

**CITY OF RIVERSIDE COMMERCIAL LEASE AGREEMENT
MULTI-TENANT – MAGNOLIA CENTER**

DUNN ENTERPRISES, INC. doing business as ICE TOWN

This Commercial Lease Agreement (“Agreement”), dated _____, 2022 for reference purposes only, is made by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, as Lessor (hereafter referred to as “Landlord”), and **DUNN ENTERPRISES, INC.**, a California corporation doing business as (“DBA”) ICE TOWN, as Lessee (hereafter referred to as “Tenant” or “Lessee”). Landlord and Tenant are sometimes referred to in this Agreement individually as a “Party”, and collectively as “Parties.”

ARTICLE I

PREMISES; EFFECTIVE DATE; TERM; RENT; DEPOSIT; USE; EXTENSIONS

1.1 **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, in accordance with the terms and conditions of this Agreement, space within a building located in the Magnolia Place Shopping Center (“Shopping Center”) described as 10540 Magnolia Avenue, Suite “A”, Riverside, CA which space consists of approximately 52,145 square feet of Floor Area, as defined in Section 1.7, entitled “Floor Area – Definition”, and approximately located as shown by the shaded area and arrow on Exhibit “A” entitled “Lease Plan” (“Premises”).

1.2 **Effective Date.** This Agreement shall not become effective until it has been approved by the governing body of Landlord and executed by the Parties.

1.3 **Term.** The term of this Agreement shall commence on October 1, 2022, (“Commencement Date”) and shall continue for a period of ten (10) years (“Term”) and expire on September 30, 2032 (“Expiration Date”). Upon mutual written consent, Tenant has the option to renew the Lease for One (1) Five (5) year period.

1.3.1 **Termination of Prior Lease.** Tenant and Landlord entered into that certain Riverside Commercial Lease Agreement for the Premises dated December 10, 2014, as amended on February 13, 2017 (“Prior Lease”). Upon the Commencement Date of this Agreement, the Prior Lease shall terminate and the agreement between the parties for the Premises shall be controlled by the terms and conditions of this Agreement.

1.4 **Monthly Rent.** Tenant shall pay to Landlord, commencing on the Commencement Date, Twenty Eight Thousand Eight Hundred Six Dollars and Seven Cents (\$28,806.07) as Monthly Rent. Monthly Rent shall be paid in the manner specified in Section 3.1 of this Agreement, entitled “Payment of Rent”. In addition to the monthly rent the Tenant shall a monthly Common Area Maintenance (“CAM”) fee of Two Thousand Three Hundred Seventy Three Dollars and Fifty Two Cents (\$2,373.52).

Beginning with the payment due on October 1, 2023, and annually thereafter the Monthly Rent shall be increased by one and one half percent (1.5%).

1.4.1 Repayment of Prior Rent Owed. As of October 1, 2022, Tenant owes to Landlord the amount of Eight Hundred Thirty Eight Thousand Seven Hundred Thirty One Dollars and Forty Two Cents (\$838,731.42) as past due monthly rental ("Prior Rent") under the Prior Lease between the parties. In addition to all other amounts owed under this Agreement and to satisfy the Prior Rent, Tenant shall pay a monthly installment of Six Thousand Nine Hundred Eighty Nine Dollars and Forty Three Cents (\$6,989.43) for a period of ten (10) years or until the balance of Prior Rent is satisfied. The outstanding balance of Prior Rent shall become immediately payable and due upon the expiration or early termination of this Agreement, or the bankruptcy or insolvency of Tenant.

Any assignment of this Lease, via sale of the business on the Premises or otherwise, by Tenant shall be in accordance with Article IX, Assignments, Subletting, Processing, hereof. Any assignee of this Lease shall accept and assume all of the Lease terms and conditions, including repayment of Prior Rent as provided in this section.

1.5 Security Deposit. As an existing Tenant, Tenant has already provided a security deposit to Landlord and no additional Security Deposit is required ("Deposit"). The Deposit shall be subject to the terms and conditions contained in Section 3.3 of this Agreement.

1.6 Permitted Use. Tenant agrees to use the Premises for the following purpose(s), and for no other purpose: Ice sports center.

1.7 "Floor Area" - Definition. The term "Floor Area" is defined as all areas for the exclusive use and occupancy by Tenant, measured from the exterior surface of the exterior walls (and from the extensions thereof, in case of openings) and from the center of the interior demising partitions, and shall include, but not be limited to office, clerical, employee, storage, warehouse, and restroom areas.

ARTICLE II

CONDITION OF PREMISES; DELIVERY OF PREMISES; COMMON FACILITIES

2.1 Condition of Premises. Tenant has examined the Premises and agrees to take possession of the Premises in an "as is" condition. Tenant acknowledges and agrees that Landlord, including its authorized agents, representatives and employees, has not made any representations, guarantees or warranties regarding the Premises, nor has Landlord, its agents, representatives, or employees made any representations, guarantees or warranties regarding whether the Premises and improvements thereon comply with applicable covenants and restrictions of record, building codes, ordinances or statutes in effect at the Commencement Date.

2.2 Delivery of Premises. Landlord agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Tenant by the Commencement Date of this Agreement, as specified in Section 1.3. If, despite said efforts, Landlord is unable to deliver possession as agreed, Landlord shall not be subject to any liability therefore, nor shall such failure affect the validity of

this Agreement. Landlord shall not, however, be obligated to pay rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within thirty (30) calendar days after the Commencement Date, Tenant may, by notice in writing after the end of such thirty (30) calendar day period, cancel this Agreement and the Parties shall be discharged from all obligations hereunder.

2.3 Landlord Access. Landlord, and its authorized agents, representatives, and employees, may enter the Premises at any time in case of emergency, and otherwise at reasonable hours to: (i) inspect the Premises; (ii) exhibit the Premises to prospective purchasers, lenders, insurer or tenants; (iii) determine whether Tenant is complying with all its obligations hereunder; (iv) take possession due to any breach of this Agreement in the manner provided herein; (v) perform any covenants of Tenant which Tenant fails to perform; and (vi) repair, alter or improve the Premises or any portion of the Premises, and may for such purposes erect, use and maintain scaffolding, pipes, conduits and other structures in and through the Premises where reasonably required by the nature of the work to be performed; provided, however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference with the operation of Tenant's business as reasonably possible. There shall be no abatement of any Rent by reason of Landlord's entry of the Premises pursuant to this Section 2.3 and Tenant hereby waives any claim for damages, including but not limited to interference with business, lost profits, and any other incidental or consequential damages of any sort whatsoever, for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, or about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance); and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. No provision of this Agreement shall be construed as obligating Landlord to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Landlord in this Agreement.

