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11 and Debtor-in-Possession, LITTLE SAIGON SUPERMARKET, LLC

12 **UNITED STATES BANKRUPTCY COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

14 In re:  
15 LITTLE SAIGON SUPERMARKET, LLC.

16 Case No.: 2:17-bk-20227-WB  
17 Chapter 11

18 **NOTICE OF MOTION AND MOTION FOR**  
19 **ORDER:**

20 Debtor and Debtor-In-Possession.

- 21 **1. APPROVING THE SALE OF**  
22 **SUBSTANTIALLY ALL ASSETS OF THE**  
23 **ESTATE FREE AND CLEAR OF LIENS,**  
24 **CLAIMS, INTERESTS AND**  
25 **ENCUMBRANCES PURSUANT TO 11**  
26 **U.S.C. §363(b)(1) AND (f)(2); AND**
- 27 **2. AUTHORIZING ASSUMPTION AND**  
28 **ASSIGNMENT OF UNEXPIRED**  
**COMMERCIAL LEASE**

**MEMORANDUM OF POINTS AND**  
**AUTHORITIES; DECLARATIONS OF PETER**  
**NGUYEN, ELAINE NGUYEN, AND**  
**KIMHENG “SAM” LAO IN SUPPORT**  
**THEREOF**

Hearing

Date: September 21, 2017

Time: 10:00 a.m.

Place: Courtroom 1375

255 E. Temple St.

Los Angeles, CA 90012

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1           **TO THE HONORABLE JULIA W. BRAND, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE AND ALL OTHER**  
3 **INTERESTED PARTIES:**

4           **PLEASE TAKE NOTICE** that On September 21, 2017 at 10:00 a.m., before the  
5 Honorable Julia W. Brand, United States Bankruptcy Judge, in Courtroom 1375, located at 255  
6 East Temple Street, Los Angeles, CA, Little Saigon Supermarket, LLC, a California limited  
7 liability company and the debtor and debtor in possession herein (“Debtor”), will hereby move  
8 the Court for an Order (“Sale Order”) approving the Debtor's *Motion for Order (1) Approving*  
9 *the Sale of Substantially All Assets of the Estate Free and Clear of Liens, Claims, Interests, and*  
10 *the Sale of Substantially All Assets of the Estate Free and Clear of Liens, Claims, Interests, and*  
11 *Encumbrances Pursuant to 11 U.S.C. § 363(b)(1) and (f)(2); and (2) Authorizing Assumption*  
12 *and Assignment of Unexpired Commercial Lease* (“Motion”).

13           This Motion is brought pursuant to 11 U.S.C. §§ 363 (b)(1) and (f)(2) and 11 U.S.C.  
14 §365 on the grounds that the Debtor has determined that it is in the best interest of the estate and  
15 its creditors to seek a sale of substantially all of its assets and property (“Assets”), which  
16 includes a liquor license and all of Debtor’s rights and interests in that certain fifteen (15) year  
17 lease (“Lease”) with HMZ Retail, LP (“HMZ”), concerning the commercial real property  
18 located at 10932 Westminster Ave., Garden Grove, California (“Premises”), to Lucky Taro, Inc.  
19 (“Lucky Taro” or “Buyer”), or such party that is the prevailing bidder at the auction (“Sale”).  
20 Lucky Taro is a wholesale produce business founded by Sam Lao and Lily Chang in 2011,  
21 which imports exotic produce from all over the world and sells such produce to authorized  
22 wholesales and supermarkets through Los Angeles County.

23           On or about August 28, 2017, the Debtor and Buyer executed an *Asset and Purchase*  
24 *Agreement* (“Purchase Agreement”), providing for the sale and acquisition of the Assets for the  
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1 sum of \$600,000 (“Purchase Price”) all cash at closing, subject to overbid.<sup>1</sup> To maximize the  
2 value received<sup>2</sup> for the Assets and manage the sale process, the Debtor has proposed certain sale  
3 procedures (“Bid Procedures”), which are subject to a separately filed motion filed on August  
4 29, 2017.  
5

6 The Debtor has no secured creditors, and its scheduled general unsecured creditor claims  
7 total approximately \$370,678.50. Thus, the Purchase Price is sufficient to (1) cure the arrearages  
8 owed to HMZ<sup>3</sup>; and (2) pay in full Debtor’s administrative general unsecured creditor claims.  
9

10 After taking possession of the Premises, the Debtor spent approximately \$1,800,000  
11 over a 12-month period improving and renovating the Premises. As a result of its prime  
12 location and Debtor’s improvements to the Premises, the Lease has significant equity. The  
13 Debtor ceased operations and its only means for repaying creditors and interests holders is  
14 through the Sale. The Sale allows Debtor to cure the Lease arrearages and make HMZ whole,  
15 pay its creditors in full, and make a distribution to equity. HMZ has filed a *Motion for Relief*  
16 *from the Automatic Stay* [Docket #7], set for September 19, 2017 in an effort to go to trial on its  
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18  
19 <sup>1</sup> In addition to the indebtedness arising from operations, Debtor’s operating agreement provides  
20 a liquidation preference for its Class B members. The Class B members are EB-5 investors, such  
21 that the EB-5 investors are entitled to receive full payment of their investments before the Class  
22 A members receive any distribution. The EB-5 investments are as follows:

- 23 - \$500,000 owed to Class B EB-5 investor Huy Dinh Le; and
- 24 - \$500,000 owed to Class B EB-5 investor Vo Thi Hong Truc

25 <sup>2</sup> The Debtor has received four (4) other verbal offers and a second written offer which the  
26 proposed buyer withdrew after being threatened by Ms. Jasmine Nguyen, one of the members of  
27 the Debtor’s management company, who Debtor suspects may be working to secure the Lease  
28 for her own financial benefit.

<sup>3</sup> Landlord asserts arrears of \$114,650.35, which is inclusive of attorneys’ fees and costs.  
Landlord is also holding a \$63,000 deposit belonging to Debtor’s estate, which has not been  
credited towards the arrearage amount.

1 unlawful detainer complaint and terminate the Lease. If this happens, the value of the Debtor's  
2 estate will crater and creditors will likely recover nothing. As the Debtor has no operating  
3 capital, Debtor is unable to pay administrative rent other than through the Sale. The Lease has  
4 significant equity and Debtor believes HMZ seeks to terminate the Lease in order to capture all  
5 such equity for itself to the prejudice of creditors and the estate.  
6

7 The Motion is based upon the Bid Procedures Motion, the Notice of Motion filed  
8 concurrently herewith, the *Notice of Sale of Estate Property* filed with the Clerk of the Court,  
9 the Memorandum of Points and Authorities and Declarations of Peter Nguyen<sup>4</sup> ("Peter  
10 Declaration"), Elaine Nguyen ("Elaine Declaration"), and KimHeng "Sam" Lao attached hereto  
11 and all pleadings, papers and records on file with the Court and other evidence and argument,  
12 oral or documentary, as may be presented to the Court at the time of the hearing on the within  
13 Motion.  
14

15 **PLEASE TAKE FURTHER NOTICE**, that if you wish to object to or oppose the  
16 relief sought by the Motion, you must appear at the hearing and file and serve any responsive  
17 pleading on Debtor's attorney no later than **September 7, 2017**, which is fourteen (14) days  
18 prior to the hearing. Pursuant to Local Bankruptcy Rule 9013-1(h), papers not timely filed and  
19 served may be deemed by the court to be consent to the granting or denial of the motion, as the  
20 case may be.  
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28 <sup>4</sup> For purposes of clarification only, Elaine V. Nguyen of Weintraub, Selth & Nguyen APC, is not related to Peter Nguyen, or Jasmine Nguyen.

1           **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

- 2           1.       Approving the Motion and authorizing, pursuant to a sale order in substantially  
3                   the same form attached to the Peter Declaration as **Exhibit “1”** (“Sale Order”),  
4                   the sale of the Assets as defined herein, to Buyer or to a bidder with a higher,  
5                   better or otherwise best bid for the Assets (which such highest and best bidder  
6                   may be Buyer or a qualified third party overbidder, and is hereinafter referred to  
7                   as the “Successful Bidder”), pursuant to the terms of that certain Purchase  
8                   Agreement attached as **Exhibit “2”** to the Peter Declaration, or if not to Buyer  
9                   pursuant to its existing bid, then to an overbidder pursuant to terms that are  
10                  similar to the Purchase Agreement;  
11  
12           2.       Authorizing, with appropriate findings as set forth in the Sale Order, the sale of  
13                   the Assets to the Successful Bidder, free and clear of all claims, liens, security  
14                   interests, charges, encumbrances, adverse interests of any kind and all other  
15                   liabilities, including, without limitation, successor liabilities pursuant to Section  
16                   363 of the Bankruptcy Code;  
17  
18           3.       Finding that the Successful Bidder has acted in good faith and is entitled to the  
19                   protections of 11 U.S.C. §363(m);  
20  
21           4.       Authorizing the Debtor to assume and assign the Lease to the Successful Bidder;  
22  
23           5.       With appropriate findings of the Court regarding the adequacy of notice to  
24                   creditors and parties in interest relating to the within Motion;  
25  
26           6.       Waiving the fourteen (14) day stay of order provided in Rules 6004(h) and  
27                   6006(d) of the Federal Rules of Bankruptcy Procedure; and

28           //



1           7.       Granting such other and further relief as the Court deems just and appropriate.

2 Dated: August 30, 2017

WEINTRAUB, SELTH & NGUYEN, APC

3  
4 By /s/ Elaine V. Nguyen

Daniel J. Weintraub

5 James R. Selth

6 Elaine V. Nguyen

[Proposed] Attorneys for Debtor and

7 Debtor-in-Possession,

LITTLE SAIGON SUPERMARKET, LLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

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5 Debtor hereby moves this Court for an order authorizing the Debtor to sell substantially  
6 all of its assets to Lucky Taro, in accordance with the *Asset and Purchase Agreement*  
7 (“Purchase Agreement”) attached to the Peter Declaration as **Exhibit “2”**, and to authorize the  
8 assumption and assignment by Lucky Taro of Debtor’s Lease<sup>5</sup> of the commercial premises  
9 located at 10932 Westminster Ave., Garden Grove, California (“Premises”). The Debtor has  
10 been marketing its assets for sale since June 2017 and the purchase price of \$600,000  
11 (“Purchase Price”), all cash at Closing, represents the highest and best signed written offer  
12 received by the Debtor. Lucky Taro has deposited the sum of \$21,000 with Viva Escrow, Inc.,  
13 as a deposit towards the Purchase Price of the Assets and agreed to a liquidated damage of  
14 \$121,000 in the event it is approved by the Court and does not close the Sale.

15 The Purchase Price represents fair consideration for the estate and puts the estate in a  
16 position to (1) cure the arrears on the Lease; (2) pay all unsecured creditors in full; and (3)  
17 provide a distribution to the Class B EB-5 investors.

18 The Debtor has no operating capital and no post-petition financing to pay its obligations  
19 or administrative rent. On August 22, 2017, HMZ filed a *Motion for Relief from the Automatic*  
20 *Stay* to proceed with an unlawful detainer [Docket # 7]. Should HMZ regain possession of the  
21 premises and the Lease expire, the Debtor will lose its most significant asset, and the value of  
22 the Debtor’s Assets will crater causing the Debtor’s general unsecured creditors to receive  
23 nothing on their claims.

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28 <sup>5</sup> A copy of the Lease is attached to the Peter Declaration as **Exhibit “3”**.

1 **II.**

2 **FACTUAL BACKGROUND**

3 **A. Jurisdiction**

4 On August 20, 2017 (“Petition Date”), the Debtor commenced the instant bankruptcy  
5 case (“Bankruptcy Case”) by filing an emergency petition under Chapter 11 of the United States  
6 Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (“Bankruptcy Code”). The Debtor is serving as a  
7 debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Court  
8 has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334. These matters constitute core  
9 proceedings under 28 U.S.C. § 157(b)(2)(A) and (O).

10 **B. General Background**

11 As set forth in the Declaration of Peter T. Nguyen<sup>6</sup> (“Peter Declaration”), Little Saigon  
12 Supermarket, LLC, is a California limited liability company formed on August 19, 2015. Sun  
13 Valley Management, LLC (“SVM”)<sup>7</sup>, is the Debtor’s Manager and the Debtor’s sole Class A  
14 member. Huy Dinh Le and Vo Thi Hong Truc are Class B members of the Debtor by virtue of  
15 their investment under the U.S. Citizenship and Immigration Services EB-5 Immigrant Investor  
16 Program (“EB-5”). The Debtor has no other managers or members.

17 The Debtor was formed in order to develop and operate a Vietnamese supermarket. On or  
18 about November 11, 2015, the Debtor entered into a fifteen (15) year lease (“Lease”) with HMZ  
19 Retail, LP (“HMZ”), concerning the commercial real property located at 10932 Westminster  
20 Ave., Garden Grove, California. Thereafter, the Debtor spent approximately one year and  
21 \$1,800,000 in cash designing, developing, renovating and building out the space for a  
22 Vietnamese supermarket. On December 3, 2016, the Debtor opened the “Farmer’s Garden  
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24 <sup>6</sup> For purposes of clarification only, Elaine V. Nguyen of WSN is not related to Peter Nguyen or  
25 Jasmine Nguyen.

26 <sup>7</sup> The members of SVM are Richard Chhor (“Richard”), Peter Nguyen (“Peter”), Jasmine  
27 Nguyen (“Jasmine”), Ngoc Vu Hoang, and Huy Le. The managers of SVM are Richard, Peter  
28 and Jasmine.

1 Supermarket” (“Market”). The Westminster address is a central location for the Vietnamese  
2 community in Orange County. The Debtor’s mission was to provide fresh produce and  
3 Vietnamese goods catering to a younger generation of shoppers.

4 The Market opened in December 2016 and initially operated at a profit, generating gross  
5 sales in its first month of \$724,179.47. However, gross sales began to drop and along with it, the  
6 Market’s profitability. Having difficulty meeting payroll and falling behind to vendors, on June  
7 7, 2017, at a Managers meeting of SVM, at which all the Managers were present with counsel,  
8 the Managers voted to, among other things,

- 9 - Close the Market and begin liquidation;
- 10 - Designate Peter as the Debtor’s Authorized Representative; and
- 11 - File a Bankruptcy.

12 On June 26, 2017, the Market closed its doors.

### 13 **C. Summary of Assets and Assignment of the Lease**

14 Since terminating the Market’s operations, the Debtor has received several offers to  
15 purchase its assets, the most significant, of which are the Debtor’s rights and interest under the  
16 Lease. To date, the Debtor has received approximately four (4) verbal and one (1) written offer  
17 to acquire Debtor’s assets and its interest in the Lease.

18 Following the cessation of its business, the Debtor fell behind in payments due under the  
19 Lease. HMZ thereafter served the Debtor with a 3-day Notice to Quit or Pay Rent and ultimately  
20 with an Unlawful Detainer action.

21 The Lease has adequate equity to enable the Debtor to cure the Lease arrearage, repay all  
22 creditors in full and provide a return to the EB-5 investors, who will likely not receive their  
23 “Green Cards” due to the failure of the Market.<sup>8</sup>

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27 <sup>8</sup> The immigrant status of an EB-5 investor is dependent upon the business in which they invest  
28 creating ten (10) permanent jobs per investor. Because the Market has failed to operate, no such  
jobs exist.

1       **D. Summary of Liabilities**

2       As reflected in the Debtor's schedules, the Debtor has the following liabilities:

- 3       - \$370,678.50 in general unsecured vendor/trade debt; and  
4       - \$51,650.40 in purported arrears owed to HMZ after application of \$63,000  
5       deposit HMZ is currently holding that belongs to the estate.<sup>9</sup>

6       In addition to the indebtedness arising from operations, Debtor's operating agreement  
7 provides a liquidation preference for the Class B EB-5 investors, such that the EB-5 investors are  
8 entitled to receive full payment of their investments before the Class A members receive any  
9 distribution. The EB-5 investments are as follows:

- 10       - \$500,000 owed to Class B EB-5 investor Huy Dinh Le; and  
11       - \$500,000 owed to Class B EB-5 investor Vo Thi Hong Truc

12       As set forth in the Peter Declaration, the Debtor has no secured creditors. Attached to the  
13 Elaine Declaration as **Exhibit "4"** is a "Search Certificate" from the California Secretary of  
14 State, certifying that there are no active financing statements, tax liens, attachment liens, or  
15 judgment liens as of August 17, 2017.

16       **E. Debtor's Marketing Efforts**

17       On or about June 15, 2017, the Debtor engaged Amigos Realty ("Broker"), to market  
18 and sell the Assets. The Debtor selected Raymond Tang of Amigos Realty because he had  
19 previously sold a market in the area. During his pre-petition engagement, Mr. Tang presented  
20 the Debtor with two offers in the \$300,000 range. Management believed that these offers were  
21 well below market. The Debtor does not intend to retain Broker as it has secured much more  
22 substantial offers which management believes better reflects market value and allow for full  
23 repayment of creditor claims. in this current proposed sales transaction.

24       The Debtor's efforts have been successful. Richard and Peter reached out to an owner  
25 of seven (7) supermarkets in the Los Angeles and Orange County area. This individual made an  
26 offer to purchase the Assets for \$940,000. However, Jasmine threatened litigation against this

27 \_\_\_\_\_  
28 <sup>9</sup> Debtor has not reviewed an accounting of the arrears.

1 individual and the offer was revoked. Debtor is working to revive this offer with assurances of  
2 Bankruptcy Court approval of the sale.

3 Lucky Taro has signed an asset purchase agreement and paid a deposit towards  
4 consummation of a sale, and agreed to a liquidated damage of \$121,000 in the event it is  
5 approved by the Court and does not close the Sale. Lucky Taro is a creditor of the Debtor in the  
6 amount of \$4,488.00 and one of the Debtor's vendors. Neither the Debtor, nor any of its  
7 members or managers, have any other relationship with Lucky Taro or Lucky Taro's owners  
8 and officers Sam Lao and Lily Chang, other than as disclosed herein. Lucky Taro is in the  
9 wholesale produce business, importing exotic Asian produce and selling this produce to  
10 authorized wholesalers and supermarkets throughout Los Angeles county. Lucky Taro intends  
11 to operate a supermarket with the purchased Assets.

12 The Debtor will continue to market a sale of the Assets until the Sale Hearing and reach  
13 out to all entities and individuals that previously expressed interest or made offers.

### 14 III.

#### 15 PROPOSED SALE

##### 16 A. Purchase Price

17 As set forth in the Purchase Agreement, and subject to approval of the Bankruptcy Court  
18 and overbids, Buyer has offered to purchase the Assets for Six Hundred Thousand Dollars  
19 (\$600,000) (the "Purchase Price"), all cash at Closing, which shall be allocated as follows:

- 20 - The amount required to cure the Lease arrearage ("Cure Payment"), conditioned  
21 on the simultaneous assumption and assignment of the Lease to Buyer; and
- 22 - The balance of the Purchase Price remaining after payment of the Cure Payment  
23 shall be deposited into Debtor's attorney client trust account for disbursement to  
24 creditors and equity holders pursuant to a Chapter 11 Plan.

25 On August 25, 2017, Buyer wired a Deposit of \$21,000, to Viva Escrow, Inc., pending  
26 the closing of the Sale. If the transaction closes as contemplated, the Deposit shall be credited  
27 to the Purchase Price at Closing. If the Buyer is the winning bidder and fails to fulfil its  
28 obligations herein, the Deposit made by Buyer shall be retained by the Debtor's estate and

1 Buyer shall be responsible for an additional \$100,000 as liquidated damages.

2 **B. The Terms of the Proposed Sale**

3 The following is a summary of the proposed material terms of the sale of the Property to  
4 Buyer pursuant to the Purchase Agreement. To the extent of any inconsistency, the Purchase  
5 Agreement controls:

6 1. **ASSETS.** Buyer shall purchase the Debtor's interest in the unexpired Retail  
7 Lease dated November 11, 2015 ("Lease") with HMZ Retail, LP ("Landlord") for  
8 commercial property located at 10932 Westminster Ave., Garden Grove, CA 91843,  
9 Debtor's liquor license, good will, tangible and intangible assets, and all assets thereof  
10 as contained in **Schedule "A"** attached to the Purchase Agreement.

11 2. **LEASE.** Subject to Bankruptcy Court approval, the Debtor shall assume and  
12 assign the Lease to Buyer. Buyer understands the Sale is subject to the Court's approval  
13 of the Debtor's assumption and assignment of the Lease to Buyer or Landlord approval  
14 of the assignment of the Lease to Buyer. Debtor makes no representation of any  
15 intention of whether Landlord will either approve or deny Buyer's assumption of the  
16 lease.

17 3. **EXCLUDED LIABILITIES.** Notwithstanding anything herein to the contrary,  
18 and other than the liabilities and obligations arising from the Lease, the Parties expressly  
19 acknowledge and agree that the Assets shall be sold to Buyer, free and clear of all liens,  
20 claims, interests and encumbrances, and Buyer shall not assume, be obligated to pay,  
21 perform or otherwise discharge or in any other manner be liable or responsible for any  
22 liabilities, indebtedness, and obligations of the Debtor, whether existing on the closing  
23 date or arising thereafter.

24 4. **TRANSFER OF TITLE.** Following the entry of the Sale Order and on or  
25 before the Closing, the Debtor shall execute and deliver a bill of sale with respect to the  
26 Assets and all such other good and sufficient instruments of sale, transfer and  
27 conveyance consistent with the terms and provisions of this Agreement, which forms  
28 shall be provided by Buyer and reasonably acceptable to the Debtor. Title to and  
possession of the Assets shall immediately pass to Buyer upon the Closing, on the  
Closing Date.

1 5. **CLOSING.** Subject to the terms and conditions hereof, the closing of the sale of  
2 the Assets (the “Closing”) shall take place within 5 days of the entry of a Bankruptcy  
3 Court order approving the Sale.

4 **IV.**

5 **THE PROPOSED SALE SHOULD BE APPROVED**

6 **PURSUANT TO 11 U.S.C. §363(b)(1) AND 11 U.S.C. §363(f)**

7 A review of the applicable cases interpreting Sections 363(b)(1) and (f) of the  
8 Bankruptcy Code and, in light of the aforementioned facts, indicates that a sound basis exists  
9 for Court approval of this sale.  
10

11 **A. The Sale Should be Approved Under Section 363(b)(1)**

12 Section 363(b)(1) of the Bankruptcy Code empowers a debtor in possession to “sell . . .  
13 other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). The  
14 authority to sell assets conferred upon a debtor by Section 363(b)(1) “include[s] a sale of  
15 substantially all the assets of an estate.” Otto Preminger Films, Ltd. v. Quintex Entm't., Inc. (In  
16 re Quintex Entm't, Inc.), 950 F.2d 1492, 1495 (9th Cir. 1991); *see also*, In re Anchor Exploration  
17 Co., 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) (court should have wide latitude to approve  
18 sale under Section 363(b)). A bankruptcy court's power to authorize a sale under Section 363(b)  
19 is to be exercised at the court's discretion. In re WPRV-TV, 983 F.2d 336, 340 (1st Cir. 1993),  
20 New Haven Radio, Inc. v. Meister (In re Martin-Trigona), 760 F.2d 1334, 1346 (2d Cir. 1985),  
21 Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069  
22 (2d Cir. 1983); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390-91 (6th Cir. 1986).

23  
24 In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the  
25 best interest of the estate and a business justification exists for authorizing the sale. In re  
26  
27  
28



1 Huntington, Ltd., 654 F.2d 578 (9<sup>th</sup> Cir. 1981); In re Walter, 83 B.R. 14, 19-20 (9<sup>th</sup> Cir. B.A.P.  
2 1988).

3 In evaluating the propriety of a sale of property of the estate, courts have evaluated  
4 whether: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of  
5 the sale be given to interested parties; (3) the price to be paid is adequate i.e., fair and  
6 reasonable; and (4) the parties to the sale have acted in good faith. Titusville Country Club v.  
7 Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); see also,  
8 In re Walter, 83 B.R. at 19-20.

9  
10 An examination of each of the above four factors shows that the sale as proposed herein  
11 should be approved.

12  
13 1. Sound Business Justification.

14 The Ninth Circuit Bankruptcy Appellate Panel in Walter v. Sunwest Bank (In re  
15 Walter), 83 B.R. 14,19 (9<sup>th</sup> Cir. B.A.P. 1988) adopted a flexible case-by-case test to determine  
16 whether the business purpose for a proposed sale justifies disposition of property of the estate  
17 under Bankruptcy Code section 363(b) as follows:

18  
19 Whether the proffered business justification is sufficient depends on the case. As the  
20 Second Circuit held in Lionel, the bankruptcy judge should consider all salient factors  
21 pertaining to the proceeding and, accordingly, act to further the diverse interests of the  
22 debtor, creditors and equity holders, alike. He might, for example, look to such relevant  
23 factors as the proportionate value of the asset to the estate as a whole, the amount of  
24 elapsed time since the filing, the likelihood that a plan of reorganization will be  
25 proposed and confirmed in the near future, the effect of the proposed disposition on  
26 future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis  
any appraisals of the property, which of the alternatives of use, sale or lease the proposal  
envisions and, most importantly perhaps, whether the asset is increasing or decreasing in  
value. This list is not intended to be exclusive, but merely to provide guidance to the  
bankruptcy judge.

