

## APPENDIX A

**MODEL**  
**CONCESSION AGREEMENT**  
**BETWEEN**  
**CHICAGO TRANSIT AUTHORITY**  
**(“LANDLORD”)**  
**AND**  
**[INSERT NAME OF TENANT]**  
**(“TENANT”)**

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**CONCESSION AGREEMENT**

**THIS CONCESSION AGREEMENT** (the "Contract ") is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_, between the **CHICAGO TRANSIT AUTHORITY**, a municipal corporation, body politic and unit of local government created and existing under the laws of the State of Illinois ("Landlord"), and \_\_\_\_\_, a (n) \_\_\_\_\_ corporation [insert correct type of business organization for Tenant] ("Tenant").

**RECITALS**

- A. Landlord operates and maintains a public transportation system in the Chicago, Illinois region, which system contains the Property as defined herein;
- B. Tenant wishes to lease certain location within the Landlord's Property; and
- C. Landlord is willing to lease certain property to Tenant (the "Premises") and grant it permission to operate its business at the Premises in accordance with the terms and provisions set forth below;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the parties hereto hereby agree as follows:

**ARTICLE I – SUMMARY SHEET**

Section 1.1 **General Information:**

**Tenant's Trade Name:** \_\_\_\_\_

**Property: Line:** \_\_\_\_\_ **Property:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**Premises:** Space No. \_\_\_\_\_ at the Property Consisting of approximately \_\_\_\_\_ rentable square feet, the approximate location of which is shown cross-hatched on Exhibit A of this Agreement.

**Tenant Notice Address:** \_\_\_\_\_

**Instruction for Payment:** Tenant must pay all fees due the CTA, by check or money order or electronic funds transfer, in immediately available funds, made payable to the "CHICAGO TRANSIT AUTHORITY." CTA has adopted Electronic Fund Transfer (AFT) as the preferred method of payment. An EFT enrollment form will be provided to the Tenant with the executed contract and must be completed to enable payment of vendor accounts by this method. If awarded a contract, provide the completed EFT form to the CTA Purchasing Administrator identified on the title page.

The term of this agreement is for five years with one five-year option.

**Contract Commencement Date:** \_\_\_\_\_ **Rent Commencement Date** \_\_\_\_\_

**Initial Expiration Date:** \_\_\_\_\_ **Renewal Expiration Date (1)** \_\_\_\_\_ :

Section 1.2 **Permitted Use:**

Section 1.3 **Rents:**

(a) **Base Rent:**

(i) **Initial Term**

		<u>Monthly Amount</u>	<u>Annual Amount</u>
Rent Commencement Date	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____

(i.i) **Renewal Term (1) (if applicable)**

		<u>Monthly Amount</u>	<u>Annual Amount</u>
First day of Renewal	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____

**(iii) Renewal Term (2) (if applicable)**

		<u>Monthly Amount</u>	<u>Annual Amount</u>
First day of Renewal	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____

**(b) Utilities:** All utilities to be paid by Tenant directly to supplier. In such case that the Tenant is unable to contract directly with an outside supplier, Tenant agrees to pay the CTA monthly as follows:

**(i) Initial Term**

		<u>Monthly Amount</u>	<u>Annual Amount</u>
Rent Commencement Date	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____

**(ii) Renewal Term (1) (if applicable)**

		<u>Monthly Amount</u>	<u>Annual Amount</u>
First day of Renewal	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____

**(iii) Renewal Term (2) (if applicable)**

		<u>Monthly Amount</u>	<u>Annual Amount</u>
First day of Renewal	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through _____	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____
_____	Through Expiration Date	\$ _____	\$ _____

Section 1.4 **Miscellaneous**

**(a) Security Deposit:** \$ \_\_\_\_\_

**(b) Insurance Certificates and Gross Sales Reports:** Tenant shall forward all insurance certificates, insurance policies, Gross Sales reports and other materials as required to Landlord at the following address:

\_\_\_\_\_



(c) **"Operating Hours"** shall mean every day of the year during reasonable operating hours to be established from time to time by Landlord and further defined in the Operators Handbook (see Exhibit C). Unless otherwise changed by Landlord, the minimum hours of operation as follows:

Monday through Friday 6:00 a.m. continuously until 8:00 p.m.

Saturdays 9:00 a.m. continuously until 6:00 p.m.

Sundays/Holidays\* 12:00 p.m. continuously until 6:00 p.m.

\*Holidays are defined herein as: Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day, and Thanksgiving Day.

*Requests for exceptions to have a reduction in operating hours must be presented in writing to CTA's Property and Real Estate Management Department at least 30 calendar days prior to implementation.*

## ARTICLE II - DEFINITIONS AND ATTACHMENTS

Section 2.1 **Certain Defined Terms**. Certain terms, as used herein, each of which is capitalized, shall have the following meanings:

(a) **"Attorney's Fees"** shall mean all court, attorneys and legal fees.

(b) **"Base Rent"** Base Rent shall mean, with respect to each Contract Year, the amount indicated below opposite such Contract Year, payable in monthly installments as set forth in Article I.