2.4 Vehicle Parking. Tenant shall not use and shall not permit its employees to use any parking spaces in the Shopping Center except for parking by vehicles that are not larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Tenant shall permit its employees to only occupy those parking spaces, if any, as depicted as employee parking spaces on the Shopping Center site plan. Landlord may regulate the loading and unloading of vehicles by adopting rules and regulations, as provided in Section 2.5. No vehicles other than Permitted Size Vehicles may be parked in the Common Facilities without the prior written permission of Landlord. In addition:

A. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities.

B. Tenant shall not service or store any vehicles in the Common Facilities.

C. If Tenant permits or allows any of the prohibited activities described in this Section 2.4, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

2.5 Common Facilities.

A. During the term of this Lease Landlord grants to Tenant for the customers, patrons, suppliers, employees, and invitees of Tenant, a non-exclusive license to use parking areas in the Shopping Center for the use of parking motor vehicles during the term of this Lease, and to use the balance of the Common Facilities for the purposes intended, subject to all rights reserved to Landlord under this Agreement. For purposes of this Agreement, "Common Facilities" shall mean all those portions of the Shopping Center from time to time provided or designated by Landlord for the common and joint use and benefit of the occupants of the Shopping Center, including, but not limited to, parking areas, access roads, driveways, retaining walls, landscaped areas, truck service ways, loading docks or loading areas, trash areas, pedestrian malls, courts, stairs, ramps and sidewalks, comfort and first aid stations, lavatories and washrooms, but excluding any such areas designated by Landlord, in Landlord's sole discretion, for the exclusive use of any particular tenant. Landlord reserves the right at any time and from time to time to grant similar non-exclusive licenses to use the Common Facilities to other tenants and occupants of the Shopping Center; to promulgate rules and regulations relating to the use of the Common Facilities or any part thereof in addition to the General Rules and Regulations attached hereto as Exhibit B, including reasonable rules and restrictions on parking by Tenants and employees of Tenants to the end that parking will be adequate for customers of stores in the Shopping Center; to designate specific parking spaces for the use of any tenant, to make changes in ingress, egress and parking layout from time to time; to add additional property to the Common Facilities; to withdraw property from parking use, provided adequate customer parking is nonetheless maintained; to withdraw property from any other portion of the Common Facilities, to establish reasonable time limits upon customer parking; to close all or any portion of the parking areas or of any other portion of the Common Facilities to such extent as may, in the sole opinion of Landlord or Landlord's counsel, be legally sufficient to prevent a dedication thereof or accrual of any right therein to any person or to the public; to close temporarily all or any portion of the parking areas or the balance of the Common Facilities; and to do and perform any other acts in and to said areas and improvements as Landlord determines to be advisable.

B. Tenant shall pay to Landlord, as additional Rent, a proportion of the Operating Costs (as hereinafter defined) of the Common Facilities, as defined in Section 1.4 of this agreement.

ARTICLE III PAYMENT OF MONTHLY RENT; SECURITY DEPOSIT; LATE CHARGES

3.1 **Payment of Rent.** Monthly Rent shall be paid in advance on or before the first calendar day of each month during the Term. If the Term commences on a calendar day other than that first calendar day of the month or ends on a calendar day other than that last calendar day of a calendar

month, then Monthly Rent will be appropriately prorated by Landlord based on the actual number of calendar days in such month. If the Term commences on a calendar day other than the first calendar day of a calendar month, then the prorated Monthly Rent for such month shall be paid on or before the first calendar day of the Term. Monthly Rent shall be paid to Landlord without written notice or demand, and without offset, in lawful money of the United States of America at Landlord's address, or to such other address as Landlord may from time to time designate in writing.

3.2 Intentionally omitted.

3.3 **Security Deposit.** If Tenant defaults with respect to any provision of this Agreement, including but not limited to the provisions related to the payment of Monthly Rent, Landlord may use, apply or retain all or any part of the Deposit for the payment of rent, any other sum in default, or for the payment of any other amount Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage Landlord may suffer by reason of Tenant's default. If any portion of the Deposit is so used, applied or retained, Tenant shall with five (5) calendar days after written demand deposit cash with the Landlord in an amount sufficient to restore the Deposit to its original amount. Landlord shall not be required to keep the Deposit separate from its general funds, and Tenant shall not be entitled to any interest earned on the Deposit. The Deposit shall not be deemed a limitation on Landlord's damages or a payment of liquidated damages or a payment of rent due for the last month of the Term.

A. Tenant specifically waives the provisions of California Civil Code Section 1950 which provides that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to claim the Premises. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omissions of Tenant or Tenant's officers, agents, employees, independent contractors, or otherwise.

B. If Tenant faithfully, and timely performs every provision of this Agreement to be performed by it, the Deposit or balance of the Deposit shall be returned to Tenant within sixty (60) calendar days after the expiration of the Term. Landlord may deliver the funds deposited under this Agreement by Tenant to the purchaser of the Premises in the event that the Premises is sold, and after such time, Landlord shall have no further liability to Tenant with respect to the Deposit.

3.4 **Late Charges.** Intentionally omitted.

ARTICLE IV USE; COMPLIANCE WITH LAWS; NON-DISCRIMINATION

4.1 **Use.** The Premises shall be used only for the purposes set forth in Section 1.6, and purposes incidental to that use and in accordance with the General Rules and Regulations attached hereto as Exhibit "B." Tenant shall use the Premises in a careful, safe and proper manner and shall not use the Premises for any disreputable business or purpose. Tenant shall not use or permit the Premises to be used or occupied for any purpose or in any manner prohibited by any applicable law,

ordinance order, rule, regulation or other governmental requirement. Tenant shall not commit waste or suffer or permit waste to be committed in, on or about the Premises. Tenant shall conduct its business and control its employees, agents and invitees in such a manner so as not to create a nuisance or a risk of fire or other hazard, or that would violate, suspend, void or increase the rate of fire or liability or any other insurance of any kind at any time carried by Landlord upon the Premises.

4.2 **Signs.** Any signs to be installed by Tenant shall be subject to the prior written approval of Landlord and shall be installed by a sign contractor approved by Landlord. All required permits for signs shall only be obtained by the approved sign contractor who shall also be responsible for compliance with all applicable codes. Tenant shall be responsible for payment of all sign costs including installation costs, permits and costs to repair the Premises resulting from the installation or removal of such sign.