27 In re Walter, 83 B.R. at 19-20, citing In re Continental Air Lines, Inc. 780 F.2d 1223, 1226 (5<sup>th</sup>  
28 Cir. 1986).

1 The facts of this case support the Debtor’s business decision to consummate a sale and is  
2 in the best interest of the Debtor’s creditors. The Debtor has ceased operations and does not  
3 have any operating capital or post-petition financing with which to resume operations or to pay  
4 creditors. If the Debtor does not consummate a sale promptly, the Debtor risks losing its rights  
5 under the Lease. If this occurs, the Debtor will have little, if anything to sell and creditors will  
6 receive pennies on the dollar, if anything.  
7

8 In contrast, the sale as proposed herein will provide sufficient cash to pay all general  
9 unsecured creditors in full, with a distribution to Class B members. Thus, the Debtor submits  
10 that the sale is justified by a sound business purpose.  
11

12 2. Accurate and Reasonable Notice.

13 Pursuant to §363(b)(1), a debtor in possession must give notice of any sale of property  
14 of the estate. Transactions not in the ordinary course of business are generally governed by  
15 Federal Rule of Bankruptcy Procedure 6004. Rule 6004(a) refers, in turn, to Rule 2002(a),  
16 which requires a twenty-one (21) day notice period for any “proposed use, sale, or lease of  
17 property of the estate other than in the ordinary course of business, unless the court for cause  
18 shown, shortens the time...” FRBP 2002(a).  
19

20 Concurrently herewith, the Debtor is mailing notice to all creditors and parties in interest  
21 of the proposed sale. Thus, the Debtor has satisfied the notice requirements.  
22

23 3. Adequate Price.

24 Despite serious expressions of interest, Lucky Taro is the only prospective buyer that  
25 has signed an asset purchase agreement, and paid a deposit towards the consummation of a sale.  
26 Concurrently with the filing of this Motion, the Debtor is filing and serving to all creditors and  
27 parties a *Notice of Sale of Estate Property* and has filed a Sales Procedures Motion, so that the  
28

1 sale is subject to overbid. Overbidding, will increase the likelihood that the estate will receive  
2 the highest and best price for the Assets.

3 4. Good Faith.

4 Finally, the Sale is proposed in good faith. The “good faith” requirement focuses  
5 principally on the element of special treatment of a debtor’s insiders in the sale transaction.  
6 Industrial Valley Refrig. And Air Cond. Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).  
7 Here, the Buyer is not an insider or affiliate of the Debtor, and the negotiations between the  
8 Buyer and Debtor regarding the proposed Sale were at arms-length and no collusion was  
9 involved. Lucky Taro is a creditor (\$4,488.00) of the Debtor, having previously supplied  
10 goods to the Debtor’s Market. The Debtor, its members, and managers do not have any other  
11 relationship with the company. The Purchase Agreement was negotiated with the goal of  
12 maximizing recovery to creditors and interest holders.  
13

14  
15 **B. The Motion Should Be Granted Under 11 U.S.C. Section 363(f)**

16 Section 363(f) of the Bankruptcy Code describes the circumstances under which a  
17 debtor in possession may sell property of the estate free and clear of any interest of third parties  
18 in such property. Section 363(f) provides, in pertinent part:  
19

20 The trustee may sell property under subsection (b) or (c) of this section free and  
21 clear of any interest in such property of an entity other than the estate, only if—

- 22 (1) applicable nonbankruptcy law permits sale of such property free and clear of such  
23 interest;  
24 (2) such entity consents;  
25 (3) such interest is a lien and the price at which such property is to be sold is greater than  
26 the aggregate value of all liens on such property;  
27 (4) such interest is in bona fide dispute; or  
28 (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money  
satisfaction of such interest.

11 U.S.C. §363(f).

1 Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, a debtor  
2 need only meet the provisions of one of the five subsections of section 363(f) in order for a sale  
3 of property to be free and clear of all liens, claims and interests. Here, the Debtor submits that  
4 the requirements of section 363(f) are met because as set forth in the Peter Declaration there are  
5 no secured creditors. Moreover, the “Search Certificate” attached to the Elaine Declaration as  
6 **Exhibit “4”** from the California Secretary of State, certifies that there are no active financing  
7 statements, tax liens, attachment liens, or judgment liens as of August 17, 2017.  
8

9 In any event all, creditors will receive notice of the proposed sale and will have an  
10 opportunity to respond to this Motion. Moreover, if any other individual or entity believes that  
11 it has a claim or interest in the Assets, it will have an opportunity to assert such claim or interest  
12 in response to this Motion. Therefore, based upon the authority set forth above, the Debtor  
13 requests that the Court approve the Sale free and clear of all liens, claims, encumbrances and/or  
14 interests of any parties who may assert such liens, claims, encumbrances and/or interests against  
15 the Assets and who do not file a timely objection to the proposed sale by deeming all such  
16 parties to have consented to the proposed sale pursuant to Section 363(f)(2) of the Bankruptcy  
17 Code.  
18  
19

20 **V.**

21 **ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASE**

22 As required by the Purchase Agreement<sup>10</sup>, and in order to enhance the value to the  
23 Debtor’s estate, the Debtor requests the approval of the assumption and assignment of the Lease  
24 to the Buyer or the Successful Bidder upon the closing of the Sale.  
25  
26

27 \_\_\_\_\_  
28 <sup>10</sup> The assignment of the Lease is essential to the proposed Sale.

1 Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

2 The trustee may assign an executory contract or unexpired lease of  
3 the debtor only if —

4 (A) the trustee assumes such contract or lease in accordance  
5 with the provisions of this section; and

6 (B) adequate assurance of future performance by the assignee  
7 of such contract or lease is provided, whether or not there has been  
8 a default in such contract or lease.

9 11 U.S.C. § 3650(2).

10 Under section 365(a), a debtor "subject to the court's approval, may assume or reject any  
11 executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1), in  
12 turn, codifies the requirements for assuming an unexpired lease or executory contract of a  
13 debtor, providing that:

14 (b)(1) If there has been a default in an executory contract or  
15 unexpired lease of the debtor, the trustee may not assume such  
16 contract or lease unless, at the time of assumption of such contract  
17 or lease, the trustee —

18 (A) cures, or provides adequate assurance that the trustee will  
19 promptly cure, such default;

20 (B) compensates, or provides adequate assurance that the trustee  
21 will promptly compensate, a party other than the debtor to such  
22 contract or lease, for any actual pecuniary loss to such party  
23 resulting from such default; and

24 (C) provides adequate assurance of future performance under such  
25 contract or lease.

26 11 U.S.C. § 365(b)(1).

27 Thus, pursuant to Bankruptcy Code section 365(b)(1), the assumption of a lease requires  
28 a debtor to: (a) cure any existing defaults under such agreements; (b) compensate all non-debtor

1 parties to such agreements for any actual pecuniary loss resulting from the defaults; and (c)  
2 provide adequate assurance of future performance under the contract or lease. 11 U.S.C. §  
3 365(b)(1); *see also* In re Bowman, 194 B.R. 227,230 (Bankr.D.Ariz.1995), In re AEG  
4 Acquisition Corp., 127 B.R. 34, 44 (Bankr.C.D.Cal.1991), *aff'd* 161 B.R. 50 (9<sup>th</sup> Cir.  
5 B.A.P.1993).

7 1. Debtor will Cure Existing Defaults Under the Lease and Compensate Landlord for  
8 Actual Pecuniary Loss

9 Here, Debtor will cure all defaults under the Lease and compensate the Landlord for any  
10 damages by paying the Landlord's allowed claim in full through escrow, or in the event of a  
11 dispute as to the cure or damage claim, providing adequate assurance of cure and compensation  
12 by reserving such sum pending the resolution of all disputes. Pre-petition the Debtor received  
13 an e-mail from Landlord's counsel stating that the arrears were \$114,650.35,<sup>11</sup> which amount  
14 included Landlord's attorney's fees and costs. Thus, the Purchase Price of \$600,000 is more  
15 than sufficient to cure any and all defaults under the Lease and to compensate the Landlord for  
16 its actual pecuniary loss (attorney's fees). In addition, Landlord is currently holding a \$63,000  
17 deposit belonging to the Debtor.

20 Although section 365 of the Bankruptcy Code does not set forth standards for courts to  
21 apply in determining whether to approve a debtor in possession's decision to assume an  
22 executory contract or unexpired lease, courts have consistently applied a "business judgment"  
23 test when reviewing such a decision. *See, e.g.,* Group of Institutional Investors v. Chicago,  
24 Milwaukee, St. Paul & Pacific Railroad Co., 318 U.S. 523, 550 (1953). A debtor satisfies the  
25

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27 <sup>11</sup> The Debtor has not received an accounting of this amount and thus has not reviewed the  
28 validity of this claim amount.

1 "business judgment" test when it determines, in good faith, that assumption of an executory  
2 contract will benefit the estate and the unsecured creditors. In re FCX, Inc., 60 B.R. 405, 411  
3 (Bankr. E.D.N.Y. 1986).

4 Here, since the Lease has significant equity and no buyer, can reasonably be expected to  
5 consummate a sale at this price which does not include the Lease, it is an appropriate exercise of  
6 the Debtor's business judgment to seek to assume and assign the Lease to facilitate the Sale  
7 because the proceeds of the sale will allow Debtor to propose a Plan which pays all general  
8 unsecured creditors in full, and provides a significant distribution to Class B members. Thus,  
9 the Debtor submits that it is sound business judgment to assume the Lease.  
10  
11

## 12 2. Adequate Assurance

13 The meaning of "adequate assurance of future performance" depends on the facts and  
14 circumstances of each case, but should be given a "practical, pragmatic construction." In re  
15 DBSI, Inc. 405 B.R.698,708 (Bankr. D.Del.2009); *see also* In re Decora Indus., 2002 U.S. Dist.  
16 LEXIS 27031, at \*23 (D.Del. 2002) ("[A]dequate assurance falls short of an absolute guarantee  
17 of payment"). Adequate assurance may be provided by demonstrating the assignee's financial  
18 health and experience in managing the type of enterprise or property assigned. *See, e.g., In re*  
19 Bygaph, Inc. 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is  
20 present when prospective assignee of lease from debtor has financial resources and has  
21 expressed willingness to devote sufficient funding to business to give it strong likelihood of  
22 success).  
23  
24

25 The Debtor requests that if the Landlord does not object to the Sale to the Buyer or the  
26 Successful Bidder, that the Court deem such lack of objection as consent to the assumption and  
27 assignment of its Lease under section 365 of the Bankruptcy Code. *See* Hargrave v. Twp. Of  
28

1 Pemberton (In re Tabone, Inc.) 175 B.R. 855,858 (Bankr. D.N.J. 1994) (by not objecting to sale  
2 motion, creditor deemed to consent).

3 If an objection is received, the Debtor proposed in the its Bid Procedures that objections  
4 should be resolved as follows:

5  
6 **Resolution and Adjudication of Objections.** Upon filing of an objection by HMZ,  
7 the Debtor and/or Buyer will contact HMZ to attempt to consensually resolve any  
8 timely served objection. If the Debtor and/or the Buyer are unable to resolve an  
9 objection in response to the Assignment Notice, (i) to the extent such objections relate  
10 to the adequate assurance of future performance by the Buyer or Successful Bidder  
11 (each an "Adequate Assurance Objection"), such objections will be heard at the Sale  
12 Hearing or (ii) to the extent such objections relate to a Cure Amount, such objections  
13 will be heard at a hearing to be scheduled by the Court at the Sale Hearing. In the  
14 event an objection relates **solely** as to a Cure Amount, then HMZ will be deemed to  
15 consent to the assumption of the Lease and its assignment to the Buyer,  
16 notwithstanding such objection.

17 If necessary, the Buyer or the other Successful Bidder shall provide its financials  
18 demonstrating its ability to provide adequate assurances in the form of future rent payments to  
19 landlord HMZ prior to, or at the Sale Hearing. In addition, Debtor reserves the right to provide  
20 evidence at the hearing, including testimony from the Buyer establishing Buyer's adequate  
21 assurance of future performance under the Lease.

## 22 VI.

### 23 **THE COURT HAS THE DISCRETION TO AND SHOULD WAIVE THE** 24 **FOURTEEN-DAY PERIOD FOR THE EFFECTIVENESS OF A SALE ORDER**

25 Rule 6004(h) of the Federal Rules of Bankruptcy Procedure provides: "An order  
26 authorizing the use, sale, or lease of property other than cash collateral is stayed until the  
27 expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr.  
28 P. 6004(h).



1 The court can eliminate or reduce the 14-day stay period upon a showing that there is a  
2 sufficient business need to necessitate an immediate closing within the 14-day period and the  
3 interests of any objecting party, taking into account the likelihood of success on appeal, are  
4 sufficiently protected. 10-6004 Collier on Bankruptcy P 6004.11. In Yamaha Motor Corp.,  
5 USA v. Perry Hollow Mgmt. Co., Inc. (In re Perry Hollow Mgmt. Co., Inc.), 297 F.3d 34, 41  
6 (1st Cir. 2002), the court affirmed the bankruptcy court's decision to waive the waiting period of  
7 Rule 6004(g) (now (h)). The appellate court found that the bankruptcy court acted properly  
8 within its discretion to waive the stay where the evidence at the hearing established that the sale  
9 price was reasonable, the buyer was ready to complete the sale the next day and there would be  
10 a charge for storage if there were a delay.  
11

12  
13 Similarly, in Hower v. Molding Sys. Eng'g Corp., 445 F.3d 935, 938 (7th Cir. 2006) ,  
14 the court affirmed the elimination of the stay where the debtor was down to its last five dollars,  
15 had dozens of employees who needed to be paid and a purchaser who made \$250,000 available  
16 to keep operations going. In In re Nature Leisure Times, LLC, 59 C.B.C.2d 121, 2007 Bankr.  
17 LEXIS 4333 (Bankr. E.D. Tex. Dec. 19, 2007), the court noted that it was appropriate to  
18 eliminate the waiting period under Rule 6004(h) because the estate had negative cash flow and  
19 the trustee should not be required to continue to operate the estate with third party moneys.  
20

21  
22 Similarly, here the need to proceed sooner with the sale outweighs any objecting party's  
23 interests. The Debtor does not have any operating capital with which to pay the Landlord post-  
24 petition rent and risks losing the premises and Lease if a sale is not consummated quickly.  
25 Accordingly, the Debtor request that the Court order that the sale may be effectuated  
26 immediately upon entry of the order.  
27  
28

VII.

CONCLUSION

1  
2  
3  
4       **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

- 5       1. Approving the Motion and authorizing, pursuant to a sale order in substantially the same  
6       form attached to the Peter Declaration as **Exhibit “1”** (“Sale Order”), the sale of the  
7       Assets as defined herein to Buyer or to a bidder with a higher, better or otherwise best  
8       bid for the Assets (which such highest and best bidder may be Buyer or a qualified third  
9       party overbidder, and is hereinafter referred to as the “Successful Bidder”), pursuant to  
10       the terms of that certain Purchase Agreement attached as **Exhibit “2”** to the Peter  
11       Declaration, or if not to Buyer pursuant to its existing bid, then to an overbidder  
12       pursuant to terms that are similar to the Purchase Agreement;  
13  
14       2. Authorizing, with appropriate findings as set forth in the Sale Order, the sale of the  
15       Assets to the Successful Bidder, free and clear of all claims, liens, security interests,  
16       charges, encumbrances, adverse interests of any kind and all other liabilities, including,  
17       without limitation, successor liabilities pursuant to Section 363 of the Bankruptcy Code;  
18  
19       3. Finding that the Successful Bidder has acted in good faith and is entitled to the  
20       protections of 11 U.S.C. §363(m);  
21  
22       4. Authorizing the Debtor to assume and assign the Lease to the Successful Bidder;  
23  
24       5. With appropriate findings of the Court regarding the adequacy of notice to creditors and  
25       parties in interest relating to the within Motion;  
26  
27       6. Waiving the fourteen (14) day stay of order provided in Rules 6004(h) and 6006(d) of  
28       the Federal Rules of Bankruptcy Procedure; and

1 7. Granting such other and further relief as the Court deems just and appropriate.

2 8.

3 Dated: August 30, 2017

WEINTRAUB, SELTH & NGUYEN, APC

4  
5 By /s/ Elaine V. Nguyen  
6 Daniel J. Weintraub  
7 James R. Selth  
8 Elaine V. Nguyen  
9 [Proposed] Attorneys for Debtor and  
Debtor-in-Possession,  
LITTLE SAIGON SUPERMARKET, LLC

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1 **DECLARATION OF PETER NGUYEN**

2 I, Peter Nguyen, declare as follows:

3 1. I am an individual over the age of eighteen and am a Manager of Sun Valley  
4 Management, LLC ("SVM"). SVM is the Manager of Little Saigon Supermarket, LLC, the  
5 debtor and debtor in possession herein ("Debtor"). Except as otherwise stated herein, each of  
6 the facts contained in this declaration is based on my personal knowledge and my review of the  
7 books and records of the Debtor kept in the ordinary course. If called as a witness, I could and  
8 would competently testify thereto.

9 2. On August 20, 2017 ("Petition Date"), Debtor commenced the instant  
10 bankruptcy case ("Case") by filing an emergency petition under Chapter 11 of the United States  
11 Bankruptcy Code, 11 U.S.C. § 101 et seq. ("Bankruptcy Code").

12 3. Attached hereto as **Exhibit "1"** is a proposed Sale Order.

13 4. Attached hereto as **Exhibit "2"** is the signed Asset and Purchase Agreement  
14 ("Purchase Agreement") between the Debtor and Lucky Taro, Inc. ("Lucky Taro" or "Buyer").

15 5. As set forth in the Purchase Agreement, and subject to approval of the  
16 Bankruptcy Court and overbids, Buyer has offered to purchase the Assets for Six Hundred  
17 Thousand Dollars (\$600,000) (the "Purchase Price"), **all cash at Closing**. On August 25, 2017,  
18 Buyer wired a Deposit of \$21,000, to Viva Escrow, Inc., pending the closing of the Sale. If the  
19 transaction closes as contemplated, the Deposit shall be credited to the Purchase Price at  
20 Closing.

21 6. Attached hereto as **Exhibit "3"** is a true and correct copy of the Lease.

22 7. We have been marketing the Assets since June 2017, and every potential buyer  
23 we've spoken to is interested in the purchase due to the location and the Lease. The offers I  
24 have received for the Assets range between \$300,000 - \$940,000. However, the individual who  
25 made the offer for \$940,000.00 revoked its offer after Jasmine threatened litigation against this  
26 individual and the offer was withdrawn.

27 **A. General Background**

28 8. Little Saigon Supermarket, LLC, is a California limited liability company formed

1 on August 19, 2015. SVM , is the Debtor’s Manager and the Debtor’s sole Class A member.

2 9. The Debtor was formed in order to develop and operate a Vietnamese  
3 supermarket. On or about November 11, 2015, the Debtor entered into the Lease with HMZ for  
4 the Premises. Thereafter, the Debtor spent approximately one year and \$1,800,000 in cash  
5 designing, developing, renovating and building out the space for a Vietnamese supermarket. On  
6 December 3, 2016, the Debtor opened the “Farmer’s Garden Supermarket” (“Market”).

7 10. The Westminster address is a central location for the Vietnamese community in  
8 Orange County. The Debtor’s mission was to provide fresh produce and Vietnamese goods  
9 catering to a younger generation of shoppers.

10 11. The Market opened in December 2016 and initially operated at a profit,  
11 generating gross sales in its first month of \$724,179.47. However, gross sales began to drop  
12 and along with it, the Market’s profitability.

13 12. Having difficulty meeting payroll and falling behind to vendors, on June 7,2017,  
14 at a Managers meeting of SVM, at which all the Managers were present with counsel, the

15 13. Managers voted to, among other things

- 16 - Close the Market and begin liquidation;  
17 - Designate me as the Debtor’s Authorized Representative; and  
18 - File a Bankruptcy.

19 14. On June 26, 2017, the Market closed its doors.

20 **B. Summary of Assets and Assignment of the Lease**

21 15. Since terminating the Market’s operations, the Debtor has received several offers  
22 to purchase its Assets. The most valuable of Debtor’s Assets are its rights and interests under  
23 the Lease. To date, the Debtor has received approximately four (4) verbal and one (1) written  
24 offer to acquire the Assets and its interest in the Lease.

25 16. Following the cessation of its business, the Debtor fell behind in payments under  
26 the Lease. HMZ thereafter served the Debtor with a 3-day Notice to Quit or Pay Rent and  
27 ultimately with an Unlawful Detainer action. The Debtor filed this Case in order to preserve the  
28 equity in the Lease for creditors and the estate.

1 17. The Lease has adequate equity to enable the Debtor to cure the Lease arrearage,  
2 repay all creditors in full and provide a return to the EB-5 investors, who will likely not receive  
3 their “Green Cards” due to the failure of the Market.

4 **C. Summary of Liabilities**

5 18. I have reviewed the Debtor’s books and records and the Debtor has no secured  
6 creditors.

7 19. The Debtor has the following liabilities:

- 8 - \$370,678.50 in general unsecured vendor/trade debt; and  
9 - \$51,650.40 in purported arrears owed to HMZ after application of \$63,000 deposit  
10 HMZ is currently holding that belongs to the estate.

11 20. In addition to the indebtedness arising from operations, Debtor’s operating  
12 agreement provides a liquidation preference for the EB-5 investors, such that the EB-5 investors  
13 are entitled to receive full payment of their investments before the Class A members receive any  
14 distribution. The EB-5 investments are as follows:

- 15 - \$500,000 owed to Class B EB-5 investor Huy Dinh Le; and  
16 - \$500,000 owed to Class B EB-5 investor Vo Thi Hong Truc

17 **D. Debtor’s Marketing Efforts**

18 21. On or about June 15, 2017, the Debtor engaged Amigos Realty (“Broker”), to  
19 market and sell the Assets. I selected Raymond Tang of Amigos Realty because he had  
20 previously sold a market in the area. During his pre-petition engagement, Mr. Tang presented  
21 the Debtor with two offers in the \$300,000 range. We believed that these offers were well  
22 below market and terminated the relationship with Mr. Tang. The Debtor does not intend to  
23 retain Broker as we have secured much more substantial offers which management believes  
24 better reflects market value and allow for full repayment of creditor claims.

25 22. Richard and I have reached out to an owner of seven (7) supermarkets in the Los  
26 Angeles and Orange County area. This individual made an offer to purchase the Assets for  
27 \$940,000. However, Jasmine threatened litigation against this individual and the offer was  
28 withdrawn. Richard and I are working to revive this offer with assurances of Bankruptcy Court

1 approval of the sale.

2 23. Lucky Taro has signed an asset purchase agreement, paid a deposit to escrow  
3 towards consummation of a sale and agreed to a liquidated damage of \$121,000 in the event it is  
4 approved by the Court and does not close the Sale. Lucky Taro is a scheduled creditor  
5 (\$4,488.00) of the Debtor and one of the Debtor's vendors.

6 24. Neither I, the Debtor, nor any of the Debtor's members or managers, have any  
7 other relationship with Lucky Taro or Lucky Taro's owners and officers Sam Lao and Lily Ch,  
8 other than as disclosed herein. Lucky Taro is in the wholesale produce business, importing  
9 exotic Asian produce and selling this produce to authorized wholesalers and supermarkets  
10 throughout Los Angeles County. Lucky Taro intends to operate a supermarket with the  
11 purchased Assets.

12 25. The Debtor and I will continue to market a sale of the Assets until the Sale  
13 Hearing and reach out to all entities and individuals that previously expressed interest or made  
14 offers.

15 26. The Debtor has no operating capital or cash with which to resume operations or  
16 pay administrative rent to HMZ. Thus, I believe a sale must close quickly in order to preserve  
17 the value of the Assets and the equity in the Lease.

18 27. HMZ is holding a \$63,000 deposit belonging to the Debtor. Pre-petition,  
19 Landlord's counsel sent an email asserting arrears of Landlord of \$114,650.35, which includes  
20 inclusive of attorneys' fees and costs.

21  
22 I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day  
23 of August 2017, at 08/30/2017, California.

24  
25 

26 \_\_\_\_\_  
Peter Nguyen

**DECLARATION OF ELAINE V. NGUYEN**

I, Elaine V. Nguyen, declare and state as follows:

1. I am an attorney duly admitted to practice in the State of California and before the United States District Court for the Central District of California and an attorney of Weintraub, Selth & Nguyen, APC (“WSN”), counsel of record for Little Saigon Supermarket, LLC the debtor and debtor in possession herein. Except as otherwise stated herein, each of the facts contained in this declaration is based on my personal knowledge and my review of the books and records of WSN kept in the ordinary course. If called as a witness, I could and would competently testify thereto.

2. On or about August 17, 2017, I made a search request with the California Secretary of State for any financing statements filed against the Debtor. Attached hereto as **Exhibit “4”** is the “Search Certificate” I received from the California Secretary of State certifying that there are no active financing statements, tax liens, attachment liens, or judgment liens as of August 17, 2017.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of August 2017, at Los Angeles, California.

