of Landlord.

15. Tenants shall not use or keep in the Building any inflammable or explosive fluid or substance, or any illuminating material, unless it is battery powered, UL approved.

16. Tenants, employees, or agents, or anyone else who desire to enter the Building after normal business hours will be required to sign in upon entry and sign out upon leaving, giving the location during their stay and their time of arrival and departure.

17. Landlord has the right to evacuate the Building in event of emergency or catastrophe.

18. All electrical fixtures hung in the Premises must be fluorescent and of a quality, type, design, bulb color, size and general appearance approved by Landlord.

19. No water cooler, air-conditioning unit or system or other apparatus shall be installed or used by Tenant without the prior written consent of Landlord.

20. Landlord reserves the right to rescind any of these rules and make such other and further rules and regulations as in the judgment of Landlord shall from time to time be needed for the safety, protection, care and cleanliness of the Building, the operation thereof, the preservation of good order therein, and the protection and comfort of its tenants, their agents, employees and invitees, which rules when made and notice thereof given to a tenant shall be binding upon him in like manner as if originally herein prescribed. In the event of any conflict, inconsistency, or other difference between the terms and provisions of these Rules and Regulations, as now or hereafter in effect and the terms and provisions of any Lease now or hereafter in effect between Landlord and any tenant in the Building, Landlord

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11-11-11

shall have the right to rely on the term or provision in either such Lease or such Rules and Regulations which is most restrictive on such tenant and most favorable to Landlord.

Property of Cook County Clerk's Office

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00121430

SCHEDULE III

<u>Lease Year</u>	<u>Base Rent Per Square Foot</u>	<u>Monthly Base Rent</u>
1	Abated	Abated
2	7% of Gross Sales	
3	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
4	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
5	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
6	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
7	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
8	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
9	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00
10	\$17.50 (or 7% of Gross Sales, whichever is greater)	\$5,250.00

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01011-23

UNOFFICIAL COPY

9 9 4 4 8 5 0 0

SCHEDULE IV

DEARBORN STATION

CHICAGO, ILLINOIS

DATE: March 4, 1988

WORK LETTER AGREEMENT

La Margarita at Dearborn Station, Inc.
868 North Wabash
Chicago, Illinois

Re: 4,800 leasable square feet, as shown
on Exhibit A of the Lease

Gentlemen:

You (hereinafter referred to as "Tenant") and we (hereinafter referred to as "Landlord") are executing, simultaneously with this Work Letter Agreement, a written lease ("Lease") covering the space referred to above (hereinafter called "Premises").

To induce Tenant to enter into such Lease (which is hereby incorporated by reference) and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant mutually agree as follows:

1. Prior to the commencement of any construction on the Premises by Tenant, Tenant agrees to furnish Landlord, at Tenant's sole cost and expense, the following:

(a) Complete, finished and detailed scale architectural drawings and specifications for Tenant's partition layout, reflected ceiling, telephone and electrical outlets, and complete building standard mechanical plans and specifications ("Tenant Plans and Specifications"); and

(b) All necessary permits and any other information Landlord may reasonably require from each and every contractor performing labor or furnishing materials; and

(c) Upon submission of an Application for Payment (as hereinafter defined), contractors statements, lien waivers.

All drawings, plans and specifications, including Tenant Plans and Specifications, are expressly subject to Landlord's prior written approval (which shall not be unreasonably withheld), whether prepared at Landlord's or Tenant's cost. Within twenty (20) days from the execution of the Lease, Tenant covenants and agrees to furnish to Landlord final copies of Tenant Plans and Specifications and approved by Landlord as aforesaid. Tenant covenants and agrees to

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

furnish Landlord with the items required in subparagraphs (b) and (c) above prior to the date any contractor performing work or furnishing materials shall begin or, as the case may be, brings said materials into the Building. Tenant agrees to build out the entire space in accordance with Tenant Plans and Specifications as approved by Landlord, including bringing all utilities, fresh air and exhaust air, and any other required services to the Premises from their base building locations. Tenant further agrees that all construction and improvements will be done in a timely and first-class manner. All work to be performed on the Premises may be done by a contractor chosen by Tenant, upon Landlord's prior written approval (such approval shall not be unreasonably withheld). In addition, (a) any contractor performing any work on the Premises, or delivering any material to the Premises, will have payment and performance bonds in place in form, substance, amount and with such companies satisfactory to Landlord and said bonds will contain a dual obligee rider containing coverage to Landlord, all at the sole cost and expense of Tenant, and (b) at Landlord's election, any and all payments to any contractor or subcontractor for any work done, or materials furnished to the Premises shall be made through an escrow established at Chicago Title and Trust Company ("CT&T") pursuant to an escrow agreement in form and substance satisfactory to Landlord, and Tenant agrees to provide CT&T with all documentation and other information necessary for CT&T to issue its dated endorsement free of any mechanics or other liens, including, but not limited to, all lien waivers, contractor's statements and any personal undertaking.

2. The Tenant shall maintain, at its own expense, the following insurance coverage, insuring the Tenant, its employees, agents, contractors, subcontractors, materialmen and anyone directly or indirectly employed by the Tenant, which insurance shall be issued by insurance companies rated at least A by Best's key rating guide in form acceptable to Landlord and shall incorporate a provision requiring giving of written notice to the Landlord at least thirty (30) days prior to the cancellation, nonrenewal or modification or amendment of any such policies, as evidence by return receipt of United States certified mail. The originals or certificates of the same shall be deposited with the Landlord. The obtaining of the following insurance policies shall not relieve the Tenant, or its agents or employees, of any obligations or liabilities it might otherwise have to the Landlord under this Lease;

(i) Comprehensive General Liability Insurance written on an occurrence basis, in form and amount satisfactory to Landlord.