4.3 **Compliance with Laws.** Tenant shall comply with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises and the Common Facilities. The judgment of any court of competent jurisdiction, or the admission of Tenant in a proceeding brought against it by any governmental entity, that Tenant has violated any such governmental requirement shall be conclusive as between the Landlord and the Tenant and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by Landlord.

4.4 **Compliance with Environmental Laws.** Tenant and the Premises shall remain in compliance with all applicable laws, ordinances, orders, rules and regulations regulating, relating to, or imposing liability of standards of conduct concerning any Hazardous Materials, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Premises, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C Section 25288 et seq.]; the California Hazardous Substances Account Act [H & S C Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state or local law, ordinance, order, rule or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under or about the Premises, or the regulation or protection of the

environment, including ambient air, soil, soil vapor, groundwater, surface water or land use (“Environmental Laws”).

A. Tenant shall immediately notify Landlord in writing and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Premises or compliance with Environmental Laws. Tenant shall promptly cure and have dismissed with prejudice and of those actions and proceedings to the satisfaction of Landlord. Tenant shall keep the Premises free of any lien imposed pursuant to and Environmental Law.

B. For the purpose of Section 4.4, the term “Hazardous Materials” shall include, without limitation, substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” “hazardous wastes,” “extremely hazardous wastes,” or “restricted hazardous wastes,” or stated to be known to cause cancer or reproductive toxicity, under any Environmental Law. Tenant shall not permit to occur any release, generation, manufacture, storage, treatment, transportation or disposal of any Hazardous Materials. Tenant shall promptly notify Landlord in writing if Tenant has or acquires notice or knowledge that any Hazardous Materials have been or are threatened to be released, discharged, disposed of, transported, or stored on, in, under or from the Premises; and if any Hazardous Materials are found on the Premises, Tenant, at its sole cost and expense, shall immediately take such action as is necessary to detain the spread of and remove the Hazardous Material to the complete satisfaction of Landlord and the appropriate governmental authorities.

C. Landlord shall, at Landlord’s sole cost and expense, have the right at all reasonable times and from time to time to conduct environmental audits of the Premises, and Tenant shall cooperate in the conduct of those audits.

D. If Tenant fails to comply with the forgoing covenants pertaining to Hazardous Materials, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any Hazardous Materials from the Premises. The costs of Hazardous Materials removal and any other cleanup (including transportation and storage costs) will be additional rent under this Agreement, whether or not a court has ordered the cleanup, and those costs will become due and payable on demand by the Landlord. Tenant shall give Landlord, its agents and employees access to the Premises to remove or otherwise cleanup any Hazardous materials. Landlord, however, has no affirmative obligation to remove or otherwise cleanup any Hazardous Materials, and this Agreement shall not be construed as creating any such obligation.

E. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord and at Tenant’s sole cost), and hold Landlord and Landlord’s elected and appointed officials, officers, employees, agents, successors and assigns free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys’ and experts’ fees and expenses and fees and expenses incurred in investigating, defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord in connection or arising out of: (i) any Hazardous Material on, in, under or affecting all or any portion of the Premises, (ii)

any violation or claim of violation of any Environmental Law by Tenant; or (iii) the imposition of any lien for the recovery of costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on, in, under or affecting all or any portion of the Premises. Tenant's indemnification shall survive the expiration and termination of this Agreement.

4.5 Non-Discrimination. Tenant herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, genetic information, gender, gender identity, gender expression, marital status, age, national origin, ancestry, veteran or military status, in the leasing, use, occupancy, tenure, or enjoyment of the Premises, nor shall the Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of Tenants, Tenants, Sub-tenants, or vendees in the Premises herein leased.

ARTICLE V TAXES AND UTILITIES

5.1 Possessory Interest Tax/Property Taxes. Tenant recognizes and understands that this Agreement may create a possessory interest subject to taxation and that Tenant may be subject to the payment of taxes levied on such interest. Tenant shall pay all taxes including without limitation any possessory interest, real estate and personal property taxes and assessments assessed, levied, confirmed or imposed during the Term of this Agreement, whether or not now customary or within the contemplation of Landlord and Tenant: (i) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or by the cost or value of the leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to the improvements is in Tenant or Landlord; (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Premises; (iii) upon the Premises and all personal property, furniture, fixtures and equipment, and all replacements, improvements, or additions to them, whether owned by Landlord or Tenant; and (iv) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

5.2 Utilities. Tenant shall pay the appropriate suppliers for all water, gas, power, electricity, light, heat, telephone, facsimile, internet, and other utilities and communications services used by Tenant on the Premises during the Term, including the taxes thereon, whether or not the services are billed directly to Tenant. Tenant shall procure, or cause to be procured, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any of the services to and upon the Premises. Landlord, upon request of Tenant, shall at the sole expense and liability of Tenant, join with Tenant in any application required for obtaining and continuing any of the services.

ARTICLE VI
INSURANCE; INDEMNIFICATION; WAIVER AND RELEASE

6.1 **Minimum Insurance Requirements.** At all times during the Term and during any other time in which Tenant occupies the Premises, Tenant, at its sole cost and expense, shall procure, pay for and maintain the following types of insurance with the following coverages:

A. **Commercial General Liability.** Tenant shall, at Tenant's sole expense, obtain and maintain during the Term: (i) a policy of commercial general liability insurance, including contractual liability insurance, for bodily injury, property damage and personal/advertising liabilities arising out of the use or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount satisfactory to Landlord and of not less than One Million Dollars (\$1,000,000) per occurrence and a Two Million Dollar (\$2,000,000) annual aggregate for all claims.

B. **Tenant's Property and Business Interruption Insurance.** Tenant shall, at Tenant's sole expense, obtain and maintain during the Term, insurance coverage for (i) Tenant's personal property, inventory, alterations, fixtures and equipment located on the Premises, for the full replacement value thereof without deduction for depreciation, and with a deductible not to exceed Five Thousand Dollars (\$5,000.00) per occurrence. The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the personal property, inventory, alterations, fixtures and equipment so insured; and for (ii) loss of income and extra expense in such amounts as will reimburse Tenant for direct and indirect loss of earnings attributable to all perils commonly insured against by prudent Tenants.