/s/ Elaine V. Nguyen

Elaine Nguyen



1  
2 **DECLARATION OF SAM LAO**

3 I, Kimheng “Sam” Lao, declare as follows:

4 1. I am an individual over the age of eighteen and am the founder and President of  
5 Lucky Taro, Inc. (“Lucky Taro”). Except as otherwise stated herein, each of the facts contained  
6 in this declaration is based on my personal knowledge and my review of the books and records  
7 of the Debtor kept in the ordinary course. If called as a witness, I could and would competently  
8 testify thereto.

9 2. My wife and I founded Lucky Taro in 2011. Lucky Taro is a whole sale produce  
10 company, importing a variety of Asian exotic fruits and vegetables from around the world to the  
11 Los Angeles and Orange County markets. My wife and I also own Lucky Express  
12 Transportation, Inc., where we operate a fleet of semi-trucks to deliver Lucky Taro’s produce to  
13 customers from our distribution center in Fresno.

14 3. I have wanted to open a retail supermarket under the Lucky Taro brand for some  
15 time and have worked to identify a suitable space for the market. On or about August 17,2017,  
16 Richard Chhor and Peter Nguyen of Little Saigon Supermarket, LLC, approached me and asked  
17 if Lucky Taro was interested in purchasing the company.

18 4. I have reviewed the books and records of the Debtor, reviewed its personal  
19 property assets, toured the premises which it leases from HMZ Retail, LP at 10932 Westminster  
20 Ave., Garden Grove, California (“Premises”). My primary interest is in the Lease and I  
21 attribute very little value to the remaining assets.

22 5. On August 28, 2017, I executed the *Asset and Purchase Agreement* (“Purchase  
23 Agreement”) on behalf of Lucky Taro, a true and correct copy of which is attached to the  
24 Declaration of Peter Nguyen as **Exhibit 2**. On August 25, 2017, I caused Lucky Taro to wire a  
25 deposit of \$21,000, to Viva Escrow, Inc., pending the closing of the Sale. If the transaction  
26 closes as contemplated, the deposit shall be credited to the Purchase Price at Closing.

27 //

28 //

1           6.       Lucky Taro is not interested in purchasing the Debtor's other assets, unless it  
2 also acquires the Debtor's interest in the Lease as I believe the other assets have little value.  
3

4 I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th  
5 day of August 2017, at Los Angeles, California.  
6

7  
8   
9 \_\_\_\_\_  
10 Kimheng "Sam" Lao  
11  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

11766 Wilshire Blvd., Ste. 1170, Los Angeles, CA 90025

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR ORDER: (1) APPROVING THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(b)(1) AND (f)(2); AND (2) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF UNEXPIRED COMMERCIAL LEASE MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF PETER NGUYEN, ELAINE NGUYEN, AND KIMHENG "SAM" LAO IN SUPPORT THEREOF**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **August 30, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **LESLIE A BOWER** leslie@labowerlaw.com
- **Alvin Mar** alvin.mar@usdoj.gov, kenneth.g.lau@usdoj.gov;dare.law@usdoj.gov;kelly.morrison@usdoj.gov
- **Elaine Nguyen** elaine@wsrlaw.net, melissa@wsrlaw.net;vinnet@ecf.inforuptcy.com;elayna@wsrlaw.net
- **James R Selth** jim@wsrlaw.net, jselth@yahoo.com;melissa@wsrlaw.net;vinnet@ecf.inforuptcy.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **August 30, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Jeremy Suiter, Esq.  
Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Ste 1600  
Newport Beach, CA 92660

Sam Lao  
Lucky Taro, Inc.  
1884 E 22nd St  
Los Angeles, CA 9005

**X See attached list**

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **August 29, 2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Personal delivery to Chambers of Julia W. Brand, United States Bankruptcy Court, Los Angeles Division**

8/30/2017  
*Date*

Elayna Fenelon  
*Printed Name*

/s/ Elayna Fenelon  
*Signature*

Label Matrix for local noticing  
0973-2

Case 2:17-bk-20227-WB  
Central District of California  
Los Angeles  
Wed Aug 30 15:06:21 PDT 2017

Los Angeles Division  
255 East Temple Street,  
Los Angeles, CA 90012-3332

Catherine Huang  
1300 Carpe Myrtle  
Azusa, CA 91702-6289

Employment Development Dept.  
Bankruptcy Group MIC 92E  
P.O. Box 826880  
Sacramento, CA 94280-0001

HMZ Retail, LP  
c/o Packard Management Corp  
9555 Chesapeake Drive  
San Diego, CA 92123-6301

Hudson Butcher Supply  
7425 Lampson Avenue  
Garden Grove, CA 92841-2903

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Jasmine Nguyen  
15751 Brookhurst St. #101  
Westminster, CA 92683-7567

Lucky Taro  
1884 East 22nd Street  
Los Angeles, CA 90058-1034

New Japan International  
6464 Flotilla Street  
Commerce, CA 90040-1712

HMZ RETAIL, LP  
10872 Westminster Avenue Suite 202  
Garden Grove, CA 92843-4982

A.N Wholesales  
13896 Harbor Blvd. #5  
Garden Grove, CA 92843-4045

City of Industry Supermarket, LLC  
21580 Valley Blvd.  
Walnut, CA 91789-5241

Franchise Tax Board  
Bankruptcy Section, MS: A-340  
P.O. Box 2952  
Sacramento, CA 95812-2952

Hans Meats Inc.  
8504 Firestone Blvd. #203  
Downey, CA 90241-4926

Hung Nguyen  
8581 Orangewood Blvd.  
Garden Grove, CA 92841-1519

J. Enterprises  
4611 Sheila Street  
Commerce, CA 90040-1003

Lamb & Kawakami LLP  
333 South Grand Avenue, Ste 4200  
Los Angeles, CA 90071-1567

Minh's Meat  
P.O. Box 26649  
Santa Ana, CA 92799-6649

Pepsi Beverage Company  
6261 Caballero Blvd.  
Buena Park, CA 90620-1123

Little Saigon Supermarket, LLC  
4843 Doreen Avenue  
Temple City, CA 91780-4140

Abhing Corporation  
25550 Pellissier Place  
City of Industry, CA 90601

Coca Cola  
P.O. Box 740214  
Los Angeles, CA 90074-0214

H.C. Foods Co., Ltd.  
P.O. Box 911429  
Los Angeles, CA 90091-1238

Harvest Meat Company, Inc.  
P.O. Box 58608  
Los Angeles, CA 90058-0608

In Suk Suh  
c/o Troy S. An Esq.  
3600 Wilshire Blvd., Suite 1801  
Los Angeles, CA 90010-2626

JFC International Inc.  
7101 E. Slauson Avenue  
Commerce, CA 90040-3622

Leslie A. Bower  
Bower & Associates  
PO Box 11748  
Newport Beach, CA 92658-5040

Nam Nguyen  
14128 Fairgrove Avenue  
La Puente, CA 91746-1707

Planet Coffee Roasters, Inc.  
217 S. Ninth Avenue  
La Puente, CA 91746-3310

Quoc Viet Food, Inc.  
9353 Bolsa Avenue, Suite K #D60  
Westminster, CA 92683-5951

Rain Forest Produce  
P.O. Box 21346  
Los Angeles, CA 90021-0346

7667 Steddom Dr.  
Monterey Park, CA 91755

Sea Win Inc.  
526 Stanford Avenue  
Los Angeles, CA 90013-2123

(p)CALIFORNIA STATE BOARD OF EQUALIZATION  
ACCOUNT REFERENCE GROUP MIC 29  
P O BOX 942879  
SACRAMENTO CA 94279-0029

United States Trustee (LA)  
915 Wilshire Blvd, Suite 1850  
Los Angeles, CA 90017-3560

YHS Trading  
755 Epperson Drive  
City of Industry, CA 91748-1335

Elaine Nguyen  
Weintraub & Selth APC  
11766 Wilshire Blvd Ste 1170  
Los Angeles, CA 90025-6553

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

State Board Of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0001

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Courtesy NEF

End of Label Matrix	
Mailable recipients	37
Bypassed recipients	1
Total	38

# EXHIBIT 1

1 **Daniel J. Weintraub - Bar #132111**  
2 **James R. Selth - Bar #123420**  
3 **Elaine V. Nguyen - Bar #256432**  
4 **WEINTRAUB & SELTH, APC**  
5 **11766 Wilshire Boulevard, Suite 1170**  
6 **Los Angeles, CA 90025**  
7 **Telephone: (310) 207-1494**  
8 **Facsimile: (310) 442-0660**  
9 **Email: elaine@wsrlaw.net**

10 [Proposed] Attorneys for Debtor  
11 and Debtor-in-Possession, LITTLE SAIGON SUPERMARKET, LLC

12 **UNITED STATES BANKRUPTCY COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

14 In re )  
15 ) Case No. 2:17-bk-20227-WB  
16 )  
17 ) Chapter 11  
18 )  
19 ) LITTLE SAIGON SUPERMARKET, LLC. )  
20 )

21 **ORDER GRANTING DEBTOR’S**  
22 **MOTION FOR ORDER:**

23 Debtor and Debtor-In-Possession. )

24 **1. APPROVING THE SALE OF**  
25 **SUBSTANTIALLY ALL ASSETS OF**  
26 **THE ESTATE FREE AND CLEAR OF**  
27 **LIENS, CLAIMS, INTERESTS AND**  
28 **ENCUMBRANCES PURSUANT TO 11**  
**U.S.C. §363(b)(1) AND (f)(2); AND**

**2. AUTHORIZING ASSUMPTION AND**  
**ASSIGNMENT OF UNEXPIRED**  
**COMMERCIAL LEASE**

Hearing

Date: September 21, 2017

Time: 10:00 a.m.

Place: Courtroom 1375

255 E. Temple St.

Los Angeles, CA 90012

1           **IN SAID DISTRICT, AT THE TIME AND PLACE ASCRIBED ABOVE:**

2  
3           The Court held a hearing (the “Sale Hearing”)<sup>1</sup> to consider Debtor's *Motion for Order (1)*  
4 *Approving the Sale of Substantially All Assets of the Estate Free and Clear of Liens, Claims,*  
5 *Interests, and Encumbrances Pursuant to 11 U.S.C. § 363(b)(1) and (f)(2); and (2) Authorizing*  
6 *Assumption and Assignment of Unexpired Commercial Lease* (the “Sale Motion”) filed by Little  
7 Saigon Supermarket, LLC, a California limited liability company and the debtor and debtor in  
8 possession herein (“Debtor”), pursuant to 11 U.S.C. §§ 363 (b)(1) and (f)(2) and 11 U.S.C. §365,  
9 and Rules 2002, 6004, 9013 and 9014 of the Federal Rules of Bankruptcy Procedures (the  
10 “Bankruptcy Rules”), for the entry of an order authorizing and approving the sale of substantially  
11 all of the Debtor’s assets (“Assets”) free and clear of all liens, claims, and encumbrances  
12 pursuant to that certain *Asset Purchase Agreement* by and between the Debtor and Lucky Taro,  
13 Inc. or its designee (“Buyer” or “Lucky Taro”) and the assumption and assignment of all of  
14 Debtor’s rights and interests in that certain fifteen (15) year lease (“Lease”) with HMZ Retail, LP  
15 (“HMZ”), concerning the commercial real property located at 10932 Westminster Ave., Garden  
16 Grove, California (“Premises”) to Lucky Taro.  
17  
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19           The Court having reviewed and considered the Sale Motion, and all briefs, evidence and  
20 declarations filed in support of the Sale Motion; and the arguments and representations made by  
21 counsel at the Sale Hearing, and determining that the relief requested in the Sale Motion and the  
22 approval of the Sale to the Buyer of the Assets as identified in the Asset Purchase Agreement is  
23 in the best interests of the Debtor, the Debtor’s estate, creditors, and other parties-in-interest  
24 herein,  
25  
26

27 \_\_\_\_\_  
28 <sup>1</sup> All capitalized terms used, unless otherwise defined herein, shall have the meanings set forth in the Sale Motion or in the Asset Purchase Agreement.



1           **IT IS HEREBY FOUND AND DETERMINED:**

2           A.       The Court has jurisdiction to consider the Sale Motion and the relief requested  
3 therein and to enter this Order pursuant to 28 U.S.C. §§ 157 and 1334, and this is a core  
4 proceeding pursuant to 28 U.S.C. § 157(b)(2).

5           B.       As evidenced by the proof of service and declarations filed with the Court, proper,  
6 timely, adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing has  
7 been provided by serving (i) the Office of the United States Trustee; (ii) Buyer; (iii) all creditors of  
8 the Estate; (iv) landlord HMZ; (v) all entities who had filed a request for electronic service of  
9 papers in the case; and (vi) all parties identified after reasonable inquiry as contract counterparties  
10 to the Estate; and by follow-up communications with potential bidders.

11           C.       Such notice was good and sufficient, reasonably calculated to all potentially  
12 interested parties, and appropriate for all purposes under the particular circumstances of this case  
13 and no other or further notice of the Sale Motion, this Order, the Asset Purchase Agreement, or the  
14 Sale Hearing is required.

15           D.       A reasonable opportunity to object or be heard with respect to the Sale Motion and  
16 the relief requested therein has been afforded to all interested parties and entities.

17           E.       Through a competitive sale process open to the public in which the Debtor sought  
18 higher and better offers for the Assets through notice of the Sale Motion, the Debtor and its  
19 professionals afforded potential purchasers a full, fair, and reasonable opportunity to make a  
20 higher and better offer to purchase the Assets through the bid procedures (“Bid Procedures”)  
21 approved by an order of this Court entered \_\_\_\_\_.

22           F.       The terms and conditions of the Asset Purchase Agreement, including but not  
23 limited to the total consideration, are fair and reasonable. The aggregate consideration provided by  
24 the Buyer for the Assets pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) is  
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1 the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtor's  
2 creditors than would be provided by any other practical, available alternative, and (iv) constitutes  
3 reasonably equivalent value and fair consideration.

4 G. The Debtor has advanced sound and sufficient business justification, and it is a  
5 reasonable exercise of its business judgment to enter into the Asset Purchase Agreement.  
6

7 H. The Debtor has full power and authority to execute the Asset Purchase Agreement  
8 and all other documents contemplated thereby, and the Debtor has duly and validly authorized the  
9 sale of the Assets. Other than this Order, no consents or approvals are required for the Debtor or  
10 the Buyer to consummate the Asset Purchase Agreement.

11 I. The consummation of the Asset Purchase Agreement is properly authorized under  
12 all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105, 363,  
13 and 365 of the Bankruptcy Code, and all of the applicable provisions of such sections have been  
14 complied with in respect of the Asset Purchase Agreement.  
15

16 J. The Debtor may sell the Assets free and clear of all liabilities of any kind or  
17 nature whatsoever because one or more of the standards set forth in section 363(f)(1)- (5) of the  
18 Bankruptcy Code has been satisfied.

19 K. The Debtor has advanced sound and sufficient business justification, and it is a  
20 reasonable exercise of its business judgment to assume and assign to the Buyer all of Debtor's  
21 rights and interests in the Lease ("Assumed Lease").  
22

23 L. The Buyer has provided and satisfied the requirement of providing HMZ adequate  
24 assurance of future performance under the Lease.

25 L. The Asset Purchase Agreement must be approved and consummated promptly in  
26 order to prevent the Estate from becoming administratively insolvent. Time is of the essence in  
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1 closing the Asset Purchase Agreement, and the Debtor and the Buyer intend to close the Asset  
2 Purchase Agreement as soon as possible.

3 **ACCORDINGLY, THE COURT HEREBY ORDERS THAT:**

4 1. The findings of fact set forth above and the conclusions of law stated herein shall  
5 constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052,  
6 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding  
7 of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent  
8 any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

10 2. Any objections not withdrawn are overruled and the Sale Motion is **GRANTED** in  
11 its entirety.

12 3. The Asset Purchase Agreement and each of the agreements, documents, exhibits,  
13 and instruments executed in connection therewith are approved in their entirety pursuant to  
14 sections 105, 363 and 365 of the Bankruptcy Code.

16 4. Landlord HMZ shall be paid the sum of \$ \_\_\_\_\_ as its Cure Payment upon  
17 Closing.

18 **TRANSFER OF THE ASSETS FREE AND CLEAR**

19 5. Pursuant to 11 U.S.C. §§ 363 (b)(1) and (f)(2), the Debtor and the Buyer are each  
20 hereby authorized and directed to (i) enter into, (ii) execute, and (iii) take all actions and execute  
21 all documents reasonably necessary or appropriate to effectuate any obligations under the Asset  
22 and Purchase Agreement and to transfer the Assets free and clear of all liens, claims, interests, and  
23 encumbrances, to the Buyer and to execute and deliver such other documents and take such other  
24 actions as are necessary to effectuate the transactions contemplated by the Asset Purchase  
25 Agreement.

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1           6.       Except as otherwise specifically provided in the Asset Purchase Agreement, the  
2 sale of the Assets to Buyer pursuant to this Order and the Asset Purchase Agreement will vest the  
3 Buyer with good title to the Assets, free and clear of all liabilities, including all liens, pledges,  
4 mortgages, deeds of trust, security interests, conditional sales, royalty rights or agreements, or  
5 other title retention agreements, debts, obligations, demands, judgments, claims (as that term is  
6 defined in section 101(5) of the Bankruptcy Code), interests (ownership or other), encumbrances,  
7 leases, charges, options, preferential rights, easements, servitudes, transfer restrictions under any  
8 shareholder or similar agreement, guaranties, contractual commitments, rights of first offer, rights  
9 of first refusal (and other such similar restrictions), rights of setoff, netting, deduction and  
10 recoupment, and matters of any kind and nature, whether arising prior to or subsequent to the  
11 commencement of this case, whether under any theories of successor or transferee liability and  
12 whether imposed by agreement, understanding, law, equity, or otherwise. In addition to the other  
13 rights and protections afforded by this Order, the sale of the Assets to the Buyer shall entitle Buyer  
14 to all of the benefits of a good-faith purchaser who takes the Assets for value in a public  
15 foreclosure auction pursuant to California Civil Code.  
16

17  
18           7.       All persons and entities, including, but not limited to, the Debtor and all (a) holders  
19 of the Debtor's indebtedness, (b) debt security holders, (c) equity security holders, (d)  
20 governmental, tax, and regulatory authorities, (e) lenders, (f) current and former officers, directors,  
21 and employees, (g) insiders of the Debtor (as defined in 11 U.S.C. § 101(31)) and (h) trade and  
22 other creditors, holding claims against the Debtor or the Assets (whether legal or equitable,  
23 secured or unsecured, matured or unmatured, contingent or noncontingent, senior or  
24 subordinated), arising on or before the Closing, or out of, under, in connection with, or in any way  
25 relating to, events occurring prior to the Closing, hereby are forever barred, estopped, and  
26 permanently enjoined from asserting such claims of any kind and nature against Buyer, its  
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1 members, affiliates, designees, officers, directors, employees, agents, successors or assigns,  
2 financial advisors, legal professionals, or any of their respective properties.

3           8.       This Order (i) is and shall be effective as a determination that, upon the Closing  
4 Date, in accordance with and as allowed by Sections 105 and 363 of the Bankruptcy Code, all  
5 liens, claims, and interests existing as to the Assets prior to the Closing have been unconditionally  
6 released, discharged, and terminated in each case as to the Assets; and (ii) is and shall be binding  
7 upon and shall govern acts of all entities, including, without limitation, all filing agents, filing  
8 officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of  
9 deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and  
10 local officials, including the United States Patent and Trademark Office, and all other persons and  
11 entities who may be required by operation of law, the duties of their office, or contract, to accept,  
12 file, register or otherwise record or release any documents or instruments that reflect that Buyer is  
13 the owner and/or assignee of the Assets free and clear of all liens, claims, and interests.  
14

15           9.       The Buyer shall not in any way whatsoever be liable or responsible as a  
16 successor or otherwise for any claims, liabilities, debts, commitments or obligations (whether  
17 known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed or otherwise)  
18 of or against the Debtor or its operations, or any claims, liabilities, debts, commitments or  
19 obligations in any way whatsoever relating to or arising from the Assets or the Debtor's  
20 ownership, use or control of the Assets on or prior to the Closing, or any such claims, liabilities,  
21 debts, commitments or obligations that in any way whatsoever relate to the Assets during periods  
22 on or prior to the Closing or that are to be observed, paid, discharged or performed on or prior to  
23 the Closing, or any such liabilities calculable by reference to the Debtor or its assets or operations,  
24 or relating to the Debtor's continuing conditions existing on or prior to the Closing, which claims,  
25 liabilities, debts, commitments and obligations are hereby extinguished insofar as they may give  
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1 rise to such liability, without regard to whether the claimant asserting any such claims, liabilities,  
2 debts, commitments or obligations has delivered a release thereof.

3 **ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND ASSIGNED**  
4 **CONTRACTS**

5 10. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and  
6 conditioned upon the Closing of the Sale, the Debtor's assumption and assignment to the Buyer of  
7 the Lease is hereby approved.

8 11. Subject to the "cure" payments \_\_\_\_\_ upon Closing ("Cure Amount"), the  
9 Debtor is authorized to execute and deliver to the Buyer such documents or other instruments as  
10 may be necessary to assign and transfer the Assumed Lease to the Buyer.

11 12. The payment of the Cure Amount shall (a) effect a cure of all defaults existing  
12 under the Assumed Lease as of the Closing Date; and (b) compensate for any pecuniary loss to  
13 such non-Debtor party resulting from such default. After the payment of the relevant Cure  
14 Amount, neither the Debtor nor the Buyer shall have any further liabilities to the counterparties to  
15 the Assumed Lease other than the Buyer's obligations under the Assumed Lease that accrue and  
16 become due and payable on or after the Closing Date.

17 13. The Assumed Lease shall be transferred to, and remain in full force and effect for  
18 the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision  
19 in any such lease/contract that prohibits, restricts, or conditions such assignment or transfer.

20 14. The Buyer has provided adequate assurance of future performance under the  
21 Equipment Leases in accordance with sections 365(b)(1)(C), 365(b)(3) (to the extent applicable),  
22 and 365(f)(2)(B) of the Bankruptcy Code.

23 **MISCELLANEOUS PROVISIONS**  
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# EXHIBIT 2



**ASSET AND PURCHASE AGREEMENT**

Agreement made this 21 day of August, 2017 by and between Little Saigon Supermarket, LLC (doing business as Farmer's Garden Supermarket) hereinafter referred to as "Seller") and Sam Lao an Individual and Lucky Taro Inc., a California Corporation (hereinafter referred to as the "Buyer"). Seller is currently a debtor and debtor in possession in the Chapter 11 bankruptcy case bearing the case number 2:17-bk-20227-WB (the "Bankruptcy Case") before the United States Bankruptcy Court for the Central District of California, Los Angeles Division, United States Bankruptcy Judge Julia W. Brand presiding (the "Bankruptcy Court"). The Seller and Buyer are together referred to hereinafter as the "Parties," and individually, as a "Party".

WHEREAS, the Seller desires to sell and the Buyer desires to buy the Debtor's interest in the unexpired Retail Lease dated November 11, 2015 ("Lease") with HMZ Retail, LP ("Landlord") for commercial property located at 10932 Westminster Ave., Garden Grove, CA 91843, good will, tangible and intangible assets, of a certain Asian Supermarket located at 10932 Westminster Avenue, Garden Grove, CA 92843 and all assets thereof as contained in **Schedule "A"** ("Assets") attached hereto (the "Sale"), the parties hereto agree and covenant as follows:

1. **PURCHASE PRICE:** The total purchase price for the Lease, all fixtures, furnishings and equipment is \$600,000.00 dollars payable as follows:
  - a. The Buyer shall make a \$21,000.00 deposit in cash or certified funds, ("Deposit") upon execution of this Agreement, to be held by Escrow Company, or Weintraub & Selth, APC.
  - b. The Buyer shall pay an additional \$579,000.00 in cash or certified funds, within 5 days of the entry of a Bankruptcy Court order approving the Sale to Buyer.

2. **APPROVAL BY THE BANKRUPTCY COURT.** The effectiveness of this Agreement is subject to the Bankruptcy Court's approval of this Agreement which approves the sale of, and authorizes the Seller to enter into this Agreement to sell the Assets to Buyer or a successful overbidder, free and clear of liens, claims, interests and encumbrances.

Buyer understand that the sale of the Assets shall be subject to overbid and a Bankruptcy Court auction.

3. **LEASE.** Subject to Bankruptcy Court approval, Buyer shall assume and take an assignment of the Lease. Buyer understands that the Sale is subject to the Court's approval of the Seller's assumption and assignment of the Lease to Buyer or Landlord approval of the assignment of the Lease to Buyer. Seller makes no representation of any intention of whether Landlord will either approve or deny Buyer's assumption of the lease.
4. **EXCLUDED LIABILITIES.** Notwithstanding anything herein to the contrary, and other than the liabilities and obligations arising from the Lease, the Parties expressly acknowledge and agree that the Assets shall be sold to Buyer, free and clear of all liens, claims, interests and encumbrances, and Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any liabilities, indebtedness, and obligations of the Debtor, whether existing on the closing date or arising thereafter.
5. **FORFEIT OF DEPOSIT.** If Buyer is the winning bidder and fails to fulfill its obligations herein, all deposits made hereunder by the Buyer shall be retained by the Seller and Buyer shall be responsible for another \$100,000.00 as liquidated damages.
6. **NON-COMPETE.** Seller promises and agrees not to engage in the same type of business as the one being sold for 5 years from the time of passing, within a 10 mile radius of Garden Grove, CA miles from current physical business location.