(c) **"Common Area"** means all portions of the Property and certain portions of the Premises as further defined in Article XI: Section 11.1.

(d) **"Tenant Concept Plan"** means the site map, photos, narrative and other materials depicting with sufficient detail as required by the Landlord the anticipated build out of the Premises and upon which the Initial Tenant Improvement Plans will be prepared.

(e) **"Default Rate"** means an annual rate of interest equal to the lesser of: (i) the maximum rate of interest for which Tenant may lawfully contract in the State of Illinois, or (ii) twelve percent (12%).

(f) **"Expiration Date"** means the expiration date for the Initial Term (the "Initial Expiration Date") or any Renewal Term (the "Renewal Expiration Date"), both as set forth in Article I.

(g) **"Gross Sales"** means the actual sales prices of all food, drink, goods, wares and merchandise sold, leased, licensed or delivered, and the actual charges for all services performed by Tenant or by any subtenant, licensee or concessionaire, in, at, from or arising out of, or in connection with, the use of the Premises, whether for wholesale, retail, cash, credit, trade-in or otherwise, without reserve or deduction for inability or failure to collect. Gross Sales shall also include, without limitation, sales and services: (i) where the orders therefore originate, in, at, from, or arising out of, or in connection with, the use of the Premises, whether delivery or performance is made from the Premises or from some other place (including catering, if any), (ii) made or performed by means of mechanical, if applicable, (iii) which Tenant or any subtenant, licensee, concessionaire or other person in the normal and customary course of its business would credit or attribute to its operations in any part of the Premises, (iv) made or performed by mail or telecommunications (including sales through third parties), (v) deposits not refunded, and (vi) all cover charges, admission prices and ticket prices. Installment and credit sales shall be treated as a sale for the full price in the calendar month in which such sale is made, regardless of whether or when Tenant receives payment. The following shall not be included in Gross Sales:

(i) any exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at or from the Premises, or for the purpose of depriving Landlord of the benefit of a sale which would otherwise be made in or at the Premises; and

(i.i) returns to shippers or manufacturers; and

- (iii) cash or credit refunds to customers on transactions (not to exceed the actual selling price of the item returned) otherwise included in Gross Sales; and
  - (iv) sales of trade fixtures, machinery and equipment after use thereof in the conduct of Tenant's business; and
  - (v) amounts collected and paid by Tenant to any government for any sales, amusement or excise tax; and
  - (vi) the amount of any discount on sales to employees.
- (h) **"Contract Commencement Date"** means the effective date of this Contract as set forth in Article I.
- (i) **"Contract Year"** means each consecutive 12-month period beginning with the Rent Commencement Date, except that if the Rent Commencement Date is other than the first day of a calendar month, then the first Contract Year shall be the period from the Rent Commencement Date through the date 12 months after the last day of the calendar month in which the Rent Commencement Date occurs, and each subsequent Contract Year shall be the period of 12 months following the last day of the prior Contract Year.
- (j) **"The Operators Handbook"** shall mean the rules and regulations attached as Exhibit E hereto, as amended from time to time.
- (k) **"Opening Date"** means the date upon which Tenant commences commercial operation of the Premises.
- (l) **"Operating Hours"** shall mean the days and hours set forth in Article I unless otherwise changed by Landlord.
- (m) **"Permitted Use"** shall mean the use and occupancy of the Premises for the activity and/or sales as set forth in Article I and for no other purpose whatsoever.
- (n) **"Person"** shall mean an individual, corporation, partnership, firm, trust, limited liability company, business association or governmental entity, as the context requires.
- (o) **"Premises"** shall mean the location within CTA Property identified on in Article I and Exhibit A.
- (p) **"Rental"** means collectively the Base Rent, Percentage Rent, and Utilities as set forth in Article I.
- (q) **"Rental Statement"** means the monthly statement issued by the Landlord of all Rentals then due and owing.
- (r) **"Rent Commencement Date"** Rent Commencement Date shall be the date set forth in Article I as the date from and after which Base Rent accrues.
- (s) **"Retail Tenant"** shall mean any CTA tenant occupying Retail or Concession space that is engaged primarily in selling goods, wares, merchandise or services to the public, including, without limitation, new and convenience stores, service stores, food and beverage establishments, gift stores, flower shops, and public service offices. Tenant shall be deemed a Retail Tenant unless otherwise provided in this Contract .
- (t) **"Tenant Improvements"** means upgrades, remodeling and other physical enhancements to the Premises by and at the cost of the Tenant for the Permitted Use at the time of the Initial Term (the "Initial Tenant Improvements") or at the time of any Renewal Term (the "Renewal Tenant Improvements").
- (u) **"Tenant Improvements Plans"** means the plans and specifications for the Tenant Improvements, including a schedule for such work, at the time of the Initial Term (the "Initial Tenant Improvements Plans") or at the time of any Renewal Term (the "Renewal Tenant Improvements Plans").
- (v) **"Tenant Notice Address"** shall mean the address set forth in Article I.
- (w) **"Tenant Trade Name"** shall mean the trade name set forth in Article I.