6.2 **Delivery of Evidence of Tenant's Insurance.** Each such insurance policy or certificate thereof shall be delivered to Landlord by Tenant on or before the effective date of such policy and thereafter Tenant shall deliver to Landlord renewal policies or certificates at least thirty (30) calendar days prior to the expiration dates of the expiring policies. In the event that Tenant shall fail to insure or shall fail to furnish Landlord the evidence of such insurance as required by Section 6.3, Landlord may from time to time acquire (without any obligation to do so) such insurance for the benefit of Tenant or Landlord or both of them for a period not exceeding one (1) year, and any premium paid by Landlord shall be recoverable from Tenant as additional rent on demand. Tenant's compliance with the provisions of Article VI shall in no way limit Tenant's liability under any of the other provisions of this Agreement. Landlord may at any time, and from time to time, inspect and/or copy any and all insurance policies required by this Agreement.

6.3 **Other Insurance Requirements.** The insurance to be acquired and maintained by Tenant shall be with companies admitted to do business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher. Tenant shall deliver to Landlord, prior to taking possession of the Premises, a certificate of insurance evidencing the existence of the policies required hereunder, and such certificate shall certify that the policy:

A. Names Landlord and any other entities designated by Landlord as additional insureds under the Commercial General Liability policy;

B. Shall not be canceled or altered without thirty (30) calendar days prior written notice to Landlord;

C. Insures performance of Tenant's indemnity set forth in this Agreement;

D. Provide that no act or omissions of Tenant shall affect or limit the obligations of the insurer with respect to other insureds or including Landlord;

E. Include all waiver of subrogation rights endorsements necessary to effect the provisions below; and

F. Provide that the commercial general liability policy and the coverage provided shall be primary, that Landlord although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord by reasons of acts or omissions of Tenant, and that coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant.

6.4 Mutual Waiver of Subrogation. The Parties hereto release each other and their respective authorized employees, agents and representatives, from any and all claims, demands, loss, expense or injury to any person, or to the Premise or to personal property, including, but not limited to, furnishings, fixtures or equipment located therein, caused by or resulting from perils, events or happenings which are the subject of insurance in force at the time of such loss. Each Party shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither Party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy in effect as required by this Agreement.

6.5 No Ownership. Nothing contained in Article VI shall be construed as creating or implying the existence of: (i) any ownership by Tenant of any fixtures, additions, alterations, or improvements in or to the Premises, or (ii) any right on Tenant's part to make any addition, alteration or improvement in or to the Premises.

6.6 Indemnity. Tenant agrees, except as to the sole negligence or willful misconduct of Landlord, to fully indemnify, defend, and hold Landlord, its elected and appointed officials, officers, employees, agents, successors and assigns, free and harmless from any and all claims, liability, loss, damage, costs, or expenses, including attorney fees, resulting from Tenant's occupation or use of the Premises, specifically including, without limitation, any claim of liability, loss or damage arising by reason of:

A. The death or injury of any person or persons, including Tenant or any person who is an employee, agent, guest, or customer of Tenant, or by reason of the damage or destruction of any property, including property owned by Tenant or any person who is an employee, agent, guest, or customer of Tenant, and caused or allegedly caused by either the condition of the Premises, or some act or omission of Tenant or of some agent, contractor, employee, servant, guest, or customer of Tenant on the Premises;

B. Any work performed on the Premises or materials furnished to the Premises at the instruction or request of Tenant; and

C. Tenant's failure to perform any provision of this Agreement, or to comply with any requirement of local, state or federal law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

6.7 Waiver and Release. Tenant waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Agreement. In addition, Tenant agrees that Landlord, its elected and appointed officials, employees, agents, successors and assigns shall not be liable for any loss, injury, death or damage (including consequential damages) to persons, property, or Tenant's business occasioned by theft; act of God; public enemy; injunction; riot; strike; insurrection; war; terrorism; court order; order of governmental body or authority; earthquake; fire; explosion; falling objects; water; rain; snow; leak or flow of water, or by dampness or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or light fixtures; or from construction, repair, or alteration of the Premises; or from any acts or omissions of any visitor of the Premises; or from any cause beyond Landlord's control.

ARTICLE VII REPAIRS AND MAINTENANCE; ALTERATIONS

7.1 Repairs and Maintenance Tenant Obligations. Tenant shall, at its sole cost and expense, maintain the Premises in good order, condition and repair, and make repairs, restorations and replacements to the Premises, including without limitation the heating, ventilation, air conditioning, mechanical, electrical, lighting, plumbing systems, structural roof, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, and the fixtures and appurtenances to the Premises as and when needed to preserve them in good working order and condition regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its employees, agents, invitees, visitors or contractors. All repairs, restorations, and replacements shall be in quality and class equal to the original work or installations. If Tenant fails to make repairs, restorations or replacements, Landlord may make them at the expense of Tenant and the expense shall be collected as additional rent to be paid by Tenant within fifteen (15) calendar days after delivery of a statement for the expense.

7.2 Alterations. Tenant shall not make any alterations, improvements or additions in, on or about any of the Premises, without first obtaining Landlord's prior written consent. However, Landlord's prior written consent will not be necessary for any alteration, improvement, or addition which costs less than Five Thousand Dollars (\$5,000) including labor and material.

A. All alterations, improvements or additions in, on or about the Premises, whether temporary or permanent in character, shall immediately become Landlord's property and at the expiration of the Term of this Agreement shall remain on the Premises without compensation to Tenant.

B. By notice given to Tenant no less than ninety (90) calendar days prior to the expiration of the Term of this Agreement, Landlord may require that any alterations, improvements, or additions in, on or about the Premises be removed by Tenant. In that event, Tenant shall remove the alterations, improvements or additions at Tenant's sole cost and expense and shall restore the Premises to the condition in which the Premises was before the alterations, improvements and additions were made, reasonable wear and tear accepted.

7.3 **Mechanic's Liens.** Tenant shall pay or cause to be paid all costs and charges for: (i) work done by Tenant or caused to be done by Tenant, in or to the Premises, and (ii) all materials furnished for or in connection with such work. Tenant shall indemnify the Landlord against and hold the Landlord and the Premises, free, clear and harmless of and from any liens or claims of liens arising out of any work performed, materials furnished or obligations incurred by the Tenant, and Tenant shall be responsible for the removal of any such liens and all costs to remove same. Failure to remove any such liens within thirty (30) calendar days of written request by Landlord shall constitute a default of this Agreement. At its election, but without having any obligation to do so, the Landlord may pay such liens not so removed by the Tenant and the any amount expended by Landlord shall be collected as additional rent to be paid by Tenant within fifteen (15) calendar days after delivery of a statement for the expense.