12. All of the terms, representations and warranties shall survive the closing. This Agreement shall bind and inure to the benefit of the Seller and Buyer and their respective heirs, executors, administrators, successors and assigns.

13. If this Agreement shall contain any term or provision which shall be invalid or against public policy or if the application of same is invalid or against public policy, then, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative as of the day and year first written above.

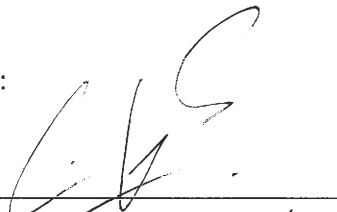
Little Saigon Supermarket, LLC  
a California limited liability company



By: Sun Valley Management, LLC, its Manager  
By: Peter T. Nguyen, its Manager

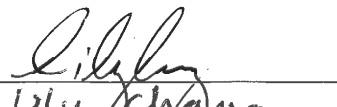
BUYER:

By:  
Title:

  
\_\_\_\_\_  
Kim Heng Lao President

BUYER:

By:  
Title:

  
\_\_\_\_\_  
Lily Chang  
Vice President

### SCHEDULE A

#### Office area;

- 1) 5 computers with 5 office desks
- 2) conference room with table and 6 chairs
- 3) safety cash box 2 feet x 4 feet
- 4) 2 printers
- 5) portable machine hot/ cold water
- 6) multi keys and remote controls for front and back gate doors

#### Fish area:

- 1) build in fish tanks for live seafood, with cooler systems in place
- 2) build in 36 feet cooler show fish case
- 3) build in 4 feet x 6 feet ice machine.
- 4) 2 of 8 feet fish cleaning table
- 5) 2 of 6 feet stainless steel prepare fish table
- 6) build in fish cooler storage room 10 feet x 10 feet x 10 feet
- 7) build in 24 feet and two of 8 feet tables to store ice/ fish
- 8) 46 feet x 7 feet frozen island
- 9) two of 20 feet x 7 feet frozen island
- 10) 2 of build in 3 compartment sinks
- 11) 2 of build in hand sink

#### liquor area:

- 1) build in hardwood with glass shelf for store hard liquor
- 2) included build in counter top

#### center area/ dry food:

- 1) build in 6 line of metal shelf to store dry food, each 4 feet x 6 feet x 50 feet
- 2) build in double side cooler with doors openers , 2 of 50 feet x 4 feet x 6 feet
- 3) build in 50 feet x 4 feet x 6 feet deli cooler without door opener
- 4) build in 50 feet x 4feet x 6 feet package foods cooler

#### Cashier area:

- 1) 3 double and one single check stand
- 2) seven cashier systems with computers cash draws, build in software POS systems for daily of inventories for sale in the supermarket
- 3) around 60 shopping cart, and 100 bracket for shopping
- 4) around 4 wood cashier shelf to hold gum and candy

#### Produce area:

- 1) build in 30 feet x 7 feet x 4 feet frozen island
- 2) build in 14 feet x 7 feet x 4 feet for frozen meat
- 3) two 4feet x 8 feet and one of 4feet x 8 feet shelf frozen storage for frozen fruits,
- 4) build in U shape 90 feet x 4 feet x 6 feet cooler for various produces
- 5) build in two stainless steel 4 feet x 6feet x 24 feet fruits table
- 6) build in three 7 feet x 9 feet x 4 feet wood fruit table

#### meat area:

- 1) build in 56 feet x 4 feet x 4feet meat show case
- 2) build in 24 feet x 4feet x 6 feet meat cooler case
- 3) build in 1 of three compartment sink, one hand sink
- 4) 3 of 4 feet x 8 feet meat prepare stainless steel tables
- 5) one meat machine cutting, one meat drainer small, one is large

#### produce/ fruits prepare area:

- 1) build in 1 three compartment sink, one hand sink
- 2) 2 stainless steel prepare tables

#### Back storage area:

- 1) cooler storage 12 feet x 12 feet x 10 feet for produce
- 2) cooler 10 feet x 10 feet x 10 feet for fruits
- 3) 8 feet x 8 feet x 10 feet frozen meat storage
- 4) 10 feet x 10 feet x 15 feet frozen meat storage
- 5) 10 feet x 12 feet x 10 feet frozen fish storage
- 6) 12 feet x 10 feet x 10 feet frozen package cold food
- 7) One hand lift cart

# EXHIBIT 3

**RETAIL LEASE**

between

HMZ RETAIL, LP,  
A CALIFORNIA LIMITED PARTNERSHIP  
(**Landlord**)

and

LITTLE SAIGON SUPERMARKET, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY

(**Tenant**)

FOR

**10932 Westminster Avenue  
Garden Grove, CA 92843**

**DATE OF LEASE: NOVEMBER 11, 2015**

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LANDLORD'S INITIALS: *JTK*  
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LANDLORD'S INITIALS: JK  
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LIST ALL ADDITIONAL EXHIBITS, ADDENDA AND RIDERS:

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LANDLORD'S INITIALS: JK  
TENANT'S INITIALS: RC PN

## RETAIL LEASE

This lease (this "Lease"), dated for reference purposes only as of November 11, 2015 (the "Date of Lease"), is entered into by and between HMZ Retail, LP, a California limited partnership ("Landlord") and Little Saigon Supermarket, LLC, a California limited liability company ("Tenant").

Landlord and Tenant, intending to be legally bound, and in consideration of their mutual covenants and all conditions of this Lease, covenant and agree as follows.

1. **BASIC LEASE PROVISIONS.** This Section summarizes the basic provisions of this Lease. The full agreement of the parties with respect to each of the following provisions is set forth in the remaining sections of this Lease.

1.1 **"Premises"** means the premises leased by Landlord to Tenant under this Lease consisting of approximately 20,544 rentable square feet of interior space (computed from measurements to the exterior of outside walls of the building and to the center of interior walls), situated in the Shopping Center (defined below), known as 10932 Westminster Avenue, Garden Grove, California 92843, as outlined on the plan attached to this Lease as **Exhibit A**.

1.2 **"Shopping Center"**. means that certain shopping center known as Saigon Square at South Grove, located at 14071-14095 Euclid Street and 10872-10932 Westminster Avenue in the City of Garden Grove, California, consisting of: approximately 106,132 square feet retail buildings (the "**Buildings**"); the land on which the Buildings are located; all parking areas used in connection with the shopping center; all landscaping, sidewalks and other common areas located on the land; together with such additions and other changes as Landlord may from time to time designate as included within the Shopping Center.

1.3 **Term; Option** This Lease shall be for a term (the "**Term**") of FIFTEEN (15) YEARS, subject to the provisions of Section 3 below. Tenant shall have TWO (2) options to extend the Lease Term for a period of FIVE (5) Year(s) (the "**Option**"), subject to the provisions of Section 3.4 below.

1.4 **Estimated Commencement Date.** The parties estimate that the Term shall commence on or about August 1, 2016 (the "**Estimated Commencement Date**"), but the actual "**Commencement Date**" shall be seven (7) months after the Early Possession Date.

1.5 **Early Possession Date; Early Access.** The parties estimate that Early Possession shall commence on or about January 1, 2016 (the "**Estimated Early Possession Date**"), but the actual Early Possession Date shall be the date upon which Landlord recaptures the Premises from the existing tenant ("**Early Possession Date**"). Tenant shall accept the Premises with existing improvements, subject to the provisions of Section 2.3. Also, see Section 3.2 below for the agreement of the parties regarding Early Possession.

1.6 **Base Rent.** Tenant shall pay rent pursuant to the terms of Sections 3.2 and 5 of this Lease. The "**Base Rent**" shall be \$27,734.40 per month, as adjusted pursuant to Section 5.3 below. Upon execution of this Lease, Tenant shall pay to Landlord \$27,734.40 as Base Rent for the First Month of the Term.

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1.7 **Rent Credits.**

(a) **Failure to Open.** If Tenant has not completed improving the Premises to open for business as of the first day of the Calendar Month that is seven (7) months after the Early Possession Date, Landlord will allow Tenant to pay one-half (1/2) of the Scheduled Base Rent during such delay, but no longer than two (2) additional months.

(b) **Free Rent.** Provided that Tenant is not in default hereunder and has opened for business, Landlord agrees to abate the scheduled Base Rent and Tenant's Proportionate Share of Operating Costs for months 13 and 25

(c) **Roof Credit.** Landlord agrees to abate the scheduled Base Rent, but not Tenant's Proportionate Share of Operating Costs, in the amount of the Rent Credit (as defined in the Improvement Agreement attached hereto as Exhibit D) commencing with the second month of the Term until fully applied.

(d) **Demolition Credit.** Landlord agrees to abate the scheduled Base Rent, but not Tenant's Proportionate Share of Operating Costs, in the amount of the Demolition Credit (as defined in the Improvement Agreement) commencing with the second month of the Term until fully applied

(e) **Refrigeration Curbs Credit.** Landlord agrees to abate the scheduled Base Rent, but not Tenant's Proportionate Share of Operating Costs, in the amount of the Refrigeration Curbs Credit (as defined in the Improvement Agreement) commencing with the second month of the Term until fully applied

1.8 **Security Deposit.** Upon execution of this Lease, Tenant shall deposit with Landlord \$63,000.00 as a security deposit (the "**Security Deposit**"). Section 4 of this Lease describes the parties' agreement with respect to the Security Deposit.

1.9 **"Tenant's Proportionate Share of Operating Costs"** means 19.3570 % of the Operating Costs (as defined in Section 5.2.1 below), based upon the rentable square feet of the Premises compared to the total rentable square feet of the Shopping Center. Tenant's Proportionate Share of Operating Costs may be adjusted if Landlord finds, in Landlord's sole and absolute discretion that Tenant's consumption or use of services exceeds ordinary levels or such excess use may be specifically charged to Tenant. The amount listed below, which shall be paid monthly in addition to Base Rent, is an estimate only, and applies only to the first year or partial year only and is subject to adjustment as set forth in Section 5.4 below:

Monthly: \$8,630.00    Annually: \$103,560.00

Upon execution of this Lease, Tenant shall pay to Landlord \$8,630.00 as the Monthly Installment of Landlord's Estimate of Tenant's Proportionate Share of Operating Costs for the First Month of Early Possession.

For water and sewer; energy (i.e.: electricity, natural gas, etc.); alarm, telephone and trash/refuse/recycling services provided for the Premises, Tenant shall pay directly to the suppliers thereof.

1.10 **Permitted Use.** Tenant shall only use the Premises as a Supermarket, common parking and other permitted uses relating to operation of an upscale supermarket. No other

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purposes shall be allowed without Landlord's prior written consent. Tenant's use of the Premises shall be governed by Section 14 of this Lease.

1.11 **Exclusive Use.** So long as Landlord may legally covenant to do so, Landlord shall not lease any other premises in the Center for the "primary purpose" (as defined below) of the retail sales of groceries or liquor. This provision shall not apply to leases in the Shopping Center executed prior to this Lease; provided that Landlord shall have six (6) months after the Commencement Date to terminate the lease with the existing liquor store tenant at 14071 Euclid Street (South Grove Liquor). For purposes of this Lease, a "**primary purpose**" shall mean any use by a tenant for the retail sale of the aforementioned items and/or services of greater than (i) five percent (5%) or more of the total sale and display area leased by such tenant; or (ii) one hundred square feet of store Premises leased by such tenant. Landlord covenants that in the event of a breach of the foregoing provisions, it will make a good and reasonable efforts to enforce same.

1.12 **Tenant's Trade Name.** LITTLE SAIGON SUPERMARKET

1.13 **Landlord's Broker.** None

1.14 **Tenant's Broker.** Ashwill Associates (Agent Charlie Buquet)

1.15 **Landlord's Address for Notices.**

HMZ Retail LP  
c/o Packard Management Group  
9555 Chesapeake Drive, Suite 202  
San Diego, California 92123  
Attn: Mercedes Juarez  
Telephone: (858) 277-4305 ext 201  
Telecopier: (858) 300-9921  
Email: mercedes@packard-1.com

With a copy to:

Lamb & Kawakami LLP  
333 South Grand Avenue, Suite 4200  
Los Angeles, California 900071  
Attn: Kevin J. Lamb, Esq.  
Telephone: (213) 630-5510  
Telecopier: (213) 630-5555  
Email: [klamb@lcfirm.com](mailto:klamb@lcfirm.com)

And to:

Joseph M. Bernhard  
PO Box 584  
Yorba Linda, CA 92885  
Telephone: (714) 488-3398  
Telecopier: (714) 970-6189  
Email: [jmbernhard@3pprofessional-usa.com](mailto:jmbernhard@3pprofessional-usa.com)

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Rent and Other Payments Should Be Sent To:

HMZ Retail LP  
c/o Packard Management Group  
9555 Chesapeake Drive, Suite 202  
San Diego, California 92123

1.16 **Tenant's Address for Notice.**

Little Saigon Supermarket, LLC  
4843 Doreen Avenue  
Temple City, CA 91780  
Attn: Peter Tri Nguyen  
Tel: (626) 524-7763  
Fax: \_\_\_\_\_

After Occupancy:

Little Saigon Supermarket, LLC  
10932 Westminster Avenue  
Garden Grove, CA 92843  
Attn: Peter Tri Nguyen  
Tel: (626) 524-7763  
Fax: \_\_\_\_\_

1.17 **Guarantor(s).** The obligations of Tenant under this Lease shall be guaranteed by the following person(s) using the form of Guaranty attached to this Lease as **Exhibit G:** **Peter Tri Nguyen, individually, and Richard Chhor, individually.**

2. **THE PREMISES AND COMMON AREAS.**

2.1 **Lease of the Premises.** By this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises on all of the terms and conditions set forth in this Lease.

2.2 **Square Footage.** The statement of the rentable square footage of the Premises included in Section 1.1 and the rentable square footage of the Shopping Center included within Section 1.2 above are approximations that Tenant and Landlord agree are reasonable.

2.3 **Condition of the Premises at Early Possession and at Commencement.** Landlord shall not perform any works of improvement whatsoever to the Premises, including, but not limited to, the plumbing, electrical, fire sprinkler, lighting, air conditioning and heating systems, and Tenant shall be solely responsible for the costs of any upgrades thereto. Landlord makes no representation or warranty with respect to the fitness of the Premises for Tenant's particular use, nor whether the Premises are in compliance with applicable laws, codes and regulations. Tenant accepts the Premises "AS IS, WHERE IS, WITH ALL FAULTS" state and is solely responsible for bringing and/or keeping the Premises in compliance with applicable laws, codes and regulations. Any defects or problems with Premises and the correction thereof shall be the obligation of Tenant at Tenant's sole cost and expense.

By taking possession of the Premises Tenant shall be conclusively deemed to have accepted the Premises in its "AS IS" condition and except as otherwise expressly provided

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in this Lease, Landlord shall have no obligation or duty whatsoever to improve, repair, refurbish, or restore the Premises. Further, Tenant shall be conclusively deemed to have agreed that Landlord has performed all of its obligations hereunder with respect to the delivery of the Premises and that, to Tenant's knowledge, the Premises are in satisfactory condition and in full compliance with the requirements of this Lease as of the date of such possession. Landlord shall have no responsibility to correct, or liability with respect to, any latent defects.

2.4 **Common Areas.**

2.4.1 "**Common Areas**" means all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Buildings that are provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Shopping Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.4.2 **Tenant's Rights.** Landlord grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, nor the right to display merchandise or conduct sales in the Common Areas. Any such storage, display or sales shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, as exercised in Landlord's sole discretion, which consent may be revoked at any time. In the event that any unauthorized storage or displays shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

2.4.3 **Changes.** Landlord shall have the right, in Landlord's sole discretion, from time to time: (a) to make changes or additions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, elevations, landscaped areas, signage, walkways and utility raceways; (b) to use and close temporarily any of the Common Areas for the purpose of maintaining, repairing and altering the Shopping Center, so long as reasonable access to the Premises remains available, and to close temporarily any of the Common Areas to whatever extent is required in the opinion of Landlord's counsel to prevent a dedication of or the accrual of any rights of any persons or of the public to any of the Common Areas; (c) to designate other land outside the boundaries of the Shopping Center to be a part of the Common Areas or to be entitled to use the Common Areas on a reciprocal basis; (d) to add additional buildings and improvements to the Common Areas; and (e) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Shopping Center as Landlord may, in the exercise of sound business judgment, deem to be appropriate.

2.4.4 **Promotional Events; Sidewalk Sales.** Landlord reserves the right, from time to time, in Landlord's sole discretion, to utilize portions of the Common Areas for seasonal activities and promotional events, which may include but shall not be limited to entertainment.

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Landlord further reserves the right, in Landlord's sole discretion, to permit any one or more tenants of the Shopping Center to conduct the display and/or sale of merchandise from the sidewalks immediately adjacent to such tenants' respective premises.

2.4.5 **Remodeling.** At any time during the Term, Landlord may remodel or expand, in any manner, the existing Shopping Center, which work may include, without limitation, the addition of sidewalks, patio space, shops and/or new buildings to the Shopping Center (collectively, the "**Remodeled Center**"). If Landlord deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Landlord shall give Tenant no less than sixty (60) days prior notice and Tenant shall allow such entry. Landlord shall use reasonable efforts to complete any work affecting the Premises in an efficient manner so as not to interfere unreasonably with Tenant's business. Tenant shall not be entitled to any damages for any inconvenience or any disruption to Tenant's business caused by such work; provided, however, if such work actually and materially impairs Tenant's use of the Premises, the Base Rent paid by Tenant for the period of the impairment shall be abated in proportion to the degree that Tenant's use of the Premises is impaired. Landlord shall have the right to use portions of the Premises to accommodate any structures required for the Remodeled Center, provided that if as a result thereof there is a permanent decrease in the floor area of the Premises of 5% or more, there shall be a proportionate downward adjustment of Base Rent and Tenant's Proportionate Share of Operating Costs.

3. **TERM.**

3.1 **Term; Commencement Date.** The Term shall be the period of time specified in Section 1.3 above, commencing on the Commencement Date. If the end of the Term as measured from the Commencement Date does not occur at the end of a month, the Term shall extend until the end of the last day of such month. Within ninety (90) days of commencement of the Term, Landlord may deliver to Tenant a notice substantially in the form attached to this Lease as **Exhibit C**, which Tenant shall execute and return to Landlord within five (5) days of receipt.

3.2 **Early Possession.** If an Early Possession Date is specified in Section 1.5, Tenant shall have the right to access the Premises after the Early Possession Date and before the Commencement Date. Commencing with the Early Possession Date but prior to the Commencement Date, all of the terms of this Lease (including but not limited to the insurance obligations set forth in Section 9) shall be in effect during such period, except that (a) Tenant shall have no obligation to pay Base Rent during such period; and (b) no obligations to pay Tenant's Proportionate Share of Operating Costs (defined below) for the first two (2) months of such Early Possession. Any such early possession shall not affect or advance the Commencement Date or the Term.

3.3 **Delay in Possession.** If Landlord is unable to deliver possession of the Premises to Tenant on or before the Estimated Early Possession Date, Landlord shall not be subject to any liability to Tenant for any loss or damage resulting from the non-delivery, and the non-delivery shall not affect the validity of this Lease or the obligations of Tenant under this Lease. If Landlord is unable to deliver possession of the Premises to Tenant within twelve (12) months after the Estimated Early Possession Date, either party may terminate this Lease, and Landlord shall not, by reason of such termination, be subject to any liability except that Landlord shall return to Tenant all amounts which Landlord previously received from Tenant as prepaid Rent or as a Security Deposit, without interest; provided, however, that Tenant's occupancy of the Premises at any time shall conclusively be deemed a waiver of this provision.

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3.4 **Option to Extend.** If Tenant is granted an Option under Section 1.3, Tenant may exercise an Option to extend the current Term for the specified period by providing written notice to Landlord of Tenant's intent to exercise such Option no more than 365 days and no less than 180 days prior to the expiration of the current Term. During the Option period, Tenant's Base Rent shall commence at the fair market value, as set forth in Rider 1 attached hereto and made a part hereof, but in no event less than four percent (4%) increase over the previous year's Minimum Monthly Rent. Each Option is contingent upon: (a) Tenant not being in default during the exercise period; and (b) Tenant not having received three (3) or more notices of default from Landlord during the current Lease Term. Each Option is personal to the original Tenant.

4. **SECURITY DEPOSIT.** Tenant shall deposit the Security Deposit with Landlord to secure the performance of all of Tenant's obligations under this Lease. Upon expiration of the Term, as long as Tenant is not in default under this Lease Landlord shall return the Security Deposit to Tenant, after deducting the amounts needed to make good any default by Tenant. Landlord shall have the right, but not the obligation, to apply all or any portion of the Security Deposit to cure any Tenant default at any time, in which case Tenant shall be obligated to restore the Security Deposit to its original amount within ten (10) business days. Tenant waives any provisions of law, now or hereafter in force, which provide 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 clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant and sums Landlord determines to meet any shortfalls in tenant's share of Operating Expenses until which time the operating period expenses have been reconciled for the Shopping Center. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. No part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any monies to be paid by Tenant under this Lease. If Landlord keeps the Security Deposit in an interest bearing account, all interest shall accrue for the benefit of Landlord.

5. **RENT.** The term "**Rent**" as used in this Lease shall mean Base Rent, Tenant's Proportionate Share of Operating Costs and all other amounts required to be paid by Tenant under the terms of this Lease.

5.1 **Open Book Account.** The amount of Rent due under this Lease shall be the subject of an open book account maintained by Landlord and Rent owing hereunder for any and all periods shall remain open and capable of collection throughout the balance of the Term. Tenant hereby waives the statute of limitations for breach of contract as it relates to the nonpayment of Rent, but does not waive the statute of limitations as it relates to an open book account.

5.2 **Base Rent.** Tenant agrees to pay the Base Rent set forth in Section 1.6 above for each month of the Term, payable in advance on the first day of each month commencing with the Commencement Date, without any deduction or set off whatsoever. If the Commencement Date is not the first day of a month, a prorated monthly installment shall be paid on the Commencement Date for the fractional month during which the Commencement Date occurs. At the time of execution of this Lease, Tenant shall pay the amount set forth in Section 1.6, as prepayment of the Base Rent for the periods set forth in Section 1.6.

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5.3 **Annual Increases.** Base Rent shall be increased on each anniversary of the Commencement Date (or if the Commencement Date does not fall on the first day of a month, then on each anniversary of the first day of the month following the month in which the Commencement Date occurs) (the "**Adjustment Date(s)**"). As of each Adjustment Date the then current Base Rent shall be increased by the greater of: (a) four percent (4%); or (b) the percentage annual increase in the CPI Index (defined below) determined as of second month preceding the Adjustment Date.

5.3.1 "**CPI Index**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, for the region closest to the Premises (1982-1984 = 100) published by the U.S. Department of Labor, Bureau of Labor Statistics (the "**Bureau**"), or if such index is no longer published, then the Bureau's most comprehensive official index then in use that most nearly corresponds to the index named above (If it is calculated from a base different from the base period (1982-1984 = 100), figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau).