(ii) Workman's Compensation Insurance, including occupational disease, as set forth in the Worker's Compensation Act, Illinois Revised Statutes, Chapter 48, Section 138.1 and 138.2, as amended, in form and amount satisfactory to Landlord.

The Tenant shall submit valid certificates in form and substance satisfactory to the Landlord evidencing the effectiveness of the foregoing insurance policies, along with the original copies of the amendatory riders to any policies to the Landlord for the Landlord's approval before the Tenant,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00221-00

or any contractor, subcontractor or materialman commences any work.

If the Tenant fails to furnish and maintain such insurance, the Landlord may purchase such insurance on behalf of the Tenant and the Tenant shall pay the costs thereof to the Landlord upon demand and shall furnish to Landlord any information needed to obtain such insurance that may arise from its operations connected with the Project.

If by the term of these required insurance policies, any deductibles are maintained, the Tenant shall be responsible for payment of such deductibles in the event of a paid claim.

3. To the fullest extent permitted by law, the Tenant shall defend, indemnify and hold harmless the Landlord and any other person or entity designated by Landlord and its respective agents, employees and designees (herein collectively referred to as the "Indemnities"), from and against all liabilities, obligations, damages, fines, costs, charges, judgments and expenses (including reasonable attorneys' fees and disbursements and other costs of defense), whether founded in tort or in contract, which may be imposed upon or incurred or paid by or asserted against the Indemnities, or any of them, or the Landlord's interest in the Project, by reason of or in connection with injury or damage sustained to any person or property arising out of or resulting from the performance of the work set forth in the Tenant Plans and Specifications, provided that any such claim, damage, loss or expense is caused in whole or in part by any act or omission of the Tenant, any contractor, subcontractor and materialman, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in the paragraph. Claims against which Tenant indemnifies the Indemnities shall be construed to include but not be limited to (a) injury or damage consequent upon the failure of or use or misuse by Tenant, its contractors, subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items or equipment including those covered in the Illinois Worker's Compensation Act whether or not the same be owned, furnished or loaned by the Landlord; (b) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in this Lease; and (c) time expended by the Indemnities at their usual rates plus costs of travel, long distance telephone and reproduction of documents.

4. Landlord agrees to contribute the sum of \$100,000.00 ("Landlord's Initial Contribution") in accordance with the provisions below, toward the cost of Tenant improvements to the Premises as set forth in Tenant Plans and Specifications ("Tenant Improvements"). Furthermore, if the total cost of the Tenant Improvements reaches \$425,000.00, Landlord agrees to contribute additional sums of money, up to a maximum of \$25,000, toward the cost of any further Tenant Improvements ("Landlord's Additional Contribution") (Landlord's Initial Contribution and Landlord's Additional Contribution are herein collectively known as "Landlord's Contribution"). On the 25th day of each month, or, if the

-88-448500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000011-1-1

UNOFFICIAL COPY

25th day of the month should fall on a weekend or holiday, then the business day immediately preceding or following said weekend or holiday, Tenant shall submit to Landlord and Chicago Title and Trust Company, as escrowee ("CT&T"), an itemized Application for Payment ("Application for Payment") for approval. The Application for Payment shall indicate:

(1) All contractors and subcontractors and suppliers, with the itemized costs detailed and substantiated as the Landlord may require, and copies of any and all contracts entered into with said contractors, subcontractors or suppliers.

(2) The total amount of each previous Application for Payment.

(3) The amount requested in the instant Application for Payment.

(4) The amount necessary to complete the work required in the Tenant Plans and Specifications.

The Tenant shall submit the Application for Payment signed and notarized. Each Application for Payment shall be accompanied by the Tenant's sworn statement listing the names of all persons furnishing materials and labor and the amounts due or to become due to each and by sworn statements from contractors, subcontractors and materialmen as CT&T or Landlord may require.

To receive payment, the Tenant and any contractors or suppliers must deliver to Landlord and CT&T all necessary waivers of lien supporting the dollar amount so requested in connection with the current Application for Payment, and evidence satisfactory to Landlord and CT&T that the bond or bonds required hereunder are in place. Tenant acknowledges that at least a portion of the Landlord's Contribution for Tenant Improvements will be disbursed through Landlord's construction loan for the Project, and Tenant agrees to furnish Landlord with any documentation which may be required to obtain dated title endorsements in connection with the construction loan. All such documentation shall be in form and substance satisfactory to CT&T and Landlord and comply with mechanic's lien laws of the State of Illinois. The Landlord or CT&T shall have no obligation to pay any Application for Payment at any time unless (1) Tenant is not in default under this Lease, and (2) the Tenant has submitted in satisfactory form and content all necessary waivers, affidavits and other documentation supporting each current Application for Payment as set forth herein and as may be otherwise required in this Lease. Each payment by Landlord shall not exceed ninety percent (90%) of the amount requested in each Application for Payment. Landlord may cease making payments whenever it becomes necessary to do so in order that ten percent (10%) of the maximum amount of Landlord's Contribution toward Tenant Improvements remains unpaid until the conditions set forth below for the final payment of such ten percent (10%) retention have been satisfied. Payment shall be made by Landlord or CT&T, directly to the general contractor.

Upon final completion of Tenant Improvements, as determined by Tenant's architect and evidenced by a certificate of final completion by Tenant's architect and delivered

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000001-000000