7.4 **Landlord Obligations.** Landlord shall keep in good order, condition and repair the Common Facilities, foundation, exterior walls, structural condition of interior load bearing walls, exterior roof, fire sprinkler system, fire hydrants, parking lots, walkways, sidewalks, landscaping, utility system and other Common Facilities, and the costs thereof shall be considered Common Facilities Operating Costs to be paid by Tenant pursuant to Section 2.5. Landlord shall not be obligated to paint the interior walls, nor shall Landlord be obligated to maintain, repair, or replace any windows, doors or plate glass of the Premises.

ARTICLE VIII DAMAGE AND DESTRUCTION; CONDEMNATION

8.1. **Damage or Destruction of Premises.** Unless as the result of negligence or intentional unlawful act of Tenant, if during the term of this Agreement, any portion of the Premises shall be damaged by fire or other catastrophic cause, so as to render such portion of the Premises untenable, the obligations under this Agreement may be suspended while such portion of the Premises remains untenable. In the event of such damage, Tenant shall give Landlord notice of such untenable conditions and the Landlord shall elect in its sole discretion, whether to repair the Premises or to cancel this Agreement with respect thereto. It shall notify Tenant in writing of its election within thirty (30) calendar days after service of notice by Tenant. In the event that Landlord elects not to repair the Premises or portion thereof, this Agreement shall be deemed canceled as of the date the damage occurred with respect to the applicable portion(s).

8.2 **Condemnation.** If all or any part of the Premises shall be condemned or taken as a result of the exercise of the power of eminent domain, including any conveyance or assignment in lieu of any condemnation or taking, this Agreement shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Agreement as to the balance of the Premises by notice to the other within thirty (30)

calendar days after the date of such taking; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature as substantially to handicap, impede or impair Tenant's use of the balance of the Premises. In any event, Landlord shall be entitled to any and all compensation, damages, income, rent, awards and any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the bonus value of any unexpired Term of this Agreement or otherwise; provided, however, that nothing herein shall prevent Tenant from pursuing a separate award against the taking entity, specifically for its relocation expenses or for the taking of any personal property or trade fixtures belonging to Tenant, so long as such separate award to Tenant does not diminish any award otherwise due Landlord as a result of such condemnation or taking. In the event of a partial taking of the Premises which does not result in a termination of this Agreement, the monthly rent thereafter to be paid shall be reduced in proportion to the portion of the Premises taken.

A. For purposes of Section 8.2, the date of taking shall be the date upon which the condemning authority takes possession of any part of the Premise or the date upon which Tenant is required by the condemning authority to commence vacating the Premises, whichever is earlier.

B. Notwithstanding anything to the contrary contained in Section 8.2, if the Premises or any part thereof shall be taken under power of eminent domain on a temporary basis, this Agreement shall be and remain unaffected by such taking and Tenant shall continue to pay in full all monthly rent payable hereunder, provided that Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the Term of this Agreement, and Landlord shall be entitled to receive that portion of any award which represents the cost restoration of the Premises and the use and occupancy of the Premises after the end of the Term of this Agreement.

C. Tenant hereby waives and releases any right to terminate this Agreement under California Code of Civil Procedure Sections 1265.120 and 1265.130, or under any similar law, statute or ordinance now or hereafter in effect.

ARTICLE IX ASSIGNMENT; SUBLETTING; PROCESSING

9.1 **Assignment and Subletting.** Tenant shall not assign, mortgage, pledge, encumber, or hypothecate this Agreement or any interest herein (directly, indirectly, voluntarily or involuntarily, by operation of law, or otherwise) or sublet the Premises or any part thereof, or permit the use of the Premises by anyone other than Tenant without the prior written consent of Landlord first being obtained. If Tenant is a corporation, a limited liability company or a partnership, the transfer (as a consequence of a single transaction or any number of separate transactions) of fifty percent (50%) or more of the beneficial ownership interest of the voting stock of Tenant issued and outstanding as of the date hereof, the membership interests in Tenant or the partnership interests in Tenant, as the case may be, shall constitute an assignment hereunder for which such consent is required. Further, Tenant shall not assign this Agreement or sublet the Premises or any portion thereof to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from merger or consolidation with Tenant, or to any person or entity

which acquires all the assets as a going concern of the business of Tenant that is being conducted on the Premises, without the prior written consent of Landlord. Any of the foregoing acts without such consent shall be void and, at the sole option of Landlord, constitute an Event of Default entitling Landlord to terminate this Agreement and to exercise all other remedies available to Landlord under this Agreement and at law.

A. In the event that Tenant should desire to sublet the Premises or any part thereof, or assign this Agreement, Tenant shall provide Landlord with written notice of such desire at least sixty (60) calendar days in advance of the proposed effective date of such subletting or assignment. Such notice shall include: (i) the name of the proposed subtenant or assignee; (ii) the nature of business to be conducted by the proposed subtenant or assignee in the Premises; (iii) the terms and conditions of the proposed assignment or sublease including but not limited to a detailed description of all compensation in cash or otherwise which Tenant would be entitled to receive in connection with such assignment or sublease; and (iv) the most recent financial statements or other financial information concerning the proposed subtenant or assignee as Landlord may require. At any time within thirty (30) calendar days following receipt of Tenant's notice, Landlord may by written notice to Tenant elect to: (i) terminate this Agreement as to the space affected by the proposed subletting or assignment, as of the effective date of the proposed subletting or assignment; (ii) consent to the proposed subletting of the Premises or assignment of this Agreement; or (iii) disapprove of the proposed subletting or assignment. Landlord may elect to terminate this Agreement as to the space affected by the proposed assign or subletting in its sole and absolute discretion. If Landlord does not elect to terminate this Agreement, however, Landlord shall not unreasonably withhold its consent to a proposed subletting or assignment.

B. Subject to obtaining Landlord's consent in accordance with the requirements of Section 9.1, in order for any assignment or sublease to be binding on Landlord, Tenant must deliver to Landlord, promptly after execution thereof, an executed copy of such sublease or assignment whereby the subtenant or assignee shall expressly assume all obligations of Tenant under this Agreement as to the portion of the Premises subject to such assignment or sublease. Any purported sublease or assignment will be of no legal force or effect unless and until the proposed sublease has been consented to, in writing, by Landlord and a fully executed copy thereof has been received by Landlord.