5.4 **Proportionate Share of Operating Costs.**

5.4.1 **Operating Costs.** In addition to the Base Rent, Tenant shall also pay Tenant's Proportionate Share of Operating Costs as set forth in Section 1.9 above. The term "**Operating Costs**" means all expenses, costs, and amounts of every kind that Landlord pays or incurs on an accrual basis during any calendar year because of or in connection with the ownership, operation, management, maintenance, repair, replacement, renovation and/or management of the Shopping Center, including, but not limited to, the following items: (a) the cost of supplying all utilities; (b) the cost of operating, maintaining, repairing, replacing, renovating and managing the Common Areas, all exterior signs and tenant directories, and all systems, equipment or facilities which serve the Shopping Center, including the utility, mechanical, sanitary, storm drainage, fire detection, sprinkler, escalator and elevator systems, the cost of environmental and energy surcharges imposed by any governmental entity, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (c) the cost of landscape maintenance and relamping, and all supplies and equipment and maintenance and service contracts in connection therewith; (d) the cost of parking area maintenance, including resurfacing, repainting and restriping, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (e) the cost of licenses, certificates, permits and inspections and the cost of contesting the validity or applicability of any governmental enactments which may affect Operating Costs and the cost incurred in connection with the implementation and operation of a transportation system management or similar program; (f) the cost of insurance carried by Landlord, in such types and amounts as Landlord may reasonably determine (which may, in Landlord's reasonable discretion, include fire, extended coverage, all-risk, boiler, sprinkler, public liability, property damage, worker's compensation, loss of rent, earthquake if available at commercially reasonable rates, and other or additional insurance that Landlord purchases for the Shopping Center, including such endorsements as Landlord may desire); (g) fees, charges and other costs, including management, consulting, legal and accounting fees, of all persons engaged by Landlord or otherwise reasonably incurred by Landlord in connection with the management, operation, maintenance and repair of the Shopping Center; (h) wages, salaries, compensation and benefits, insurance and all related taxes of all persons engaged in the operation, maintenance or security of the Shopping Center; (i) the fair market rental value of the property manager's office, if any, in the Shopping Center; (j) payments under any easement, license, operating agreement, declaration, restrictive covenant or instrument pertaining to the sharing of costs by the Shopping Center; (k) amortization of the cost of acquiring or the rental expense of

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personal property used in the maintenance, operation and repair of the Shopping Center; (l) all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges, commercial rental taxes, in lieu taxes, levies, penalties or other impositions of every kind and nature, whether general, special, ordinary or extraordinary or in connection with the ownership, leasing or operation of the Shopping Center, to the extent not paid directly paid by tenants of the Shopping Center, which are paid or incurred by Landlord, including, but not limited to: (1) any assessment, tax, fee, levy or charge imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other services, whether or not such assessment, tax, fee, levy or charge was previously commonly included within the definition of real property tax and whether or not such services were formerly provided without charge to property owners or occupants; (2) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (3) any supplemental taxes assessed by the County Assessor; and (m) the cost of any capital improvement to the Buildings or the Shopping Center; provided, however, that Landlord shall allocate the cost of any such capital improvement over the useful life of the improvement as reasonably determined by Landlord. The following are not included in Operating Costs: alterations for individual tenants, leasing commissions, advertising, depreciation, interest, income taxes and administrative costs not specifically incurred in the management, maintenance and operation of the Shopping Center. If the Buildings are not fully occupied during all or a portion any calendar year during the Term of this Lease, Landlord may calculate the variable components of the Operating Costs as if the Buildings had been ninety-five percent (95%) occupied for the respective calendar year.

5.4.2 **Exclusions from Operating Costs.** The foregoing definition of Operating Costs notwithstanding, Tenant's Proportionate Share of Operating Costs shall not include domestic water and trash/refuse/recycling service(s) provided to other tenants of the Shopping Center but for which Tenant pays on its own account for the Premises the Premises; expenses relating to the elevator serving 10872 Westminster; and, during the initial Term, roof repair and maintenance. Effective during any extension of the Term, roof maintenance and repair will be included among Tenant's Proportionate share of Operating Costs.

5.4.3 **Estimation of Operating Costs.** Tenant shall pay to Landlord on the first day of each and every month of the Term one-twelfth (1/12th) of Landlord's reasonable estimate of Tenant's Proportionate Share of Operating Costs for the calendar year in which such month falls. By May 1 of each calendar year, or as soon thereafter as possible, the total Operating Costs for the previous calendar year shall be determined on an accrual basis by Landlord. Landlord shall give Tenant notice of such determination, and within thirty (30) days after receipt of such notice, Tenant shall pay to Landlord Tenant's Proportionate Share of Operating Costs for such calendar year less the estimated payments made by Tenant to Landlord during such calendar year for Operating Costs. If Tenant has overpaid such amount, Landlord shall credit any excess paid toward Tenant's Operating Costs account. During the first and last years of the Term, Tenant's Proportionate Share of Operating Costs shall be adjusted in proportion to the number of days of that calendar year during which this Lease is in effect over the total days in that calendar year. Without altering Tenant's obligation to pay Tenant's Proportionate Share of Operating Costs as set forth in this paragraph, Tenant shall have the right, within three (3) months after receipt of notice of Landlord's annual determination of the actual Operating Costs for the prior calendar year, to challenge such determination. If Tenant fails to provide written notice of its challenge of such determination within such three (3) month period, Tenant shall be deemed to have waived its right to challenge such determination, and such determination shall be final.

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5.4.4 **Taxes on Tenant's Personal Property.** In addition to Tenant's Proportionate Share of Operating Costs, Tenant shall reimburse Landlord upon demand for any and all taxes required to be paid by Landlord when such taxes are measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, trade fixtures and other personal property located in the Premises.

5.4.5 **Reduction of Operating Costs.** Landlord may, in its sole and absolute discretion, elect to use or accept vendors or services from Tenant that result in a reduction in the Operating Costs. In such event Landlord may in its sole and absolute discretion, reduce the Operating Costs by such savings and/or reimburse Tenant for its costs as an Operating Cost.

5.5 **[DELETED]**

6. **INITIAL CONSTRUCTION.** Construction by Tenant shall be completed in accordance with the "**Improvement Agreement**", attached hereto as Exhibit D and made a part of this Lease. Landlord will not be obligated to construct or install any improvements or facilities of any kind. Tenant agrees to commence and complete its work with reasonable diligence. All improvements shall remain the property of Landlord and upon termination of this Lease, Tenant shall deliver the Premises, including such improvements, to Landlord in good condition, normal wear and tear excepted. Landlord agrees to have the Shopping Center compliance with the Americans with Disability Act as of the date of the Lease and to reasonable cooperate with Tenant make any necessary changes thereto resulting as of Tenant's construction work.

7. **REPAIRS AND ALTERATIONS.**

7.1 **Landlord's Obligations.** Except for the obligations of Tenant set forth in Section 7.2, Landlord agrees to keep the Common Areas in good order and repair, including, the foundations, exterior walls, exterior doors windows (other than doors to the Premises or the premises of other tenants), exterior windows (other than windows in the Premises or the premises of other tenants), corridors in Common Areas, structural condition of interior bearing walls, exterior roofs, fire sprinkler and/or standpipe and hose (if not located within the Premises or the premises of other tenants) or other automatic fire extinguishing system including fire alarm and smoke detection systems and equipment in the Common Areas, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems servicing the Common Areas, elevators, plumbing, heating, ventilation and air conditioning ("**HVAC**") and similar equipment servicing the Common Areas of the Shopping Center and to keep the Shopping Center in a clean, neat and attractive condition. Subject to the Exclusions from Operating Costs set forth in Section 5.4.1, the foregoing costs shall be included as Operating Costs. Notwithstanding the foregoing obligations, in no event shall Landlord not be liable or responsible for breakdowns or temporary interruptions in service where reasonable efforts are used to restore service.

7.2 **Tenant's Obligations** Tenant agrees that it will, at its sole cost and expense, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises), except as required of Landlord pursuant to this Section 7.2. Specifically, but without limiting the generality of the foregoing sentence, Tenant shall, at Tenant's sole cost and expense, keep in good order, condition and repair: (a) all equipment or facilities specifically serving the Premises, such as plumbing, electrical, lighting facilities, boilers, fired or unfired

pressure vessels, lateral connections to main sewer lines and fire hose connections (no matter where located), and (b) all fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, interior and exterior doors, plate glass, and skylights, if within the Premises. Specifically with respect to HVAC maintenance and repair, if Landlord determines in its sole discretion Tenant is not maintaining the HVAC equipment according to manufacturer and industry standards, Landlord, on Tenant's behalf will engage a reputable contractor to conduct quarterly maintenance and make repairs. Tenant shall then promptly notify Landlord of any HVAC issues. Such costs shall be included as Rent or Tenant shall reimburse Landlord, upon demand, for the cost thereof. Notwithstanding anything to the contrary contained herein, Tenant will pay for any repairs to the Premises or the Shopping Center made necessary by any negligence or carelessness of Tenant or its employees or persons permitted in the Shopping Center by Tenant. Tenant will maintain the Premises in clean, neat and sanitary condition. Tenant hereby waives and releases its right under any applicable provision of law, statute or ordinance now or hereafter in effect relating to the allocation of obligations between landlords and tenants for the maintenance of leased premises. Tenant shall provide security staffing for the Premises during its business hours.

7.3 **Landlord's Right of Entry** If Tenant fails to perform Tenant's obligations under Section 7.2, Landlord may enter the Premises after ten (10) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the Premises in good order, condition and repair, and the costs and expenses incurred by Landlord in doing so shall be due and payable by Tenant to Landlord upon receipt of an invoice therefor. Such action by Landlord shall not cure Tenant's breach of its obligations under Section 7.2, and Landlord shall have the right to exercise any or all of its other remedies as set forth in Section 27.

7.4 **Mechanic's Liens** Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Shopping Center, the Buildings or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant or the Premises under this Article 7 or otherwise, and, in case of any such lien attaching or notice of any lien, Tenant covenants and agrees to cause it to be immediately released and removed of record or Landlord, at its sole option, may immediately take all action necessary to release and remove such lien and Tenant shall upon demand reimburse Landlord for all costs involved therewith.

7.5 **Restrictions on Tenant's Alterations** Subject to the restrictions in this paragraph, Tenant is responsible for all redecorating, remodeling, alterations and painting of the Premises during the Term. Tenant may not make any improvements, alterations, additions or changes to the Premises (collectively, the "**Alterations**") without the prior written consent of Landlord, which consent shall be requested by Tenant not less than thirty (30) days prior to the planned commencement of such Alterations and which consent shall not be unreasonably withheld by Landlord. The construction of the initial improvements to the Premises shall be governed by the terms of the Improvement Agreement, attached hereto as **Exhibit D**, and not the terms of this Article 7.

7.6 **Removal of Alterations at Expiration** Except to the extent Tenant requests and Landlord designates otherwise at the time Landlord approves such Alterations, all or any part of the Alterations (including, without limitation, wall-to-wall carpeting and wiring), whether made with or without the consent of Landlord, shall, at the election of Landlord, either be removed by Tenant at Tenant's sole cost and expense before the expiration of the Term or shall remain upon the Premises and be surrendered therewith at the expiration of the Term or earlier

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termination of this Lease as the property of Landlord. If Landlord requires the removal of all or part of any Alterations, Tenant, at Tenant's sole cost and expense, shall repair any damage to the Premises or the Buildings caused by such removal. If Tenant fails to remove the Alterations upon Landlord's request, then Landlord may (but shall not be obligated to) remove them and the cost of removal and repair of any damage together with all other damages which Landlord may suffer by reason of the failure of Tenant to remove the Alterations, shall be charged to Tenant and paid by Tenant upon demand. This paragraph shall not alter the requirement in Section 6 above that all improvements constructed by Landlord prior to the Commencement Date and by Tenant pursuant to the Improvement Agreement shall remain a part of the Premises at expiration.

7.7 **Compliance with Codes** Tenant shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code, ordinance or law, pursuant to a valid building permit issued by the applicable municipality and in conformance with Landlord's construction rules and regulations (collectively "**Regulations**"). All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing any such Alterations, Tenant shall have the work performed in such a manner as not to obstruct access to the Shopping Center or the Common Areas for any shoppers or for any other tenant of the Shopping Center, and as not to interfere with the business of Landlord or other tenants in the Shopping Center. Upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be filed or recorded with the appropriate governmental agency, and Tenant shall deliver to the Shopping Center management office a reproducible copy of the "**as built**" drawings of the Alterations. In addition, upon completion of the Alterations, Tenant shall deliver to Landlord evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials.

7.8 **Contractor Charges** If the construction of the Alterations is performed by a contractor selected and retained by Landlord, the charges for such work shall be deemed Rent under this Lease, payable upon billing therefor, either periodically during construction or upon the substantial completion of such work, at Landlord's option. Tenant shall pay to Landlord a percentage of the cost of such work sufficient to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's involvement with such work. Upon completion of such work, Tenant shall deliver to Landlord evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials.

7.9 **Builder's All Risk Insurance** In the event that Tenant makes any Alterations, Tenant agrees to carry "**Builder's All Risk**" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 9 of this Lease immediately upon completion thereof. In addition, Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to insure the lien-free completion of such Alterations and naming Landlord a co-obligee.

8. **FIRE, EARTHQUAKE OR OTHER CASUALTY DAMAGE.**

8.1 **Notice of Damage** If either party becomes aware of damage to the Premises or the Shopping Center by fire, earthquake or other casualty ("**Casualty Damage**"), such party shall give prompt written and telephonic notice to the other party.

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8.2 **Landlord's Right to Restrict Entry to Shopping Center** In the event of an earthquake or other casualty that may affect the safety of persons or property in the Shopping Center, Landlord shall request an inspection of the Shopping Center and the Premises by appropriate governmental inspectors as soon as possible. If Landlord in good faith believes there is a risk of injuries to natural persons or damage to property from entry into the Shopping Center or Premises prior to governmental inspection, Landlord may restrict entry into the Shopping Center or the Premises by Tenant, its employees, guests and contractors in a nondiscriminatory manner. Upon request, Landlord shall consult with Tenant to determine if there are safe methods of entry into the Shopping Center and Premises in order to retrieve files, data in computers and inventory, subject to any indemnities and waivers of liability that Landlord may reasonably require. The decision of any appropriate governmental inspector regarding safe entry shall be binding on the parties unless subsequently amended or revoked.

8.3 **Preliminary Estimate of Damage.** Within thirty (30) days after the initial occurrence of the Casualty Damage (the "**Initial Occurrence**"), Landlord shall give Tenant its best preliminary estimate (the "**Preliminary Estimate**") of the cost of repairing the Casualty Damage, the time needed to complete the repairs (without the payment of overtime or other premiums), and the limits of any insurance coverage Landlord reasonably believes is applicable to the Casualty Damage. The Preliminary Estimate shall not include any extra time or cost required to construct new, additional or upgraded improvements to any portion of the Shopping Center, except as may be required to meet building and other codes then in effect. The Preliminary Estimate shall include reasonably detailed backup information justifying the information contained in the Preliminary Estimate. As used throughout this Article 8, the cost of repairing Casualty Damage shall include only the cost of repairing damage that Landlord is required to repair under Section 8.8 below. If Landlord is unable to submit the Preliminary Estimate within such 30 day period despite Landlord's commercially reasonable efforts, Landlord shall submit the Preliminary Estimate as soon as reasonably possible thereafter.

8.4 **Repair or Termination** Landlord shall have the obligation to repair the Casualty Damage diligently and as soon as practical after the date of the Initial Occurrence at Landlord's expense after Landlord applies the proceeds of any insurance, including without limitation Tenant's insurance, except if the Casualty Damage was the fault of Tenant or the result of Tenant's negligence, the repairs shall be at Tenant's expense in accordance with Section 8.5. Notwithstanding the foregoing, Landlord shall have the right to elect in its sole discretion to terminate this Lease and not to repair the Casualty Damage in the following situations: (a) the time set forth in the Preliminary Estimate for the completion of the repairs is in excess of 200 days measured from the date of the Initial Occurrence, (b) the holder of any mortgage or deed of trust on the Shopping Center shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, (c) any ground lessor of the Shopping Center shall terminate the ground lease as a result of the Casualty Damage, (d) the Casualty Damage is not fully covered, except for deductible amounts, by Landlord's and Tenant's insurance policies, or € in the case of earthquake damage, the cost of repair not covered by insurance as a result of the deductible is greater than Fifty Thousand Dollars (\$50,000.00). Landlord shall state in the Preliminary Estimate whether or not Landlord elects to terminate the Lease, provided that if Landlord is not informed until after the date of the Preliminary Estimate by the holder of a mortgage or deed of trust that all or a portion of the insurance proceeds shall be used to retire the mortgage debt, or by the ground lessor of the termination of the ground lease, Landlord may notify Tenant of Landlord's election to terminate this Lease within one week after receipt of such information. If Landlord elects to terminate the Lease, Landlord shall give Tenant not less than ninety (90) days to vacate the Premises, and Rent shall be apportioned and paid to the date of termination.

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8.5 **Damage Caused By Tenant** All Casualty Damage resulting from the fault or negligence of Tenant or its agents shall be repaired by Tenant, at Tenant's expense, and Rent shall not abate. If Tenant shall fail to do so or if Landlord shall so elect, Landlord shall have the right to make repairs to the Shopping Center and to the Premises (but not to any tenant improvements not installed by Landlord, or to alterations or personal property), and any expense incurred by Landlord, together with interest thereon at the rate of fifteen percent (15%) per annum, shall be paid by Tenant upon demand.

8.6 **Rent Abatement** Provided that Tenant has complied with its insurance requirements under Section 9.1, during the period that Tenant is deprived of the damaged portion of the Premises, and provided the damage is not due to the fault or negligence of Tenant or its agents, Base Rent shall be reduced by the ratio that the rentable square footage of the Premises damaged bears to the total rentable square footage of the Premises.

8.7 **Tenant's Personal Property** Notwithstanding the foregoing, Tenant shall be solely responsible for all costs of repairs or replacements of Tenant's merchandise, inventory and other personal property, including without limitation any alterations or improvements constructed or installed by Tenant, resulting from fire, earthquake or other casualty.

8.8 **Diligent Prosecution of Repairs** If Landlord does not terminate this Lease as a result of any Casualty Damage, Landlord shall promptly commence and diligently prosecute to completion the repair of the Casualty Damage. However, Landlord shall not be liable for its failure to complete the repairs within the time estimate set forth in the Preliminary Estimate. Immediately after completion of the repair work Landlord is obligated to perform, Tenant shall commence and diligently pursue to completion the repair and/or replacement of Tenant improvements to the Property. Any material modification of such tenant improvements shall constitute an alteration requiring Landlord's consent pursuant to Section 7.5.

8.9 **Waiver of Statutes** The provisions of this Lease, including this Article 8, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Buildings or any other portion of the Shopping Center, and any applicable law, ordinance, code, statute or regulation with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other law, ordinance, code, statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Buildings or any other portion of the Shopping Center.

9. **INSURANCE.**

9.1 **Tenant's Insurance Obligations.** Tenant shall during the entire Term maintain the following insurance coverage:

9.1.1 Commercial General Liability Insurance against claims for bodily injury, personal injury and property damage based upon, involving or arising out of Tenant's occupation, use or maintenance of the Premises and all areas appurtenant to the Premises, and Tenant's business operations. Such insurance shall be on an occurrence basis providing coverage in an amount not less than One Million Dollars (\$1,000,000.00) for each occurrence and Three Million Dollars (\$3,000,000.00) for all occurrences each year. Such insurance shall include an "Additional Insured - Managers or Lessors of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or

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fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease.

9.1.2 Property Damage Insurance covering all Tenant's furniture, trade fixtures, equipment, merchandise and other personal property in the Premises and all Alterations and Tenant Improvements in the Premises. This insurance should be an "all risk" policy covering the full replacement cost of the items covered and including vandalism, malicious mischief, earthquake and sprinkler leakage coverage.

9.1.3 Loss of income and business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Shopping Center as a result of such perils, but in no event in an amount less than the total Gross Sales of Tenant from the Premises for six (6) months.

9.1.4 Workers' Compensation Insurance or other similar insurance pursuant to all applicable state and local statutes and regulations.

9.2 **Insurance Requirements.** Neither the minimum insurance requirements set forth in this Lease, nor the limits of such insurance, shall limit the liability of Tenant under this Lease. Landlord and any lenders or other parties specified by Landlord shall be named as additional insureds under Tenant's insurance. All insurance companies providing insurance pursuant to this Article 9 shall be rated at least A-XII in Best's Key Rating Guide and shall be otherwise reasonably acceptable to Landlord and licensed and qualified to do business in the State of California. Insurance provided by Tenant shall be primary as to all covered claims and any insurance carried by Landlord is not excess and is non-contributing. Tenant authorizes Landlord to contact Tenant's insurance company directly in the event that Landlord elects to make a claim under Tenant's insurance. Each of Tenant's insurance policies must not be cancelable or modifiable except upon thirty (30) days prior written notice to Landlord and any specified mortgagee and ground lessor of Landlord. The insurance must also contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Copies of policies or original certificates of insurance with respect to each policy shall be delivered to Landlord prior to the Commencement Date (or, if there is an Early Possession Date, prior to the Early Possession Date), and thereafter, at least thirty (30) days before the expiration of each existing policy.

9.3 **Landlord's Insurance.** Landlord shall have the right to insure the structure and Common Areas in an amount and for coverage reasonably satisfactory to Landlord and all costs of that insurance shall be included within Operating Costs pursuant to this Lease. In addition, if Tenant fails to obtain the insurance required in Section 9.1, Landlord shall have the right and option, but not the obligation, to maintain any or all of the insurance which is required in Section 9.1 above to be provided by Tenant. All costs of Tenant's insurance provided by Landlord shall be obtained at Tenant's sole cost and expense and Tenant shall promptly reimburse Landlord for such costs upon demand.

9.4 **Landlord's Right to Change Insurance.** Landlord has the right at any time, but not the obligation, to change, cancel, decrease or increase any insurance required or specified under this Lease, but in no event shall any such increased amounts of insurance or such other reasonable types of insurance be in excess of that required by comparable landlords in the

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vicinity of the Shopping Center. Landlord at its option may obtain any of the required insurance directly or through umbrella policies covering the Shopping Center and other assets owned by Landlord.

9.5 **Waiver of Subrogation.** Landlord and Tenant each release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by way of subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this Lease pursuant to insurance policies carried by the parties which are in force at the time of the loss or damage. Landlord and Tenant will each request its respective insurance carrier to include in policies provided pursuant to this Lease an endorsement recognizing this waiver of subrogation.

10. **WAIVER AND INDEMNIFICATION.** To the fullest extent permitted by law, Landlord, its partners, trustees, ancillary trustees, lenders and ground lessors (if any), and their respective officers, directors, shareholders, members, partners, beneficiaries, agents, servants, employees, independent contractors, attorneys, successors and assigns (the "**Landlord's Parties**") shall not be liable for any damage either to person or property or resulting from the loss of use of property, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, protect, defend and hold Landlord's Parties harmless from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities, except those caused by Landlord's gross negligence or willful misconduct, arising out of, resulting from, or occurring in connection with: (a) any accident, injury, death, loss or damage to any person or to any property including the person and property of Tenant and its employees, officers, agents, customers, contractors, guests, licensees, invitees and all other persons at any time in the Shopping Center or the Premises or the Common Areas, (b) the occupancy or use of the Premises by Tenant, (c) the conduct of Tenant's business; (d) the breach by Tenant of any obligation, covenant, representation or warranty contained in this Lease, or (e) any act, omission or negligence of Tenant or any employee, officer, guest, licensee or invitee of Tenant or of any agent or contractor of Tenant or of any subtenant or subtenant's agents, employees, contractors or invitees. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend such action or proceeding at Tenant's expense by counsel reasonably satisfactory to Landlord, and Landlord shall cooperate with Tenant in such defense at Tenant's sole cost and expense. Landlord need not have first paid any such claim in order to be so indemnified.

11. **Eminent Domain.** If all or any portion of the Premises is taken from Tenant by power of eminent domain or condemned by any competent authority (the "**Condemning Authority**") for any public or quasi-public use or purpose, or if Landlord shall grant a deed or other instrument in lieu of and under the threat of such taking by eminent domain or condemnation (all of which is referred to in this paragraph as being "**Condemned**", or as a "**Condemnation**"), this Lease shall terminate as to the part so taken as of the date the Condemning Authority takes title or possession, whichever occurs first. If ten percent (10%) or more of the Premises or Shopping Center are Condemned, Landlord shall have the option to terminate this Lease upon ninety (90) days' notice to Tenant, as long as such notice is given no later than one hundred eighty (180) days after the date of the Condemnation. If less than all of the Premises is Condemned and if Landlord does not elect to terminate this Lease, then this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent and Tenant's

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Proportionate Share of Operating Expenses shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. The entire award or payment in connection with any Condemnation shall be the property of Landlord, whether such award or payment is made as compensation for diminution of value of the leasehold or for the taking of the fee or as severance damages; provided, however, that Tenant shall be entitled to compensation, if separately awarded to Tenant, for Tenant's relocation expenses and/or loss of Tenant's trade fixtures.

12. **ASSIGNMENT AND SUBLETTING.**

12.1 **Landlord's Consent Required for Transfers.** Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or rent (or permit a third party to occupy or use) (collectively, a "**Transfer**") all or any portion of the Premises, nor shall any Transfer of this Lease or the right of occupancy be effected by operation of law or otherwise, without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Tenant shall be responsible for paying Landlord a \$2,000.00 processing fee upon the request of a Transfer.

12.2 **Reasonable Grounds for Withholding Consent.** The parties agree that it shall be deemed to be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where, without limitation as to other reasonable grounds for withholding consent, (a) the transferee is of a character or reputation or engaged in a business that is not consistent with the quality of the Shopping Center, in Landlord's reasonable opinion; (b) the business of the transferee does not fit within Tenant mix reasonably deemed by Landlord to be desirable for the Shopping Center; (c) the business of the transferee would cause an undue burden on the Common Areas of the Shopping Center (such as the parking areas) due to an unusually high volume of proposed visitors, or would cause an undue burden on the supply of utilities to the Shopping Center due to an unusually high projected electrical use, air conditioning demands, or water use; (d) the transferee sells items or services that would violate an exclusive right of another tenant of the Shopping Center to sell such items or services within the Shopping Center; (e) Landlord reasonably determines that the transferee does not have the financial worth and/or financial stability to meet the responsibilities involved under the Lease; (f) the transferee's credit history demonstrates repeated or material defaults under past leases or other credit obligations; or (g) the Premises are not suitable for the transferee's intended use, or the transferee's use would require extensive alterations or construction to the Premises.

12.3 **Transfers of an Interest in Tenant.** For purposes of the foregoing prohibitions, a transfer at any one time or from time to time of twenty percent (20%) or more of an interest in Tenant or in an entity that controls Tenant (whether stock, partnership interest or other form of ownership or control) by any person or persons or entity or entities having an ownership interest in or other control of Tenant as of the Date of Lease shall be deemed to be a Transfer of this Lease.

12.4 **Tenant Remains Primarily Liable Upon Transfer.** If Landlord consents to any proposed Transfer, Tenant and any guarantor shall remain liable under this Lease. Neither the consent by Landlord to any Transfer nor the collection or acceptance by Landlord of rent from such assignee, subtenant or occupant shall be construed as a waiver or release of Tenant or any guarantor from the terms and conditions of this Lease or relieve Tenant or any subtenant, assignee or other party from obtaining the consent in writing of Landlord to any further Transfer.

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12.5 **Transfers Without Consent Voidable.** Any Transfer without Landlord's written consent shall be voidable by Landlord and, at Landlord's election, constitute an "**Event of Default.**" as that term is defined in Article 26 of this Lease.

12.6 **Assignment of Rents.** Tenant hereby assigns to Landlord the rent and other sums due from any subtenant, assignee or other occupant of the Premises and hereby authorizes and directs each such subtenant, assignee or other occupant to pay such rent or other sums directly to Landlord; provided, however, that until the occurrence of an Event of Default under this Lease, Tenant shall have the license to continue collecting such rent and other sums. Upon an Event of Default under this Lease, Landlord shall have the right to instruct any or all such subtenants, assignees or other occupants to pay such rent or other sums directly to Landlord, and Tenant shall cooperate in causing such rent or other sums to be paid directly to Landlord.

12.7 **Landlord's Costs in Giving Consent.** If Landlord consent to a Transfer under this Article, Tenant will pay Landlord's processing costs and attorneys' fees incurred in giving such consent.

12.8 **Excess Rent.** Tenant will pay to Landlord as additional Rent promptly upon receipt any rent or other consideration received in any proposed Transfer exceeding the total Rent payable under this Lease after deduction of Tenant's reasonable costs for Tenant Improvements and free rent concessions (prorated by the ratio that the assignment or sublease term and square footage bears to the term and square footage of this Lease).

12.9 **Landlord's Right to Terminate Lease.** In the event of a proposed assignment or subletting, Landlord shall also have the right, by notice to Tenant, to terminate this Lease in the event of an assignment as to all of the Premises and, in the event of a sublease, as to the subleased portion of the Premises, and to require that all or part, as the case may be, of the Premises be surrendered to Landlord for the balance of the Term.

13. **TRANSFER OF LANDLORD'S INTEREST.** Landlord has the right to transfer all or any portion of its interest in the Shopping Center and in this Lease and Tenant agrees that in the event of any such transfer and a transfer of the Security Deposit, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of such transfer. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

14. **USE OF PREMISES.**

14.1 **Permitted Use.** The Premises are leased to Tenant for the sole purpose set forth in Section 1.10 above (the "**Permitted Use**") and Tenant shall not use or permit the Premises to be used for any other purposes without the prior written consent of Landlord. Tenant further covenants and agrees that it shall not use, or permit any person or person to use, the Premises or any part thereof for any use or purpose contrary to the rules and regulations, attached hereto as **Exhibit B** and made a part of this Lease, or in violation of the laws of the United States of America or the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Shopping Center. Landlord shall not be responsible to Tenant for the

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nonperformance of any of such rules and regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Shopping Center. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the real property underlying the Shopping Center.

14.2 **Other Tenancies.** Landlord, at its sole discretion, reserves the absolute right to establish procedures to control other tenancies in the Shopping Center. Regardless of whether any specific tenants are shown on any site plan attached hereto, Tenant does not rely on that fact, nor does Landlord represent that any specific tenant or number or type of tenants shall or shall not during the Term occupy any portion of the Shopping Center, nor does Tenant rely on any other tenant operating its business in the Shopping Center at any particular time or times. Further, no conduct by any tenant, subtenant or other occupant of, or any customer of, or any supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Tenant from the Premises, and Tenant hereby waives any and all claims that it might otherwise have against Landlord by reason thereof.

15. **CONTINUOUS OPERATIONS.** Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Premises the type of business for which the Premises are leased. Tenant shall operate its business with a complete line and sufficient stock of merchandise, with attractive displays, and in an efficient, high class and reputable manner. Tenant acknowledges that its breach of this Section shall cause Landlord to lose value in the Shopping Center because of diminished saleability or mortgageability or adverse publicity or appearance. Therefore, for each day this Section is breached, Landlord shall have the right, in addition to any other remedies available under this Lease or at law, to increase Base Rent to 200% of Base Rent.

16. **COMPLIANCE WITH LAW.** Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, Tenant shall promptly comply with all such governmental measures, other than the making of structural changes to the Buildings or changes to the Buildings' life safety systems. Should any standards or regulations now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

17. **HAZARDOUS MATERIALS.**

17.1 **Definition.** As used in this Lease, the term "**Hazardous Material**" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any federal, state or local laws, regulations or ordinances including, without limitation, petroleum-based products, printing inks, acids, pesticides, asbestos, PCBs and similar compounds and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

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17.2 **Tenant's Obligations.**

17.2.1 **Landlord's Prior Consent.** Tenant shall not cause or permit any Hazardous Material to be generated, handled, manufactured, produced, installed, maintained, brought upon, transported through or across, used, stored, treated, spilled released, removed or disposed of in, on, from or about the Premises or the Shopping Center by Tenant, its agents, contractors, employees, affiliates, sublessees or invitees, without obtaining Landlord's prior written consent.

17.2.2 **Compliance With Laws.** Whether or not Tenant obtains such prior written consent from Landlord (but without waiving the requirement to obtain such prior written consent), Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all applicable permits, all applicable federal, state and local laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants (collectively, the "**Environmental Requirements**") governing or relating to: (a) environmental conditions on, in, under or about the Premises and the Shopping Center, including without limitation soil and groundwater conditions; (b) the use, generation, handling, manufacture, production, installation, maintenance, storage, treatment, spill, release, transportation, removal and/or disposal of such Hazardous Materials, (c) the posting of notices with respect to such Hazardous Material, or the providing of notices to third parties with respect to such Hazardous Materials, (d) the obtaining of all necessary licenses, permits or other authorizations relating to such Hazardous Materials, and (e) the filing of all applicable applications, reports, notices, registrations or business plans regarding such Hazardous Materials with the appropriate governmental agencies or authorities. Notwithstanding the foregoing, Tenant shall not cause or permit any Hazardous Material to be spilled or released in, on, under or about the Premises, including, without limitation, through the plumbing or sanitary sewer system. Tenant shall provide Landlord with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports, notices and certificates, evidencing Tenant's compliance with the Environmental Requirements, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any of the Environmental Requirements.

17.2.3 **Duty to Inform Landlord.** If Tenant knows, or has reasonable cause to believe, that a Hazardous Material has come to be located in, on, under or about the Premises or the Shopping Center, other than as previously consented to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to such Hazardous Material.

17.2.4 **Removal of Hazardous Materials on Lease Termination.** Upon expiration of the Term or earlier termination of this Lease, Tenant shall deliver possession of the Premises to Landlord free from any and all Hazardous Materials. Therefore, upon expiration or earlier termination of this Lease, Tenant shall cause any Hazardous Material used by, or otherwise arising out of or related to the use or occupancy of the Premises by, Tenant or its agents, affiliates, customers, employees, business associates or assigns, to be removed from the Premises and the Shopping Center and properly transported for use, storage or disposal in accordance with all Environmental Requirements. Failure to comply with this Section 17.2.4

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shall, in addition to constituting an Event of Default under this Lease, constitute (without limiting any cause of action available to Landlord): (a) a continuing trespass upon the Premises by Tenant; (b) a continuing nuisance; and (c) at Landlord's option, a failure to tender possession of the Premises to Landlord with the result that Tenant shall be deemed to be a holdover tenant of the Premises in accordance with Section 32 below until all such Hazardous Materials are removed from the Premises and the Shopping Center by Tenant at Tenant's sole cost and expense in accordance with all Environmental Requirements.

17.3 **Indemnification.** Tenant shall indemnify, defend and hold Landlord and Landlord's Parties harmless from all actions (including, without limitation, remedial or enforcement actions of any kind, and administrative or judicial proceedings and orders or judgments), costs, claims, damages (including punitive damages), expenses (including attorneys', consultants' and experts' fees and court costs), amounts paid in settlement, fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief, liabilities or losses arising from a breach of this Article 17 by Tenant, its agents, employees, contractors, affiliates, sublessees or invitees.

17.4 **Inspection by Landlord.** Landlord, Landlord's agents, employees, contractors and designated representatives, and/or the holders of any mortgages, deeds of trust or ground leases on the Premises or the Shopping Center shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Environmental Requirements, and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's installation, operation, use, monitoring, maintenance, storage, transportation, spill or release of any Hazardous Materials on, in, under or from the Premises. The costs and expenses of such inspection shall be paid by the party requesting such inspection, unless the inspection reveals that an Event of Default or a breach of this Lease by Tenant or a violation of the Environmental Requirements or a contamination, caused or contributed to by Tenant, exists or is imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Tenant shall upon request reimburse Landlord or Landlord's lender or ground lessor, as the case may be, for the costs and expenses of such inspections.

18. **VIOLATIONS OF EXCLUSIVE USE RIGHTS.** Tenant acknowledges that Landlord may grant, or may have previously granted, exclusive use rights to other tenants of the Shopping Center, and agrees that a material consideration to Landlord in entering into this Lease is Tenant's covenant to limit its use of the Premises to the Permitted Use under the trade name set forth in Section 1.11 above. If Landlord has notified Tenant of exclusive use rights granted to other tenants of the Shopping Center, Tenant's violation of such exclusive use rights granted to other tenants of the Shopping Center will result in Landlord suffering irreparable harm and, therefore, in addition to all other rights and remedies available to Landlord, Landlord may seek to enjoin Tenant's breach of such covenant and Tenant shall be liable for any damages incurred or sustained by Landlord to such other tenants whose exclusive use rights are breached by Tenant. In no event shall Landlord be liable to Tenant for any failure of any other tenants of the Shopping Center to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties.

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19. **SIGNS AND STORE FRONTS.**

19.1 **Landlord Consent.** Tenant shall not, without Landlord's prior written consent, (a) make any changes to or paint the store front of the Premises; (b) install any exterior lighting, decorations or paintings; or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media (collectively referred to in this Lease as "**Signs**") of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type for its display windows. All Signs shall conform in all respects to the uniform, non-discriminatory Tenant Sign Criteria attached hereto as Exhibit E, as modified or amended from time to time, for the Shopping Center and be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. Tenant shall, at Tenant's sole cost and expense, keep all Signs in good condition and in proper operating order at all times. Landlord reserves the right to designate a uniform type of sign for the Shopping Center to be installed and paid for by Tenant. Landlord reserves the right to place its own signs on the building facade over the Premises.

19.2 **Installation of Signs Before Commencement Date.** Tenant shall erect and/or install and have fully operative on or before the Commencement Date of this Lease, all of Tenant's Signs in accordance with Tenant Sign Criteria attached hereto as Exhibit E. Upon vacation of the Premises or the removal or alteration of Tenant's Signs for any reason, Tenant shall be responsible for the repair, painting, and/or replacement of the building facade surface where the Signs were attached.

19.3 **Shopping Center Directories.** Landlord shall include Tenant's trade name on all directories and maps of the Shopping Center that are installed within the Shopping Center.

20. **BUILDING RENOVATIONS.** Tenant hereby acknowledges that Landlord may during the Term renovate, improve, alter or modify (collectively, the "**Renovations**") the Shopping Center, the Buildings and/or the Premises, which Renovations may include, without limitation, (i) installing or modifying sprinklers in the Common Areas and tenant spaces, (ii) modifying the Common Areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, and (iii) installing new carpeting, lighting and wall coverings in the Common Areas. Tenant hereby agrees that such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall use reasonable efforts to ensure that such Renovations shall be conducted in such a way as to minimize their effect on Tenant's operations; provided, however, Landlord shall have no responsibility, or for any reason be liable, to Tenant for any injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations, or for any inconvenience or annoyance occasioned by such Renovations.

21. **UTILITIES AND SERVICES.** Tenant shall be solely responsible for contracting with the appropriate utility companies and shall promptly pay all charges (including hook-up and impact fees and charges for the installation of any separate meters) for heat, air conditioning, water, gas, electricity or any other utility used, consumed or provided in, furnished to or attributable to the Premises at the rates charged by the supplying utility companies and/or Landlord. Should Landlord elect to supply any or all of such utilities, Tenant agrees to purchase and pay for the same as additional rent as apportioned by Landlord. The rate to be charged by Landlord to Tenant shall not exceed the rate charged to Landlord by any supplying utility. Tenant shall reimburse Landlord within ten (10) days of billing for fixture charges and/or water tariffs, if

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applicable, which are charged to Landlord by local utility companies. Landlord will notify Tenant of this charge as soon as it becomes known. This charge will increase or decrease with current charges being levied against Landlord, the Premises or the Buildings by the local utility company, and will be due as additional rent. In no event shall Landlord be liable for any interruption or failure in the supply of any such utility services to Tenant.

22. **ENTRY BY LANDLORD.** Landlord reserves the right to enter the Premises at all reasonable times and reserves the right, during the last nine (9) months of the Term, to show the Premises at reasonable times to prospective tenants and to affix for lease/rent signs to the Premises at Landlord's discretion.

23. **SUBORDINATION AND ATTORNMENT.** This Lease is and shall be subject and subordinate to all ground or underlying leases and to any mortgage or deed of trust that may now or hereafter be placed against the Shopping Center, and to all renewals, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative; however, Tenant shall promptly execute any instrument that Landlord or any ground lessor, mortgagee or holder of a deed of trust may request confirming subordination. Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute any such instrument on behalf of Tenant. Notwithstanding the foregoing, the mortgagee or holder of a deed of trust that may now or hereafter be placed against the Shopping Center shall have the unilateral, unconditional right, exercisable by providing written notice thereof to Tenant, to subordinate or cause to be subordinated the mortgage or deed of trust to this Lease. If such mortgagee or holder of a deed of trust so elects and subsequently forecloses such mortgage or deed of trust, this Lease shall continue in full force and effect and Tenant shall attorn to and recognize as its landlord the purchaser of Landlord's interest under this Lease, and the purchaser shall not disturb Tenant's rights under this Lease as long as Tenant is not in default under this Lease. Tenant shall, upon the request of a mortgagee, holder of a deed of trust or purchaser at foreclosure, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of the lien of any mortgage or deed of trust to this Lease or Tenant's attornment to the purchaser.

24. **ESTOPPEL CERTIFICATE.** Tenant shall at any time upon not less than ten (10) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing in the form as attached hereto as **Exhibit F** (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured landlord defaults, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver this statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's Base Rent has been paid in advance. If Landlord desires to finance or refinance the Shopping Center or the Premises, or any part thereof, Tenant agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by that lender, including the past three years' financial statements. All such financial statements shall be received by Landlord in confidence and shall be used only for the specified purposes.

25. **SHOPPING CENTER RULES AND REGULATIONS.** Landlord or its Agent shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations (the

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**“Rules and Regulations”**) for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Buildings and the Shopping Center and their invitees. Tenant agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Landlord shall not be responsible to Tenant for the non-compliance with said Rules and Regulations by other tenants of the Shopping Center. Landlord’s Rules and Regulations at this time are set forth in **Exhibit B**.

26. **EVENTS OF DEFAULT.** Each of the following shall constitute an **“Event of Default”**:  
(i) Tenant fails to pay Rent or another charge required to be paid under this Lease when due,  
(ii) Tenant fails to observe or perform any other term, condition or covenant of this Lease binding upon or obligating Tenant within ten (10) days after notice from Landlord, (iii) Tenant abandons the Premises; (iv) Tenant or any guarantor makes or consents to a general assignment for the benefit of creditors or a common law composition of creditors, or a receiver of the Premises or all or substantially all of Tenant’s or guarantor’s assets is appointed,  
(v) Tenant or any guarantor files a voluntary petition in any bankruptcy or insolvency proceeding, or an involuntary petition in any bankruptcy or insolvency proceeding is filed against Tenant or any guarantor and is not discharged by Tenant or the guarantor within sixty (60) days, or (vi) Tenant fails to occupy the Premises within ten (10) business days after the Premises are substantially completed.

27. **LANDLORD’S REMEDIES.**

27.1 **Landlord’s Remedies.** Upon the occurrence of an Event of Default, Landlord, at its option, without further notice or demand to Tenant, shall have, in addition to all other rights and remedies provided in this Lease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

27.1.1 Landlord shall have the right to terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

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

(b) 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 award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) 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;

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or

which in the ordinary course of events would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

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

27.1.2 The term "rent" as used in this Section 27.1 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 27.1.1(i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Section 27.3, below, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 27.1.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

27.1.3 Landlord shall have the right to continue this Lease in effect after an Event of Default and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due and the rights set forth in Section 15 above.

27.2 **Landlord's Rights With Respect to Subleases.** Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 27, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

27.3 **Late Charge.** If Tenant fails to pay any Rent within five (5) days after the Rent becomes due and payable, Tenant shall pay to Landlord a late charge of ten percent (10%) of the amount of overdue Rent. In addition, any late Rent payment shall bear interest from the date that Rent became due and payable to the date of payment by Tenant at the interest rate of fifteen percent (15%) per annum, provided that in no case shall such rate be higher than the highest rate permitted by applicable law. Late charges and interest shall be due and payable within two (2) days after written demand from Landlord. If a Rent check is returned for insufficient funds or otherwise is not accepted by Landlord's bank, then in addition to other remedies, Landlord may impose an appropriate fee which shall be paid by Tenant upon receipt of written demand, and Landlord may require that subsequent payments of Rent be made by certified checks.

28. **RIGHT OF LANDLORD TO CURE TENANT'S DEFAULT.** If an Event of Default occurs, then Landlord may (but shall not be obligated to) make such payment or do such act to cure the Event of Default, and charge the expense, together with interest, at the rate of fifteen percent (15%) per annum (provided that in no case shall such rate be higher than the highest rate permitted by applicable law), to Tenant. Payment for the cure shall be due and payable by Tenant upon demand; however, the making of any payment or the taking of such action by

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Landlord shall not be deemed to cure the Event of Default or to stop Landlord from the pursuit of any remedy to which Landlord would otherwise be entitled.

29. **EXCULPATION OF LANDLORD.** It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord) and any recourse by Tenant against Landlord shall be limited solely and exclusively to the interest of Landlord in and to the Shopping Center, and neither Landlord nor any of Landlord's Parties, shall have any personal liability therefor and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. In the event of a transfer of Landlord's title or interest in the Shopping Center, Landlord shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Landlord. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Landlord shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Landlord. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Landlord shall be binding only upon the Landlord as hereinabove defined.

30. **SUBSTITUTED PREMISES.** Intentionally Deleted.

31. **SURRENDER OF PREMISES.** Tenant shall peaceably surrender the Premises to Landlord on the expiration date of the Term or earlier termination of this Lease, in broom-clean condition and in as good a condition as when Tenant took possession, including, without limitation, the repair of any damage to the Premises caused by the removal of any of Tenant's personal property or trade fixtures from the Premises, except for reasonable wear and tear and loss by fire or other casualty not caused by Tenant or its agents. Notwithstanding the foregoing Tenant shall not take the Designated Improvements (as defined in the Improvement Agreement), which shall remain on the Premises as property of the Landlord. Any of Tenant's personal property left on or in the Premises, the Shopping Center or the Common Areas after the expiration date of the Term or earlier termination of this Lease shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease. This Section is subject to the terms and conditions of Section 17.2.4 above.

32. **HOLDING OVER.** In the event that Tenant shall not immediately surrender the Premises to Landlord on the expiration date of the Term or earlier termination of this Lease (including without limitation for the reasons set forth in Section 17.2.4 above), Tenant shall be deemed to be a month to month tenant upon all of the terms and provisions of this Lease, except the monthly Rent shall be twice the monthly Rent in effect during the last month of the Term. If Tenant shall hold over after the expiration date of the Term or earlier termination of this Lease, and Landlord shall desire to regain possession of the Premises, then Landlord may forthwith re-enter and take possession of the Premises without process or by any legal process in force in the State of California. Tenant shall indemnify Landlord against all liabilities and damages sustained by Landlord by reason of such holding over.

33. **GENERAL MATTERS.**

33.1 **Notices.** All notices or other communications between the parties shall be in writing and shall be deemed duly given, if delivered in person, or upon the earlier of receipt, if mailed by certified or registered mail, or three (3) days after certified or registered mailing, return receipt requested, postage prepaid, addressed and sent to the parties at their addresses set

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forth in Sections 1.15 and 1.16 above. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

33.2 **Successors and Assigns.** Subject to the provisions of Article 12 hereof, the rights, duties and liabilities created hereunder shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

33.3 **Prohibition Against Recording.** Except as provided in this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under, or on behalf of Tenant and the recording thereof in violation of this provision shall make this Lease null and void at Landlord's election.

33.4 **Waiver and Severability.**

33.4.1 The consent of Landlord in any instance to any variation of the terms of this Lease, or the receipt of Rent with knowledge of any breach, shall not be deemed to be a waiver as to any breach of any Lease covenant or condition, nor shall any waiver occur to any provision of this Lease except in writing, signed by Landlord or Landlord's authorized agent. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations and understandings, if any, between the parties hereto and none thereof shall be used to interpret or construe this Lease. This Lease and any side letter or separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith contain all of the terms, covenants and agreements of the parties relating in any manner to the Premises, and shall be considered to be the only agreement between the parties hereto and their representatives and agents.

33.4.2 If any term or provision of this Lease or any application shall be invalid or unenforceable, then the remaining terms and provisions of this Lease shall not be affected.

33.5 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, a "**Force Majeure**"), except with respect to the obligations imposed with regard to the Rent and other charges to be paid by Tenant pursuant to this Lease and Tenant's obligations under Article 14, 15, 16 and 17 of this Lease notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay, or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

33.6 **Attorneys' Fees.** If either party commences litigation against the other for the specific performance of this Lease, for damages for breach hereof or otherwise for enforcement of any remedy hereunder, the parties hereto agree to and hereby do waive any right to a trial by jury and, in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred.

33.7 **Joint and Several.** If there is more than one individual or entity comprising Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

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33.8 **Governing Law; Consent to Jurisdiction.** This Lease shall be construed and enforced in accordance with the laws of the State of California. Landlord and Tenant agree that any action or proceeding to enforce the provisions of this Lease or otherwise relating to this Lease or the Premises shall be brought in a court of law of competent jurisdiction located in the county and state in which the Shopping Center is located.

33.9 **Submission of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

33.10 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Sections 1.14 and 1.15 above (the "**Brokers**") and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Landlord shall pay a commission to the Brokers pursuant to separate agreement. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Brokers. The terms of this Section 33.10 shall survive the expiration of the Term or earlier termination of this Lease.

33.11 **Landlord's Reservations.** In addition to the other rights of Landlord under this Lease, Landlord reserves the right to change the street address and/or name of the Shopping Center without being deemed to be guilty of an eviction, actual or constructive, or a disturbance or interruption of the business of Tenant or Tenant's use or occupancy of the Premises.

33.12 **Captions.** The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

33.13 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

33.14 **Time of Essence.** Time is of the essence of this Lease and each of its provisions.

33.15 **Right to Lease.** Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Term, occupy any space in the Shopping Center.

33.16 **Authority.** If Tenant is a corporation, partnership or other form of legal entity, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant

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has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so.

33.17 **Transportation Management.** Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Shopping Center, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

33.18 **Counterparts.** This Lease may be signed in counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument.

33.19 **Exhibits and Addenda.** The exhibits and addenda that are attached to this Lease are incorporated into and constitute a part of this Lease.

33.20 **California Civil Code Section 1938.** Pursuant to California Civil Code § 1938, Landlord hereby states that the Premises have undergone inspection by a Certified Access Specialist (CASp) (defined in California Civil Code § 55.52).

33.21 **OFAC Compliance.**

33.21.1 As used herein, "**Blocked Party**" shall mean any party or nation that (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the U.S. Treasury ("**OFAC**") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (September 25, 2001) or other similar requirements contained in the rules and regulations of OFAC (the "**Order**") or in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**") or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"); or (b) has been determined by competent authority to be subject to the prohibitions contained in the Orders.

33.21.2 As a material inducement for Landlord entering into this Lease, Tenant represents and warrants that none of Tenant, any affiliate, parent or subsidiary (an "**Affiliate**") of Tenant, any partner, member or stockholder in Tenant or any Affiliate of Tenant, or any beneficial owner of Tenant, any Affiliate of Tenant or any such partner, member or stockholder of Tenant (collectively, a "**Tenant Owner**"): (a) is a Blocked Party; (b) is owned or controlled by, or is acting, directly or indirectly, for or on behalf of, any Blocked Party; or (c) has instigated, negotiated, facilitated, executed or otherwise engaged in this Lease, directly or indirectly, on behalf of any Blocked Party. Tenant shall immediately notify Landlord if any of the foregoing warranties and representations becomes untrue during the Term.