C. Regardless of Landlord's consent, no subletting or assignment shall release Tenant or any guarantor of Tenant, of its or their obligations, or alter the primary liability of Tenant and its guarantor(s), if any, to pay rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of payments by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent or further assignment, subletting, hypothecation or third party use or occupancy. In the event of default by any assignee or successor of Tenant in the performance of any of the terms of this Agreement, Landlord may proceed directly against Tenant and/or its guarantor(s), if any, without the necessity of exhausting remedies against said assignee or successor. Landlord may consent to subsequent assignments or subletting of this Agreement or amendments or modifications to this Agreement with assignees of Tenant, without notifying Tenant and/or its guarantor(s), if any, or any successor of Tenant, and without obtaining its or their

consent thereto and such action shall not relieve Tenant and/or its guarantor(s), if any, or any successor of Tenant of liability under this Agreement.

D. Landlord shall have the unconditional right to sell, encumber, pledge, convey, transfer, and/or assign any and all of its rights and obligations under the Agreement without the consent of or notice to Tenant or any guarantor(s) of Tenant's obligations hereunder.

9.2 **Processing Fee.** Tenant agrees to pay Landlord an administrative fee of \$1,000.00 and an additional amount for reasonable attorney's fees incurred in conjunction with the processing and document review of any requested transfer, assignment, subletting, license, or concession agreement, change of ownership, mortgage or hypothecation of the Agreement or Tenant's interest in and to the Premises.

ARTICLE X HOLDING OVER; SALE OF PREMISES

10.1 **No Right to Holdover.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Agreement. If, without objection by Landlord, Tenant holds possession of the Premises after expiration of the Term, Tenant shall become a Tenant from month-to-month upon the terms herein specified, except that the monthly rent shall equal to one hundred and fifty percent (150%) of the monthly rent payable by Tenant at the expiration of the Term. In addition, Tenant shall continue to pay all other amounts due to Landlord hereunder. Each Party shall give the other notice at least one (1) month prior to the date of termination of such monthly tenancy of its intention to terminate such tenancy. If, after objection by Landlord thereto, Tenant holds possession of the Premises after expiration of the Term, Tenant shall constitute a Tenant at sufferance and without in any way waiving the wrongful holding over of the Premises by Tenant, Landlord shall be entitled to receive for each month or portion thereof during which Tenant wrongfully holds over at the Premises monthly rent equal to two hundred percent (200%) of the monthly rent payable by Tenant at the expiration of the Term together with all other amounts otherwise due to Landlord hereunder. Landlord's receipt of increased monthly rent under this Section 10.1 shall not constitute an extension of the Term nor shall it constitute a waiver of Tenant's wrongful holding over and shall not prejudice any other rights or remedies available to Landlord under this Agreement or by law.

10.2 **Sale of Premises.** In the event Landlord, or any successor owner of the Premises, shall sell or convey the Premises, all liabilities and obligations on the part of the Landlord, or such successor owner, under this Agreement, accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner.

ARTICLE XI SUBORDINATION; ESTOPPEL CERTIFICATES

11.1 **Subordination.** This Agreement and the rights of Tenant hereunder are subject and subordinate to any ground or underlying lease and the lien of the holder of or beneficiary under a mortgage or deed of trust which now or in the future encumbers the Premises and to any and all advances made thereunder, and interest thereon, and all modifications, renewals, supplements,

consolidations and replacements thereof. Tenant agrees that any ground or underlying Landlord or lender may at its option, unilaterally elect to subordinate in whole or in part, such ground or underlying lease or the lien of such mortgage or deed or trust to this Agreement. Such subordination or priority of this Agreement, as the case may be, shall be effective without the necessity of executing any further instrument or agreement to effect such subordination or priority; provided, however, that Tenant agrees to execute, acknowledge and deliver to Landlord upon demand any and all instruments required by Landlord or any such ground or underlying Landlord or lender evidencing the subordination or priority of this Agreement, as the case may be. Tenant hereby irrevocably appoints Landlord as its agent and attorney-in-fact to execute, acknowledge and deliver any such instruments in the name of and on behalf of Tenant if Tenant fails to so execute, acknowledge and deliver such instruments within ten (10) calendar days after written request therefore.

11.2 Estoppel Certificates. At any time and from time to time, Tenant shall execute, acknowledge and deliver to Landlord, within five (5) calendar days after request by Landlord, a certificate certifying, among other things: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (ii) the date, if any, to which monthly rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured except as to defaults specified in said certificate; and (iv) such other matters as reasonably may be requested by Landlord.

ARTICLE XII DEFAULT; REMEDIES; DISPUTE RESOLUTION

12.1 Event of Default. The occurrence of any one or more of the following events ("Events of Default") shall constitute a breach of this Agreement by Tenant:

A. If Tenant shall default in its obligation to pay any installment of Monthly Rent, Operating Costs, or CAM fee; or

B. If Tenant shall vacate or abandon the Premises for a continuous period exceeding five (5) calendar days; or

C. If Tenant shall fail to perform or observe any other term hereof or of the rules and regulations contemplated herein to be performed or observed by Tenant hereunder, and such failure shall not have been cured by Tenant within thirty (30) calendar days after notice thereof from Landlord, or, if such failure shall be of a nature so as reasonably to require more than thirty (30) calendar days to effect the cure thereof, Tenant shall not within said thirty (30) calendar day period commence with due diligence and dispatch the curing of such failure; or

D. If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail timely to

contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its property; or

E. If within ninety (90) calendar days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) calendar days after the appointment without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or

F. If this Agreement or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) calendar days; or

G. If Tenant fails to timely deliver to Landlord any instrument or assurances required pursuant to this Agreement, including an estoppel certificate pursuant to Section 11.2 of this Agreement; or

H. If Tenant makes or has made or furnishes any warranty, representation or statement to Landlord in connection with this Agreement, or any other agreement made by Tenant for the benefit of Landlord, which is or was false or misleading in any material respect when made or furnished; or

I. If Tenant assigns or attempts to assign this Agreement or subleases or attempts to sublease any portion of the Premises in violation of Section 9.1; or

J. If waste is committed on the Premises; or

K. If Tenant fails to perform any other act or obligation under this Agreement, if such failure shall continue for fifteen (15) calendar days after written notice from Landlord to Tenant; or

L. The occurrence of any event which pursuant to the terms hereof constitutes an Event of Default hereunder; or

M. The occurrence of a material and adverse change in the financial condition or business of Tenant or any guarantor of Tenant's obligations hereunder.

12.2 Remedies. On the occurrence of an Event of Default by Tenant hereunder, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord, either in law or equity, which remedies shall not be exclusive, but shall instead be cumulative: (i) remove all persons and property from the Premises and repossess same, in which case any and all of Tenant's property that Landlord removes from the Premises may be stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant; or (ii) allow Tenant to remain in full possession and control of the Premises.