33.21.3 Tenant shall not: (a) transfer or permit the transfer of any interest in Tenant or any Tenant Owner to any Blocked Party; or (b) make a Transfer to any Blocked Party or party who is engaged in illegal activities.

33.21.4 If at any time during the Term (a) Tenant or any Tenant Owner becomes a Blocked Party or is convicted, pleads nolo contendere, or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering; (b)

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any of the representations or warranties set forth in this Section become untrue; or (c) Tenant breaches any of the covenants set forth in this Section, the same shall constitute an Event of Default. In addition to any other remedies to which Landlord may be entitled on account of such Event of Default, Landlord may immediately terminate this Lease and refuse to pay any disbursements due to Tenant under this Lease.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the "Date of Lease" shown on the first page of this Lease.

**"TENANT":**

**Little Saigon Supermarket, LLC,  
a California limited liability company**

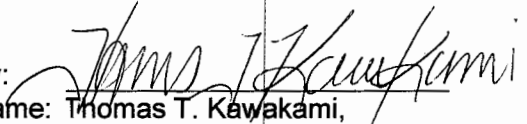
By:   
Name: Richard Chhor,  
Managing Member

By:   
Name: Peter Tri Nguyen  
Title: Managing Member

**"LANDLORD":**

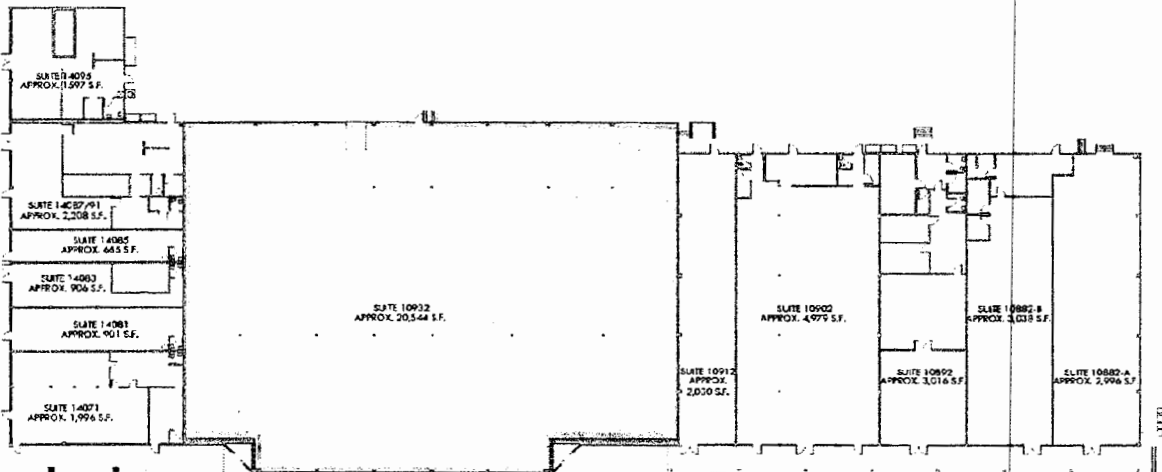
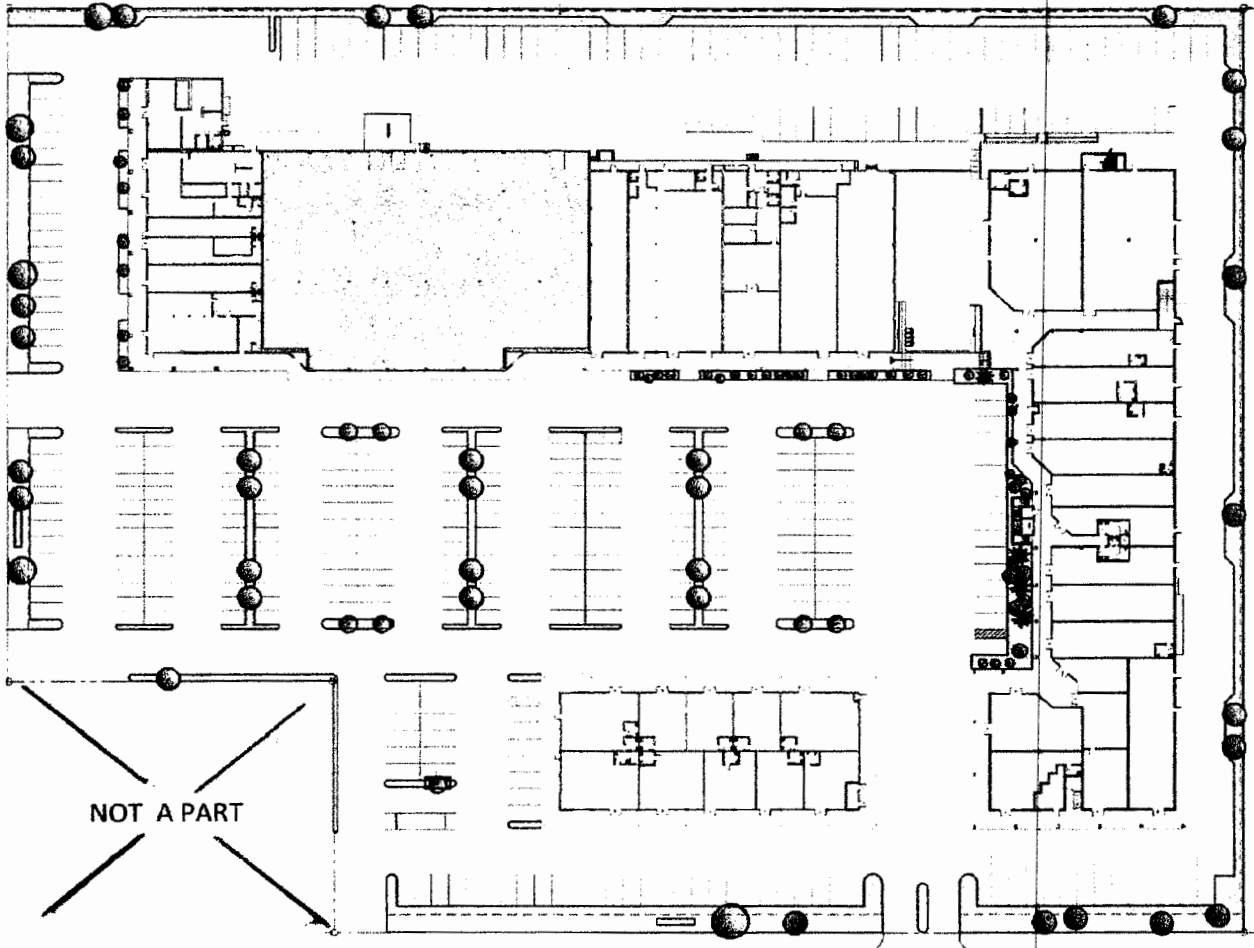
**HMZ RETAIL, LP,  
a California limited partnership**

By: HMZ GPCO, LLC,  
a California limited liability company  
its General Partner

By:   
Name: Thomas T. Kawakami,  
Manager

**EXHIBIT A**

**PLAN OF THE SHOPPING CENTER, SHOWING THE LOCATION OF THE PREMISES**



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**EXHIBIT B**  
**RULES AND REGULATIONS**

Tenant covenants and agrees with Landlord that:

1. No symbol, design, name, mark or insignia adopted by Landlord for the Shopping Center or the Project shall be used by Tenant in or about the Premises without the prior written consent of Landlord. No illuminated signs located in the interior of any store and which are visible from the outside shall advertise any product. All signs located in the interior of any store shall be in good taste so as not to detract from the general appearance of the Premises and the Shopping Center. Tenant shall not use handbills for advertising at the Shopping Center.

2. No awning or other projections shall be attached to the exterior walls of the Premises or the building of which it forms a part without the prior written consent of Landlord.

3. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances reasonably designated for such purpose by Landlord, and Tenant shall use its best efforts to prevent the parking or standing outside of such areas of trucks, trailers or other vehicles or equipment engaged in such loading or unloading.

4. All garbage and refuse shall be kept in the kind of container specified by Landlord and shall be placed in the areas reasonably specified by Landlord and prepared for collection in the manner and at the times specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's sole cost, provided such cost shall be competitive to any similar service available to Tenant. Tenant will not install or cause to be installed any automatic garbage disposal equipment without the prior written consent of Landlord.

5. No radio or television or other similar device shall be installed, and no aerial shall be erected on the roof, on exterior walls of the Premises, or on the grounds. Any such device or aerial so installed shall be subject to removal without notice at any time.

6. No loud speakers, television sets, CD players, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.

7. The following types of sales shall not be conducted on or about the Premises without the prior written consent of Landlord:

a. Sales using the auction method of selling or bankruptcy sales unless pursuant to the order of a bankruptcy court having jurisdiction;

b. Fire sales except for those solely involving merchandise damaged at the Premises; or

c. Closing out or going out of business sales except for those conducted by Tenant personally (and specifically not by a firm specializing in liquidation sales) for a reasonable period of time only which are an integral part of Tenant's conclusion of business at the Premises and the termination of Tenant's lease for the Premises.

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8. Tenant shall not place or permit any obstructions, merchandise, hand billings or soliciting of business in the corridors, sidewalks, entrances, passages, courts, corridors, elevators, stairways, parking areas, alleys, landscaping or other common area.

9. Tenant and Tenant's employees shall park their cars in the parking area south of the Premises as highlighted on Exhibit A and, upon filling all of those designated parking spaces, only in those other portions of the parking area designated for employee parking by Landlord. Tenant shall furnish to Landlord upon request a complete list of license numbers of all automobiles operated by Tenant, its employees, subtenants, licensees or concessionaires within five (5) days of any request to do so by Landlord.

10. Tenant shall use at Tenant's sole cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may reasonably require, provided the cost thereof is competitive to any similar service available to Tenant.

11. Tenant shall not make or permit any noise or odor which Landlord deems objectionable to emanate from the Premises, and no person shall use the Premises as sleeping quarters, sleeping apartment or lodging room.

12. Tenant shall obtain all permits and/or licenses necessary to conduct its business.

13. Only within the interior of its Premises, in not any manner as to create a nuisance, may Tenant operate any coin or token operated vending machine or similar device for the sale of any goods, wares, merchandise, food, beverages, or services, including, but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, food, candy, cigarettes or other commodities, without the prior written consent of Landlord.

14. Tenant shall not place or maintain any temporary fixture for the display of merchandise outside of the Premises, and Landlord shall have the right, without giving prior notice to Tenant and without any liability for damage to the Premises or Tenant's merchandise, to remove any of the same from the Premises, and, except such as shall have first received the written approval of Landlord as to size, color, location, nature and display qualities.

15. Tenant shall not make noises, cause disturbances or vibrations or use or operate any electrical or electronic devices or other devices that emit sound or other waves of disturbances, or create odors, any of which may be offensive to other tenants and occupants of the Shopping Center or that would interfere with the operation of any device of equipment or radio to television broadcasting or reception from or within the Shopping Center or elsewhere.

The foregoing covenants and agreements in this Exhibit B shall be referred to collectively as the "**Rules and Regulations.**" Tenant agrees that Landlord may amend, modify and delete the Rules and Regulations, or add new and additional reasonable rules and regulations for the use and care of the Premises, the building of which the Premises is a part, the Common Areas and all other areas of the Shopping Center. Tenant agrees to comply with all such Rules and Regulations upon notice to Tenant from Landlord or upon the posting of same in such place within the Shopping Center as Landlord may designate. In the event of any breach of any Rules and Regulations herein set forth or any amendments or additions thereto, Landlord shall have all remedies in this lease provided for upon default of Tenant.

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**EXHIBIT C**  
**NOTICE OF LEASE TERM DATES**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Retail Lease dated \_\_\_\_\_, 20\_\_, for \_\_\_\_\_, a  
\_\_\_\_\_ (the "**Tenant**") concerning Unit No. \_\_\_\_\_ of the shopping center located at  
\_\_\_\_\_, California.

In accordance with the Retail Lease (the "**Lease**"), we wish to advise you and/or confirm as follows:

1. The Premises are substantially completed and the Term has commenced on \_\_\_\_\_, 20\_\_ (the "**Commencement Date**") for a term of \_\_\_\_\_ ( ) months ending on \_\_\_\_\_, 20\_\_ (the "**Expiration Date**").
2. Rent commenced to accrue on \_\_\_\_\_, \_\_\_\_\_, with the monthly Base Rent in the amount of \$ \_\_\_\_\_.
3. If the Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.
4. Your rent checks should be made payable to \_\_\_\_\_ and delivered to \_\_\_\_\_.
5. The exact number of rentable square feet within the Premises is \_\_\_\_\_ square feet.

**LANDLORD**

HMZ RETAIL, LP,  
a California limited partnership  
By: HMZ GPCO, LLC,  
a California limited liability company  
its General Partner

By: \_\_\_\_\_  
Name: Thomas T. Kawakami  
Title: Manager  
Date: \_\_\_\_\_

Agreed to and Accepted by Tenant  
as of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

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



**EXHIBIT D**

**IMPROVEMENT AGREEMENT**

This Improvement Agreement ("**Improvement Agreement**") sets forth the terms and conditions relating to construction of the initial tenant improvements described in the Plans to be prepared and approved as provided below (the "**Tenant Improvements**") in the Premises. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Lease (the "**Lease**") to which this Improvement Agreement is attached and forms a part.

1. **Rent Credit Work**. The following work shall be constructed by Tenant using contractors approved by Landlord, pursuant to plans and specifications provided by, or accepted by, Landlord to Tenant:

1.1 Roof replacement. The roof warranty shall name Landlord as warrantee. The August 18, 2015 proposal from Howard Roofing is the roof specified by Landlord.

1.2 Demolition of existing freezers and coolers. The September 14, 2015 proposal from United Industrial Services is the scope and basis of costs specified by Landlord.

1.3 Demolition of the freezer curbs.

Tenant agrees to permit Landlord to inspect and confirm that Tenant has completed such work in a manner satisfactory to Landlord and that such work has been finally paid for in full. Landlord agrees that upon satisfaction of such conditions Landlord will certify the amount of rent credit for each category as listed below. In the event that during the course of undertaking such work Tenant discovers any latent defects, such as plywood replacement with respect the roof, then Tenant shall notify Landlord and Landlord agrees to reasonable increase the amount of the below credits to cover such unforeseen work.

1.4 Roof replacement – a credit based upon actual third party costs paid by tenant in an amount not to exceed \$135,530 (the "**Roof Credit**") subject to Landlord approval of an increase for any additional scope after removal of the existing roof membrane..

1.5 Demolition of existing freezers, coolers and floor coverings- a credit based upon actual third party costs paid by tenant in an amount not to exceed \$52,000 (the "**Demolition Credit**").

1.6 Demolition of the freezer curbs – a credit based upon actual third party costs paid by tenant in an amount not to exceed \$16,000 (the "**Refrigeration Curbs Credit**").

2. **Plans and Specifications**.

2.1 Tenant shall retain the services of New Asia FSE, Inc., or another entity approved by Landlord (the "**Space Planner**") to prepare a detailed space plan (the "**Space Plan**") mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements in the Premises. Tenant shall submit the Space Plan and any proposed revisions thereto to Landlord for Landlord's approval.

2.2 Based on the approved Space Plan, Tenant shall cause the Space Planner to prepare detailed plans, specifications and working drawings mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements (the "**Plans**"). Landlord and Tenant shall diligently pursue the preparation of the Plans. Tenant shall submit the Plans and any proposed revisions thereto, including the estimated cost of the Tenant Improvements. All necessary revisions to the Space Plan and the Plans shall be made within two (2) business

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days after Landlord's response thereto. This procedure shall be repeated until Landlord ultimately approves the Space Plan and Plans.

2.3 Tenant shall be responsible for ensuring that the Plans are compatible with the design, construction and equipment of the Building, comply with applicable Regulations, and contain all such information as may be required to show locations, types and requirements for all heat loads, people loads, floor loads, power and plumbing, regular and special HVAC needs, telephone communications, telephone and electrical outlets, lighting, light fixtures and related power, and electrical and telephone switches, B.T.U. calculations, electrical requirements and special receptacle requirements. The Plans shall also include mechanical, electrical, plumbing, structural and engineering drawings mutually satisfactory to Landlord and Tenant which shall be prepared by Eagle Construction, or another entity approved by Landlord. Notwithstanding Landlord's review and approval of the Space Plan and the Plans and any revisions thereto, Landlord shall have no responsibility or liability whatsoever for any errors or omissions contained in the Space Plan or Plans or any revisions thereto, or to verify dimensions or conditions, or for the quality, design or compliance with applicable Regulations of any improvements described therein or constructed in accordance therewith. Tenant hereby waives all claims against Landlord relating to, or arising out of the design or construction of, the Tenant Improvements.

2.4 Landlord's criteria for approvals shall be based on reasonable criteria established from time to time by Landlord, but Landlord will be deemed to have acted reasonably if Landlord's disapproval is predicated upon (i) effect on the structural integrity of the Building, (ii) possible damage to the Building's mechanical, electrical, plumbing and HVAC systems, (iii) non-compliance with applicable laws, codes and regulations, (iv) incompatibility with the base building plans, and (v) effect on the exterior of the Building or any of the Building's common areas. Landlord shall not be deemed to have approved the Space Plan, the Plans, or any proposed revisions thereto, unless approved by Landlord in writing. Landlord shall approve or disapprove any Space Plan, Plans or proposed revisions thereto submitted to Landlord for Landlord's approval within three (3) business days after Landlord's receipt thereof. If Landlord has not approved in writing any Space Plan, Plans, or proposed revisions thereto submitted to Landlord within five (5) business days after Landlord's receipt thereof, Landlord shall be deemed to have disapproved the same.

3. **Specifications for Standard Tenant Improvements.** [Intentionally Omitted]

4. **Tenant Improvement Cost.**

4.1 The cost of the Tenant Improvements shall be paid for by Tenant, including, without limitation, the cost of: space plans and studies; architectural and engineering fees; permits, approvals and other governmental fees; labor, material, equipment and supplies; construction fees and other amounts payable to contractors or subcontractors; taxes; off-site improvements; remediation and preparation of the Premises for construction of the Tenant Improvements; taxes; filing and recording fees; premiums for insurance and bonds; attorneys' fees; financing costs; and all other costs expended or to be expended in the construction of the Tenant Improvements.

(a) Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in Section 4.1 above, in connection with the design and construction of the Tenant Improvements to be performed by or at the direction of Tenant or the Approved Contractor, as that term is defined in Section 5.2 of this Improvement Agreement, which costs form a basis for the amount of the

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Contract (the "**Final Costs**"). Tenant and Landlord shall review in detail how the Final Costs relate to the Tenant Improvements and shall create a list of which Tenant Improvements shall remain on the Premises upon termination of the Lease and be property of Landlord, which shall include any and all fixtures and equipment for a subsequent market to operate, including, but not limited to: Upgraded LED Lighting (food-safe); Freezers, Coolers, interior diming reviser; Restrooms, Kitchen, Food Prep and Flooring; and other typical supermarket fixtures, equipment and finishes classified as real property fixtures ("**Designated Improvements**").

(b) In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Tenant Improvements shall change, Tenant shall provide Landlord with detail of the changes in a revised breakdown ("**Final Cost Revision**") as soon as practical.

4.2 **Evidence of Payments.** As contractors are paid by Tenant, Tenant shall deliver to Landlord: (i) a schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed; (ii) invoices from all of "Tenant's Agents," as that term is defined in Section 5.2 of this Improvement Agreement, for labor rendered and materials delivered to the Premises; (iii) evidence of payment and executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 3262(d); and (iv) all other information reasonably requested by Landlord.

## 5. **Construction of Tenant Improvements.**

5.1 Within ten (10) days after Tenant's and Landlord's approval of the Plans including the estimate of the cost of the Tenant Improvements, Tenant shall cause the contractor to proceed to secure a building permit and commence construction of the Tenant Improvements.

5.2 **Notice of Nonresponsibility.** Tenant shall give Landlord at least ten (10) days' prior written notice before starting work to give Landlord the opportunity to post and record a Notice of Nonresponsibility in accordance with Section 3094 of the California Civil Code or any successor statute.

5.3 Tenant shall be responsible for obtaining all governmental approvals to the full extent necessary for the construction and installation of the Tenant Improvements and for Tenant's occupancy of the Premises, in compliance with all applicable Regulations. Tenant shall employ Eagle Construction, or another entity approved by Landlord as the contractor or such other contractor or contractors as shall be approved by Landlord in writing ("**Approved Contractor**") to construct the Tenant Improvements in conformance with the approved Space Plan and Plans. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Approved Contractor to be known collectively as "Tenant's Agents") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval which approval will not be unreasonably withheld or delayed. The construction contracts between Tenant and the Approved Contractor shall be subject to Landlord's prior reasonable approval and shall provide for progress payments. The contractor(s) shall be duly licensed and Landlord's approval of the contractor(s) shall be conditioned, among other things, upon the

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contractor's reputation for quality of work, timeliness of performance, integrity and Landlord's prior experience with such contractor.

5.4 Landlord shall not be liable for any direct or indirect damages suffered by Tenant as a result of delays in construction beyond Landlord's reasonable control, including, but not limited to, delays due to strikes or unavailability of materials or labor, or delays caused by Tenant (including delays by the Space Planner, the contractor or anyone else performing services on behalf of Landlord or Tenant).

5.5 All work to be performed on the Premises by Tenant or Tenant's contractor or agents shall be subject to the following conditions:

(a) Such work shall proceed upon Landlord's written approval of Tenant's contractor, and public liability and property damage insurance carried by Tenant's contractor, and shall further be subject to the provisions of Paragraphs 7.4 (Liens) and 7.6 (Removal of Alterations) of the Lease.

(b) All work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished to Landlord before such work is commenced, and in any case, all such work shall be performed in a good and workmanlike and first-class manner, and in accordance with all applicable Regulations and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Premises pursuant to the Lease. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have no responsibility for Tenant's failure to comply with all applicable Regulations. Tenant shall be responsible for ensuring that construction and installation of the Tenant Improvements will not affect the structural integrity of the Building.

(c) Landlord or Landlord's agents shall have the right to inspect the construction of the Tenant Improvements by Tenant during the progress thereof. If Landlord shall give notice of faulty construction or any other deviation from the approved Space Plan or Plans, Tenant shall cause its contractor to make corrections promptly. However, neither the privilege herein granted to Landlord to make such inspections, nor the making of such inspections by Landlord, shall operate as a waiver of any right of Landlord to require good and workmanlike construction and improvements erected in accordance with the approved Space Plan or Plans.

(d) Tenant shall cause its contractor to complete the Tenant Improvements as soon as reasonably possible but in any event on or before the Estimated Commencement.

(e) Tenant's construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in strict accordance with the approved Space Plan or Plans; (ii) Tenant's and its contractor shall submit schedules of all work relating to the Tenant Improvements to Landlord for Landlord's approval within two (2) business days following the selection of the contractor and the approval of the Plans. Landlord shall within five (5) business days after receipt thereof inform Tenant of any changes which are necessary and Tenant's contractor shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord with respect to the use of freight, loading dock, and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Improvement Agreement, including, without limitation, the construction of the Tenant Improvements.

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(f) Tenant or Tenant's contractor or agents shall arrange for necessary utility, hoisting and elevator service with Landlord and shall pay such reasonable charges for such services as may be charged by Tenant's contractor.

(g) Tenant's entry to the Premises for any purpose, including, without limitation, inspection or performance of Tenant construction by Tenant's agents, prior to the date Tenant's obligation to pay rent commences shall be subject to all the terms and conditions of the Lease except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors.

(h) Tenant shall promptly reimburse Landlord upon demand for any reasonable expense actually incurred by the Landlord by reason of faulty work done by Tenant or its contractors or by reason of any delays caused by such work, or by reason of inadequate clean-up.

(i) Tenant hereby indemnifies and holds Landlord harmless with respect to any and all costs, losses, damages, injuries and liabilities relating in any way to any act or omission of Tenant or Tenant's contractor or agents, or anyone directly or indirectly employed by any of them, in connection with the Tenant Improvements and any breach of Tenant's obligations under this Improvement Agreement, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements. Such indemnity by Tenant, as set forth above, shall also apply with respect to any and all costs, losses, damages, injuries, and liabilities related in any way to Landlord's performance or any ministerial acts reasonably necessary (i) to permit Tenant to complete the Tenant Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

(j) Tenant's contractor and the subcontractors utilized by Tenant's contractor shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's contractor and the subcontractors utilized by Tenant's contractor shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Term Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the construction contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such rights of direct enforcement.

(k) Commencing upon the execution of the Lease, Tenant shall hold weekly meetings at a reasonable time with the Space Planner and the contractor regarding the progress of the preparation of the Plans and the construction of the Tenant Improvements, which meetings shall be held at a location designated by Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and upon

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Landlord's request, certain of Tenant's Agents shall attend such meetings. One such meeting each month shall include the review of contractor's current request for payment.

6. **Insurance Requirements.**

6.1 All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in Sections 9.1 and 9.2 of the Lease.

6.2 Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to Sections 9.1 and 9.2 of the Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation coverage insurance, each in amounts not less than \$500,000 per incident, \$1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in Sections 9.1 and 9.2 of the Lease.

6.3 Certificates for all insurance carried pursuant to this Improvement Agreement must comply with the requirements of Sections 9.1 and 9.2 of to the Lease and shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the contractor's equipment is moved onto the site. In the event the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Product and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Paragraph 6 shall insure Landlord and Tenant, as their interests may appear, as well as the contractors. All insurance maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Tenant Improvements and naming Landlord as a co-obligee.

7. **Completion and Rental Commencement Date.**

7.1 Tenant's obligation to pay Rent under the Lease shall commence on the Commencement Date of the Lease.

7.2 Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and

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expense. At the conclusion of construction, (i) Tenant shall cause the Space Planner and the contractor (a) to update the approved Plans as necessary to reflect all changes made to the approved Plans during the course of construction, (b) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of the Lease, and (c) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guarantees, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

7.3 A default under this Improvement Agreement shall constitute a default under the Lease, and the parties shall be entitled to all rights and remedies under the Lease in the event of a default hereunder by the other party (notwithstanding that the Term thereof has not commenced).

7.4 Without limiting the "as-is" provisions of the Lease, except for the Tenant Improvements, if any, to be constructed by Landlord pursuant to this Improvement Agreement, Tenant accepts the Premises in its "as-is" condition and acknowledges that it has had an opportunity to inspect the Premises prior to signing the Lease.

**IN WITNESS WHEREOF**, the parties have executed this Work Letter as of the date first above written.

**"TENANT":**

**Little Saigon Supermarket, LLC,  
a California limited liability company**

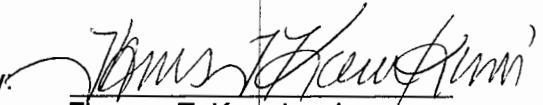
By:   
Name: Richard Obhor  
Managing Member

By:   
Name: Peter Tri Nguyen  
Title: Managing Member

**"LANDLORD":**

**HMZ RETAIL, LP,  
a California limited partnership**

By: HMZ GPCO, LLC,  
a California limited liability company  
its General Partner

By:   
Name: Thomas T. Kawakami  
Manager

**EXHIBIT E**  
**SIGNS**

**PYLON SIGN(S)**

Landlord is in the planning process for the permitting, fabrication and installation of two (2) Saigon Square pylon signs, one each intended to be located respectively along Westminster Avenue and Euclid Street. Subject to the approval and permitting of such signage by competent lawful authority, Landlord shall allow priority placement of Tenant's identity sign on each planned pylon at the sole cost and expense of Tenant, subject to Landlord approval of the design, content and details of Tenant's installation (which approval shall not be unreasonably withheld or delayed).

**TENANT SIGN CRITERIA**

The following criteria have been established for the purpose of assuring an outstanding and consistent tenant sign program. Conformance will be strictly enforced and any nonconforming signs will be disapproved.

- 1.1 Submission. Tenant shall submit for approval one (1) complete set of sign drawings to Landlord and three (3) sets to Landlord's architect prior to sign fabrication. In addition to detailed drawings, such submissions shall include:
  - A. Elevation of storefront showing design, location, size and layout of sign drawn to scale indicating dimensions, attachment devices and construction detail.
  - B. Sample board showing colors and materials.
  - C. Section through letter and/or sign panel showing the dimensioned projection of the face of the letter and/or sign panel and the illumination.
- 1.2 General Requirements.
  - A. Tenant signs shall be designed in a manner that is not only imaginative but also of high graphic quality, as determined by Landlord.
  - B. Brightness of lighted signs is subject to approval by Landlord, shall comply with all applicable building and electrical codes and shall bear the U.L. label at interior of cabinet. Surface brightness of all illuminated materials shall be consistent in all letters and components of the sign. Light leaks will not be permitted.
- 1.3 Sign Construction Requirements.
  - A. Tenant's sign contractor shall submit drawings and obtain all required permits from the appropriate agency of the City or County in which the Shopping Center is located. All drawings submitted to the City or County shall bear the approval of Landlord or Landlord's agent.
  - B. All letters shall be fabricated using full-welded construction.

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- C. Location of all openings for conduit sleeves and supports in sign panels building walls shall be indicated by the sign contractor on drawings submitted to Landlord. Sign contractor shall install same in accordance with the approved drawings.
- D. Sign contractor shall repair any damage caused by his or her work.
- E. Sign installation shall be coordinated with Landlord prior to commencement of any work by Tenant's sign contractor.
- F. All electrical signs shall bear the U.L. label inside of cabinet; their fabrication and installation shall comply with all national and local building and electrical codes.
- G. All conduit, raceways, crossovers, wiring, ballast boxes, transformers, and other equipment necessary for sign connection shall be concealed. All bolts, fastenings and clips shall consist of enameling iron with porcelain enamel finish; stainless steel, anodized aluminum, brass or bronzed; or carbon-bearing steel with painted finish.
- H. Separate all ferrous and non-ferrous metals with non-conductive gaskets to prevent electrolysis. In addition to gaskets, provide stainless steel fasteners to secure ferrous to non-ferrous metals.
- I. No sign maker's labels or other identification will be permitted on the exposed surface of signs.
- J. Simplicity and restraint in materials selection is important; however, the material selection, its method of application, or its detail construction should be consistent with other storefront design criteria.
- K. Landlord shall not be responsible for the cost of signs fabricated or installed which do not conform to Tenant Sign Criteria.

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**EXHIBIT F**

**ESTOPPEL CERTIFICATE**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

\_\_\_\_\_ ("**Tenant**") hereby certifies as follows:

1. The undersigned is Tenant under that certain Retail Lease dated \_\_\_\_\_, 20\_\_\_\_ (the "**Lease**"), executed by \_\_\_\_\_, a \_\_\_\_\_ ("**Landlord**") as Landlord and the undersigned as Tenant, covering a portion of the shopping center located at \_\_\_\_\_ (the "**Shopping Center**").

2. Pursuant to the Lease, Tenant has leased approximately \_\_\_\_\_ square feet of space, known as Store No. \_\_\_\_\_ (the "**Premises**") at the Shopping Center, and has paid to Landlord a security deposit of \$\_\_\_\_\_. The term of the Lease commenced on \_\_\_\_\_, 20\_\_\_\_, and the expiration date of the Lease is \_\_\_\_\_, 20\_\_\_\_. Tenant has paid rent through \_\_\_\_\_, 20\_\_\_\_. The next rental payment in the amount of \$\_\_\_\_\_ is due on \_\_\_\_\_, 20\_\_\_\_. Tenant is required to pay: \$\_\_\_\_\_ in monthly base rent, plus \_\_\_\_\_ percent (\_\_\_\_%) of all annual operating expenses for the Shopping Center, plus \$\_\_\_\_\_ as a fee for the pylon sign, as additional rent.

3. The Lease provides for an option to extend the term of the Lease for \_\_\_\_\_ years. The rental rate for such extension term is as follows: \_\_\_\_\_ . Except as expressly provided in the Lease, and other documents attached hereto, Tenant does not have any right or option to renew or extend the term of the Lease, to lease other space at the Property, nor any preferential right to purchase all or any part of the Premises or the Property.

4. True, correct and complete copies of the Lease and all amendments, modifications and supplements thereto are attached hereto and the Lease, as so amended, modified and supplemented, is in full force and effect, and represents the entire agreement between Tenant and Landlord with respect to the Premises and the Shopping Center. There are no amendments, modifications or supplements to the Lease, whether oral or written, except as follows (include the date of such amendment, modification or supplement): \_\_\_\_\_.

5. All space and improvements leased by Tenant have been completed and furnished in accordance with the provisions of the Lease and Tenant has accepted and taken possession of the Premises.

6. Landlord is not in default in the performance of any of the terms and provisions of the Lease. Tenant is not in default under the Lease and has not assigned, transferred or hypothecated the Lease or any interest therein or subleased all or any portion of the Premises.

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7. There are no offsets or credits against rentals payable under the Lease and no free periods or rental concessions have been granted to Tenant, except as follows:

\_\_\_\_\_.

8. Tenant has no actual or constructive knowledge of any processing, use, storage, disposal, release or treatment of any hazardous or toxic materials or substances on the Premises or the Shopping Center except as follows: (if none, state "none"): \_\_\_\_\_.

This Estoppel Certificate is given to \_\_\_\_\_ with the understanding that \_\_\_\_\_ will rely hereon in connection with the conveyance of the Shopping Center of which the Premises constitute a part to \_\_\_\_\_.

Following any such conveyance, Tenant agrees that the Lease shall remain in full force and effect and shall bind and inure to the benefit of the \_\_\_\_\_ and its successor in interest as if no purchase had occurred.

DATED: \_\_\_\_\_, 20\_\_

"TENANT":

\_\_\_\_\_,  
a \_\_\_\_\_

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

[ATTACH LEASE AND AMENDMENTS TO THIS CERTIFICATE]

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**EXHIBIT G**

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "**Guaranty**") is made by **Richard Chhor**, a(n) \_\_\_\_\_ [and NAME OF SPOUSE, an individual] (collectively, the "Guarantor"), to HMZ Retail L P, a California Limited Partnership (the "**Landlord**"), with respect to the Retail Lease (the "**Lease**") dated October 5, 2015 between Landlord and Little Saigon Supermarket, LLC, a California limited liability company (the "**Tenant**"), relating to certain premises located at 10932 Westminster Avenue, Garden Grove, CA 92843 (the "**Premises**").

In consideration of the Lease, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby covenants and agrees for the benefit of Landlord, as a material inducement to Landlord's execution of the Lease, as follows:

1. The Guarantor absolutely, unconditionally and fully guarantees: (i) the payment of all rent, monies and charges expressed to be payable by Tenant payable with respect to the first ten (10) years of the Term under the Lease at the times the same are required to be paid thereunder; (ii) the performance when due of all and each of the covenants, conditions and obligations contained in the Lease to be kept, performed or observed by Tenant with respect to the first ten (10) years of the Term; and (iii) all damages owing to Landlord by Tenant after termination of the Lease following a default thereof by Tenant occurring during the first ten (10) years of the Term. The Guarantor agrees that if Tenant fails to pay any such monetary obligation as required by the Lease, the Guarantor, after receipt of written demand therefor by Landlord, shall pay such obligation when required of Tenant under the Lease as if such obligation constituted the direct and primary obligation of the Guarantor. The Guarantor shall indemnify, defend and hold Landlord harmless from any and all losses, liabilities, costs and damages arising out of any failure by Tenant to pay or perform as required hereunder, or the recapture of any rent, monies or charges received during a preference period provided in any state or federal bankruptcy law.

2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of the Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more the Guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of the Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of the Guarantor hereunder or any security furnished by the Guarantor or give the Guarantor any recourse against Landlord.

3. The Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against the Guarantor.

(b) any defense based on the statute of limitation in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

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(c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of the Guarantor or the right of the Guarantor to proceed against Tenant for reimbursement or contribution or any rights or benefits under any provisions of California law in any way qualifying, conditioning or limiting the obligations of the Guarantor based on any steps or procedures that Landlord should take before proceeding against the Guarantor.

(f) any duty on the part of Landlord to disclose to the Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which the Guarantor intends to assume or has reason to believe that such facts are unknown to the Guarantor or has a reasonable opportunity to communicate such facts to the Guarantor, it being understood and agreed that the Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of non-performance of any obligation hereby guaranteed;

(g) any rights or benefits in favor of the Guarantor under Sections 364 or 1111(b) of 11 U.S.C. or any comparable provision of any applicable state law;

(h) any transfer of Landlord's interest in the premises demised pursuant to the Lease;

(i) any transfer of Tenant's interest as tenant under the Lease or any part thereof or any sublease or assignment by Tenant;

(j) any merger or consolidation of Tenant or sale of all or a substantial portion of Tenant's assets;

(k) any sale of all or any portion of any capital stock of Tenant or partnership interest in Tenant owned by the Guarantor; or

(l) any prior or concurrent representation, understanding, promise or condition concerning the subject matter hereof which is not expressed herein, which are of no effect.

In addition to the foregoing, the Guarantor hereby waives notice of acceptance of this Guaranty of Lease by Landlord and this Guaranty of Lease shall immediately be binding upon the Guarantor.

4. Until all obligations hereby guaranteed shall have been fully performed, the Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

5. All existing and future obligations of Tenant to the Guarantor or any person owned in whole or in part by the Guarantor and the right of the Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all

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obligations hereby guaranteed and, without the prior written consent of Landlord, such obligations to the Guarantor shall not be performed and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. The amount of the Guarantor's liability and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and the Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guaranty of any other guarantor of any obligation of Tenant to Landlord.

7. The obligations of the Guarantor hereunder are independent of the obligations of Tenant under the Lease and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against the Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

8. The Guarantor shall pay to Landlord, upon demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against the Guarantor, whether or not suit is filed including, but not limited to, reasonable attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving the Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

9. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

10. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns and shall bind the heirs, legal representatives, executors, administrators, successors and assigns of the Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease and, when so assigned, the Guarantor shall be liable to the assignee without in any manner affecting the liability of the Guarantor hereunder. The acceptance by Landlord of the performance of any of Tenant's obligations under the Lease by the Guarantor, including, without limitation, the acceptance of rent payments, shall not constitute an assignment of the Lease to the Guarantor or Landlord's consent to such assignment.

11. Satisfaction by the Guarantor of any liability hereunder incident to a particular default shall not discharge the Guarantor except for the default satisfied. This Guaranty of Lease and the obligations of the Guarantor hereunder shall be continuing and irrevocable until: (i) Landlord has received full payment of all rents, monies and charges due under the Lease and full performance of all of the obligations due under the Lease or to become due during the term of the Lease, including any option to extend thereunder; (ii) any applicable preference period under state or federal bankruptcy law has expired; or (iii) Landlord has released the Guarantor from the obligations of Tenant under the Lease, which may be accomplished by only an instrument in writing signed by Landlord. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

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12. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can the Guarantor be released from the Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

13. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

14. If two (2) or more persons are signing this Guaranty of Lease as the Guarantor, then all such persons shall be jointly and severally liable for the obligations of the Guarantor hereunder.

15. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, the Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. This Guaranty of Lease shall constitute the entire agreement of the Guarantor with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

16. Without limiting the generality of the foregoing, the liability of the Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by reason of: (a) the termination of the term of the Lease; (b) the release or discharge of Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or the rejection, disaffirmance or disclaimer of the Lease by any party in any such proceeding; (c) the repossession of the Premises demised under the Lease by Landlord, provided, however, that the net payments received by Landlord after deducting all costs and expenses of repossessions and/or reletting such Premises shall be credited from time to time by Landlord to the account of the Guarantor; or (d) any amendment of the terms of the Lease without the Guarantor's consent.

17. The Guarantor, promptly from time to time upon request, shall execute and deliver to Landlord: (a) an estoppel certificate containing such truthful information as Landlord may reasonably request; and (b) such further instruments or documentation as may reasonably be requested by Landlord to ratify and confirm this Guaranty of Lease and the continuing liability of the Guarantor hereunder.

[Signatures on Following Page]

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**IN WITNESS WHEREOF**, the Guarantor hereby signs this Guaranty for the benefit of Landlord.

**DATED: September \_\_, 2015**

**THE "GUARANTOR":**

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

By: \_\_\_\_\_  
Name: **[NAME OF SPOUSE]** \_\_\_\_\_  
Title: \_\_\_\_\_

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**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "**Guaranty**") is made by **Peter Tri Nguyen**, a(n) \_\_\_\_\_, [and NAME OF SPOUSE, an individual], (collectively, the "**Guarantor**"), to HMZ Retail L P, a California Limited Partnership (the "**Landlord**"), with respect to the Retail Lease (the "**Lease**") dated October 5, 2015 between Landlord and, Little Saigon Supermarket, LLC a California limited liability company (the "**Tenant**"), relating to certain premises located at 10932 Westminster Avenue, Garden Grove, CA 92843 (the "**Premises**").

In consideration of the Lease, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby covenants and agrees for the benefit of Landlord, as a material inducement to Landlord's execution of the Lease, as follows:

1. The Guarantor absolutely, unconditionally and fully guarantees: (i) the payment of all rent, monies and charges expressed to be payable by Tenant payable with respect to the first ten (10) years of the Term under the Lease at the times the same are required to be paid thereunder; (ii) the performance when due of all and each of the covenants, conditions and obligations contained in the Lease to be kept, performed or observed by Tenant with respect to the first ten (10) years of the Term; and (iii) all damages owing to Landlord by Tenant after termination of the Lease following a default thereof by Tenant occurring during the first ten (10) years of the Term. The Guarantor agrees that if Tenant fails to pay any such monetary obligation as required by the Lease, the Guarantor, after receipt of written demand therefor by Landlord, shall pay such obligation when required of Tenant under the Lease as if such obligation constituted the direct and primary obligation of the Guarantor. The Guarantor shall indemnify, defend and hold Landlord harmless from any and all losses, liabilities, costs and damages arising out of any failure by Tenant to pay or perform as required hereunder, or the recapture of any rent, monies or charges received during a preference period provided in any state or federal bankruptcy law.

2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of the Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more the Guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of the Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of the Guarantor hereunder or any security furnished by the Guarantor or give the Guarantor any recourse against Landlord.

3. The Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against the Guarantor.

(b) any defense based on the statute of limitation in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Landlord to file or enforce a

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claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of the Guarantor or the right of the Guarantor to proceed against Tenant for reimbursement or contribution or any rights or benefits under any provisions of California law in any way qualifying, conditioning or limiting the obligations of the Guarantor based on any steps or procedures that Landlord should take before proceeding against the Guarantor.

(f) any duty on the part of Landlord to disclose to the Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which the Guarantor intends to assume or has reason to believe that such facts are unknown to the Guarantor or has a reasonable opportunity to communicate such facts to the Guarantor, it being understood and agreed that the Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of non-performance of any obligation hereby guaranteed;

(g) any rights or benefits in favor of the Guarantor under Sections 364 or 1111(b) of 11 U.S.C. or any comparable provision of any applicable state law;

(h) any transfer of Landlord's interest in the premises demised pursuant to the Lease;

(i) any transfer of Tenant's interest as tenant under the Lease or any part thereof or any sublease or assignment by Tenant;

(j) any merger or consolidation of Tenant or sale of all or a substantial portion of Tenant's assets;

(k) any sale of all or any portion of any capital stock of Tenant or partnership interest in Tenant owned by the Guarantor; or

(l) any prior or concurrent representation, understanding, promise or condition concerning the subject matter hereof which is not expressed herein, which are of no effect.

In addition to the foregoing, the Guarantor hereby waives notice of acceptance of this Guaranty of Lease by Landlord and this Guaranty of Lease shall immediately be binding upon the Guarantor.

4. Until all obligations hereby guaranteed shall have been fully performed, the Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

5. All existing and future obligations of Tenant to the Guarantor or any person owned in whole or in part by the Guarantor and the right of the Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed and, without the prior written consent of Landlord, such



obligations to the Guarantor shall not be performed and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. The amount of the Guarantor's liability and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and the Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guaranty of any other guarantor of any obligation of Tenant to Landlord.

7. The obligations of the Guarantor hereunder are independent of the obligations of Tenant under the Lease and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against the Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

8. The Guarantor shall pay to Landlord, upon demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against the Guarantor, whether or not suit is filed including, but not limited to, reasonable attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving the Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

9. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

10. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns and shall bind the heirs, legal representatives, executors, administrators, successors and assigns of the Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease and, when so assigned, the Guarantor shall be liable to the assignee without in any manner affecting the liability of the Guarantor hereunder. The acceptance by Landlord of the performance of any of Tenant's obligations under the Lease by the Guarantor, including, without limitation, the acceptance of rent payments, shall not constitute an assignment of the Lease to the Guarantor or Landlord's consent to such assignment.

11. Satisfaction by the Guarantor of any liability hereunder incident to a particular default shall not discharge the Guarantor except for the default satisfied. This Guaranty of Lease and the obligations of the Guarantor hereunder shall be continuing and irrevocable until: (i) Landlord has received full payment of all rents, monies and charges due under the Lease and full performance of all of the obligations due under the Lease or to become due during the term of the Lease, including any option to extend thereunder; (ii) any applicable preference period under state or federal bankruptcy law has expired; or (iii) Landlord has released the Guarantor from the obligations of Tenant under the Lease, which may be accomplished by only an instrument in writing signed by Landlord. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

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12. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can the Guarantor be released from the Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

13. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

14. If two (2) or more persons are signing this Guaranty of Lease as the Guarantor, then all such persons shall be jointly and severally liable for the obligations of the Guarantor hereunder.

15. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, the Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. This Guaranty of Lease shall constitute the entire agreement of the Guarantor with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

16. Without limiting the generality of the foregoing, the liability of the Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by reason of: (a) the termination of the term of the Lease; (b) the release or discharge of Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or the rejection, disaffirmance or disclaimer of the Lease by any party in any such proceeding; (c) the repossession of the Premises demised under the Lease by Landlord, provided, however, that the net payments received by Landlord after deducting all costs and expenses of repossessions and/or reletting such Premises shall be credited from time to time by Landlord to the account of the Guarantor; or (d) any amendment of the terms of the Lease without the Guarantor's consent.

17. The Guarantor, promptly from time to time upon request, shall execute and deliver to Landlord: (a) an estoppel certificate containing such truthful information as Landlord may reasonably request; and (b) such further instruments or documentation as may reasonably be requested by Landlord to ratify and confirm this Guaranty of Lease and the continuing liability of the Guarantor hereunder.

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**IN WITNESS WHEREOF**, the Guarantor hereby signs this Guaranty for the benefit of Landlord.

**DATED:** September \_\_, 2015

**THE "GUARANTOR":**

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

By: \_\_\_\_\_  
Name: **[NAME OF SPOUSE]**  
Title: \_\_\_\_\_

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# EXHIBIT 4

# INFORMATION REQUEST

**FOLLOW INSTRUCTIONS**

A. NAME & PHONE OF CONTACT [optional] UCC Administrator 916-564-7800	FILING OFFICE ACCT#
B. E-MAIL CONTACT AT FILER (optional)	
C. RETURN TO: (Name and Address) CLAS INFORMATION SERVICES 2020 HURLEY WAY STE 350 SACRAMENTO, CA 95825 USA	

**DOCUMENT NUMBER: 63583140003**  
**ORDER DATE: 08/22/2017 12:33**

**IMAGE GENERATED ELECTRONICALLY FOR WEB ORDER**  
**THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY**

1. DEBTOR'S NAME to be searched: Provide only one Debtor name (1a or 1b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name)

OR	1a. ORGANIZATION NAME LITTLE SAIGON SUPERMARKET	1b. INDIVIDUAL SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
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2. INFORMATION OPTIONS relating to UCC filings and other notices filed in filing office that include as a Debtor the name identified in item 1

For 2a and 2b, mark this box to request a search that is **COMPLETE** to include **lapsed and unlapsed** filings. UNLESS MARKED, SEARCH MAY BE INCOMPLETE.

2a.  SEARCH RESPONSE with copies of ALL records found.  Please CERTIFY all copies (additional \$5.00 fee per record).

2b.  SEARCH RESPONSE only.

2c.  COPIES ONLY. Please complete the information below, as appropriate. For UCC3 records, include the type of UCC3 and corresponding filing date.

File Number	# of Copies	# of Certified Copies (Add'l Fee Applies)	File Date (Use for UCC3 Only)	Filing Type-Financing Statement, Cont., Term., Assign., Amend.

3. CALIFORNIA SECRETARY OF STATE'S OFFICE offers these additional searching options:

3a.  SEARCH TO REFLECT - Please run the search after the filing document accompanying this request has been filed.

3b.  DEBTOR SEARCH LIMITED TO THE FOLLOWING ADDRESS: \_\_\_\_\_

3c.  DEBTOR SEARCH LIMITED FROM THIS DATE: \_\_\_\_\_

3d.  SECURED PARTY LISTING: Insert only one name (organization or individual)

OR	ORGANIZATION NAME			
	INDIVIDUAL SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
	CITY	STATE	COUNTRY	



**SECRETARY OF STATE  
STATE OF CALIFORNIA**

**Search Certificate**

SEARCH REQUESTED ON:

08/22/2017

Organization Debtor: **LITTLE SAIGON SUPERMARKET**

Address: **NOT SPECIFIED**

Date Range From: **NOT SPECIFIED**

Search: **ALL**

The undersigned Filing Officer hereby certifies that there are no active financing statements, tax liens, attachment liens, or judgement liens on file in my office reflecting the above Debtor as of **08/17/2017 at 1700 hours**.

The search results herein reflect only the specific information requested. The results of this Debtor search will not reflect variances of this name. If the Debtor is known under other personal names, trade names, business entities, or addresses, separate searches of these names will have to be requested and conducted. The Secretary of State, his officers and agents disclaim any and all liability for claims resulting from other filings on which the name of the Debtor can be found in any other form than which was requested.

A handwritten signature in black ink, appearing to read "Alex Padilla".

Alex Padilla  
Secretary of State