A. If Landlord chooses to repossess the Premises, then this Agreement will automatically terminate in accordance with the provisions of California Civil Code Section 1951.2. In the event of such termination of the Agreement, Landlord may recover from Tenant:

(i) The worth at the time of award of the unpaid rent which had been earned at the time of termination, including interest at the maximum rate allowed by law;

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, including interest at the maximum rate allowed by law;

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which, in the ordinary course of things, would be likely to result therefrom.

B. "The worth at the time of the award," as used in Section 12.2A(i) and (ii) shall be computed by allowing interest at the maximum rate allowed by law. "The worth at the time of the award," as referred to in Section 12.2A(iii) shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank at the time of the award, plus one percent (1%).

C. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in re-letting the Premises, including, without limitation, lost rents, eviction costs, attorney's fees, brokers' commissions, expenses of remodeling the Premises required by the re-letting, and like costs. Re-letting can be for a period shorter or longer than the remaining Term. Tenant shall pay to Landlord the rent due under this Agreement on the dates the rent is due, unless Landlord notifies Tenant that Landlord elects to terminate this Agreement. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign its interest in this Agreement, or sublet all or a portion of the Premises, but Tenant shall not be released from liability or its obligations under this Agreement. Landlord's consent to a proposed assignment or subletting shall be as required in Section 9.1.

D. If Landlord elects to re-let the Premises, then any rent that Landlord receives from re-letting shall be applied to the payment of: (i) first, any indebtedness from Tenant to Landlord other than rent due from Tenant; (ii) second, all costs incurred by Landlord in re-letting, including costs for maintenance; and (iii) third, Rent due and unpaid under this Agreement.

E. After deducting the payments referred to in Section 12.2, any sum remaining from any rent that Landlord receives from re-letting shall be held by Landlord and applied in payment of future rent as rent becomes due under this Agreement. In no event shall Tenant be entitled to

any excess rent received by Landlord. If, on the date rent is due under this Agreement, the rent received from any re-letting is less than the rent due on that date, then Tenant shall pay to Landlord, in addition to the remaining rent due, all costs which Landlord incurred in re-letting, including without limitation maintenance, that remain after applying the rent received from the re-letting, as provided in Section 12.2.

12.3 Continuation After Default. Even though Tenant has breached this Agreement and/or abandoned the Premises, this Agreement shall continue in full force and effect for so long as Landlord does not terminate Tenant's right to possession as provided in Section 12.2 above, and Landlord may enforce all its rights and remedies under this Agreement, including the right to recover rent as it becomes due under this Agreement. In such event, Landlord may exercise all of the rights and remedies of a Landlord under California Civil Code Section 1951.4, or any successor statute. Acts of maintenance or preservation or efforts to re-let the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Agreement shall not constitute a termination of Tenant's right to possession.

12.4 Other Relief. In the event of re-entry or taking possession of the Premises, Landlord shall have the right but not the obligation to remove all or any part of the trade fixtures, furnishings, equipment and personal property located in the Premises and to place the same in storage at a public warehouse at the expense and risk of Tenant or to sell such property in accordance with applicable law. The remedies provided for in this Agreement are in addition to any other remedies available to Landlord at law or in equity, by statute or otherwise. Any amounts so expended by Landlord shall be immediately payable by Tenant and shall be deemed to be additional rent hereunder.

12.5 Landlord's Right to Cure Default. All agreements and provisions to be performed by Tenant under any of the terms of this Agreement shall be at its sole cost and expense and without abatement of rent. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder and such failure shall not be cured within the applicable cure period provided for herein, if any, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Agreement. All sums so paid by Landlord and all necessary incidental costs shall be on Tenant's account and shall be deemed additional rent hereunder and shall be payable to Landlord on demand.

12.6 Dispute Resolution. Any dispute arising out of or relating to this Agreement, or breach thereof, shall be first submitted to the senior management of each Party for resolution during a thirty (30) calendar day dispute resolution period. Notice must be in writing and served pursuant to Section 13.1 herein. The foregoing dispute resolution period shall run concurrently with any notice and cure periods provided for herein.

ARTICLE XIII GENERAL PROVISIONS

13.1 **Notice.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt requested, telegraphed, delivered or sent by telex, telecopy or cable and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business calendar days after the date of posting by the United States post office, (iii) if given by telegraph or cable, one (1) business calendar day after the date delivered to the telegraph company with charges prepaid.

To Landlord: City of Riverside
 General Services Department
 Attn: Director of General Services
 8095 Lincoln Avenue
 Riverside, CA 92504

To Tenant: Dunn Enterprises, Inc.
 Attn: Irina Dunaev
 10540 Magnolia Avenue, Suite "A",
 Riverside, CA 92505

A. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication sent.

B. Tenant hereby agrees that service of notice in accordance with the terms of this Agreement shall be in lieu of the methods of service specified in Section 1161 of the California Code of Civil Procedure Section 1161. The provisions of California Code of Civil Procedure Section 1013(a), extending the time within which a right may be exercised or an act may be done, shall not apply to a notice given pursuant to this Agreement.

13.2 **Tenant Reports.** On the fifteenth (15th) day of each calendar month, during the Term hereof, Tenant shall submit to Landlord a statement in writing certified to be correct (if Tenant is a corporation, the statement shall be certified by an officer of the corporation, by an officer of Tenant) as to total gross sales, from all sources, for the proceeding calendar month. .

13.3 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

13.4 **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not

be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

13.5 Amendment of Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

13.6 Waiver. The waiver by Landlord or Tenant of any agreement, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision herein contained, nor shall any custom or practice which may grow up between the Parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Tenant or Landlord in strict accordance with said terms. The subsequent acceptance of any payment hereunder by Landlord shall not be deemed to be a waiver of any breach by Tenant of any agreement, condition or provision of this Agreement, other than the failure of Tenant to pay the particular amount so accepted. Specifically Landlord may accept any payment from Tenant and apply same to any amount owing hereunder notwithstanding any stated intent or instruction on the part of Tenant to the contrary and without waiving or compromising any claim that such payment was less than the payment actually due from Tenant.

13.7 No Merger. The voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work as a merger, and shall, at the option of Landlord, terminate all or any existing subleases or sub-tenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or sub-tenancies.

13.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.9 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement, including any permit or license fees which Tenant may be required to obtain pursuant to its occupancy.

13.10 Authority to Execute Agreement. Landlord and Tenant represent and warrant that the individuals who have signed this Agreement have the legal power, right and authority to enter into this Agreement so as to bind each Party for whom they sign to perform as provided herein.

13.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Tenant shall be responsible for the acts or omissions of its sub-Tenant(s), if any.

13.12 Inspection. As required by California Civil Code No 1938, an ADA Survey has not been conducted by a Certified Access Specialist for the Premises and/or surrounding Common Areas. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or

tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

13.13 **Incorporation of Exhibits.** Each of the Exhibits to this Agreement are incorporated by reference as though fully set forth herein.

13.14 **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Tenant and Landlord as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to any employees or agents of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the calendar day and year written below.

LANDLORD:

CITY OF RIVERSIDE

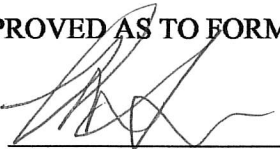
By: _____
City Manager

Date: _____

ATTEST:

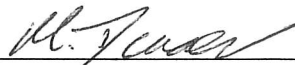
By: _____
City Clerk

APPROVED AS TO FORM:

By:  _____
Deputy City Attorney

TENANT:

DUNN ENTERPRISES, INC., a California corporation, doing business as ICE TOWN

By:  _____
Name: Matt Dunaev
Its: Vice President

Date: 8/19/2022

By: _____
Name: _____
Its: _____

Date: _____

14-1057.2 RMS 8/2/2022

EXHIBIT "A"

Premises/Lease Plan

(Inserted behind this page)



Building A Occupants

1. Capones Pizza
2. Pressing Matters Dry Cleaners
3. Vacant

Magnolia Place

Building B Occupants

1. Events Sports Bar
2. Korean BBQ
3. Picasso Salon
4. Jenny Craig



Landlord may, from time to time, inspect the Premises to ensure compliance with the foregoing provisions.

8. No display areas of the Premises shall be left vacant, and Tenant shall not black out or otherwise obstruct the windows of the Premises, without Landlord's prior written consent. Signs in the windows may be limited and must be approved by the Landlord in writing.

9. Landlord shall have the absolute right to enter upon the Premises to perform such cleaning and clearing of the pipes and drains servicing the Premises (including roto-rooter service), and any grease traps and exhaust systems servicing the Premises, as Landlord shall deem necessary.

10. If Tenant shall operate a carry-out food operation, including food and/or soft drink vending machines as well as any ice cream store, Tenant shall pay Landlord for all sidewalk and walkway cleanup work (including without limitation steam cleaning), that Landlord shall determine is necessary to preserve the sanitation, cleanliness and clean appearance of the Center. Tenant shall pay Landlord on an estimated month basis, adjusted annually, and will be responsible for a cleanup of not less than one hundred feet (100') in radius from the entrance(s) to the Premises.

11. If Tenant provides its customers with the use of shopping carts and/or baskets, Tenant shall be responsible for causing said carts and/or baskets to be stored only in areas designated by Landlord. If Tenant fails to routinely collect and store said carts as necessary (at least twice on a daily basis), Landlord may assume the responsibility of same and may bill Tenant on an estimated monthly basis for such service.

12. The sidewalks, exits and entrances shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. The exits, entrances and roof are not for the use of the general public and Landlord shall in all cases retain the right of control and prevent access thereto by all persons whose presence in the judgment of the Landlord might be prejudicial to the safety, character, reputation and interests of the Shopping Center and its tenants, provided that nothing herein contained shall be construed so as to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities or are creating a nuisance.

13. Tenant shall not alter any lock or install any new or additional locks or any bolts on any door of the Premises without the prior written consent of Landlord (except as to safes and vaults of the Tenant). Installation of floor safes will require prior written approval by Landlord, and must remain with the Premises at termination.

14. The toilet rooms and urinals, wash bowls and other apparatus therein shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be placed therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, invitees, contractors or agents, shall have caused it.

15. Except as to normal pictures and furnishings, Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof.

No boring, cutting or stringing of wires shall be permitted except with the prior written consent of Landlord and as Landlord may direct. Tenant shall not lay linoleum tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by Tenant.

16. Tenant shall not use, keep or permit to be used or kept, any noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building or Shopping Center by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business therein. Tenant shall not make or permit to be made any loud or disturbing noises or disturb or interfere with occupants of the Building or Shopping Center or those having business with them, whether by the use of any musical instrument, radio, television, video or audio recording, shouting, or in any other manner. Tenant shall not throw anything out of doors.

17. Tenant shall not use or keep in the Premises or the Building or Shopping Center any kerosene, gasoline or flammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied or permitted by Landlord.

18. Landlord will direct electricians as to where and how electrical, telephone, television and cable wires are to be introduced to the Premises. No boring or cutting for wires will be allowed without the prior consent of Landlord. The location of telephone call boxes and other office equipment in the Premises shall be subject to the approval of Landlord. All such consents and approvals by the Landlord must be in writing.

19. Tenant shall be responsible for assuring that doors to the Premises are not left unlocked during non-business hours, except while moving furniture or other items in or out of the Premises.

20. Tenant shall not canvass or solicit in the Building or the Shopping Center and Tenant shall cooperate to prevent any such canvassing and/or solicitation.

21. Landlord reserves the right to exclude or expel from the Building or the Shopping Center any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or is violating the rules and regulations of the Building or the Shopping Center.

22. The requirements of Tenant will be attended to only upon application to Landlord's designated property manager. Employees of Landlord shall have no obligation to perform any work for Tenant or do anything outside their regular duties for Tenant unless under special instructions from Landlord, and no employee shall have any obligation to admit any person (Tenant or otherwise) to any office of Landlord without specific instruction from Landlord.

B. FOR THE COMMON FACILITIES:

1. Tenant and its authorized representatives and invitees shall use any roadway, walkway or mall (including the enclosed mall, if any) only for ingress to and egress from the stores in the Shopping Center. Use of the Common Facilities shall be in an orderly manner in accordance with

directional or other signs or guides. Roadways shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. Parking in fire lanes is not allowed for any reason. Walkways shall be used only for pedestrian travel.

2. All Tenants and their authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking spaces. During peak periods of business activity, Landlord can impose any and all controls Landlord deems necessary to operate the parking lot, including but not limited to the length of time for parking use.

3. No person shall use any utility area, truck loading area, or other area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. In no event shall any Tenant or its employees park in the stalls directly in front of the buildings. Landlord may have offending vehicles towed. No employee shall use any area for motor vehicle parking except the area specifically designated for employee parking for the particular period of time the use is to be made. No tenant shall use any area for motor vehicle parking except the area specifically designated for employee parking for the particular period of time the use is to be made.