(x) **"Term"** shall mean that period of time commencing on the Contract Commencement Date and ending on the later of the Initial Expiration Date (the "Initial Term") or any applicable Renewal Expiration Date (the "Renewal Term"); as provided in Article I.

Section 2.2 **Attachments** The following attached documents shall be incorporated herein and shall be made part this Contract:

- Exhibit A Site Map - Location of Premises**
- Exhibit B Form of Sales Report**
- Exhibit C Construction Guidelines**
- Exhibit D Collateral**
- Exhibit E Operators Handbook**
- Exhibit F Disclosure of Ownership and Interests Affidavit**
- Exhibit G Insurance Requirements**

**Section 2.3 Demised Premises** Demise. Landlord hereby Contracts to Tenant, and Tenant hereby Contracts from Landlord, the Premises for the Term, including any Renewal Term, and at the Rental set forth herein.

(b) Quiet Enjoyment. So long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet use and possession of the Premises.

(c) Condition. Effective on the Contract Commencement Date, Tenant shall be deemed to have (a) accepted the Premises, and (b) that the Premises are in the condition called for by this Contract.

### ARTICLE III – **TERM; RENEWAL; TERMINATION; HOLDING OVER; SURRENDER**

Section 3.1 **Term; Renewal of Term.**

(a) The Initial Term shall be as set forth in Article I.

(b) Subject to the provisions set forth herein, Tenant may have the option to renew this Contract for a Renewal Term as set forth in Article I, if approved by the Landlord. The Landlord will have the sole right to determine if the option can be exercised. If the Landlord agrees to exercise the renewal term for this Contract, the Landlord may do so assuming the following -- (i) an Event of Default does not exist (ii) the Renewal Tenant Improvement Plan includes adequate upgrades to customer visible surfaces, including furniture, fixtures and equipment which meet or exceed the accepted condition upon the Tenant's opening day of business or; if applicable, then current franchise/corporate requirements for new establishments and (iii) the Tenant has maintained high operating standards including sales performance throughout the initial Term (collectively referred to as the "Renewal Conditions"). Not more than fourteen (14) months nor less than twelve (12) months prior to the Expiration Date (whether it be the Initial Expiration Date or any Renewal Expiration Date, as applicable), Tenant shall notify Landlord in writing that it wishes to exercise this option to renew. This notice shall include a Renewal Tenant Improvement Plan. Within sixty (60) days of receipt of such notice and Renewal Tenant Improvement Plan, the Landlord will notify Tenant whether the Renewal Conditions have been met. In the event the Landlord determines such Renewal Conditions have not been met, this Contract shall expire on the applicable Expiration Date unless otherwise modified or extended by mutual agreement of the parties.

Section 3.2 **Termination.** Absent written agreement of the parties otherwise, or renewal as provided herein, this Contract shall terminate at the Initial Expiration Date or any applicable Renewal Expiration Date, without the necessity for any notice from either Landlord or Tenant to terminate the same.

Section 3.3 **Orange Line Provision.** This provision applies only to the following Orange Line Stations: Halsted, Ashland, 35th/ Archer, Western, Kedzie, Pulaski, Midway. In addition to any other provisions of this Agreement regarding termination, this Agreement is subject to termination pursuant to Section 3.6 of the Agreement for the Operation and Maintenance Agreement of the Southwest Transit Project between the City of Chicago and the Chicago Transit Authority dated December 22, 2005 (the "O&M Agreement") in the event that the O&M Agreement is terminated.

Section 3.4 **Holding Over.** If Tenant shall be in possession of the Premises at the end of the Term, with the written consent of the Landlord, the tenancy under this Contract shall become one from month to month, upon all the terms and conditions contained in this Contract , and such tenancy shall be terminable by either party as of any date on not less than thirty (30) days' prior written notice to the other party, specifying such date. Tenant hereby agrees that if it fails to surrender the Premises at the end of the Term, or any renewal thereof, to Landlord without the express written consent from Landlord, Tenant: (i) shall pay to Landlord as rent two (2) times the Rental payable by Tenant to Landlord during the last Contract Year of the Term, and (ii) be liable to Landlord for Attorney's Fees any and all damages which Landlord shall suffer by reason thereof, and will indemnify Landlord against all claims and demands made by or payable to any succeeding tenants against Landlord founded upon delay by Landlord in delivering possession of the Premises to such succeeding tenant. Unless otherwise agreed to in writing, no option to extend or renew the Contract shall have been deemed to have occurred by Tenant's holdover.

Section 3.5 **Surrender.** Tenant will surrender the Premises at the expiration of the Term or at such other time as it may vacate the Premises in as good a condition as at the commencement of the Term, excepting ordinary wear and tear or damage by Casualty (other than damage which Tenant is required to repair or restore under this Contract ), and free of all Hazardous Materials.

#### ARTICLE IV - **USE**

Section 4.1 **Prompt Occupancy and Use.** Tenant shall operate its business on the Premises not later than the Rent Commencement Date set forth in Article I, and thereafter, shall continuously use the Premises for the Permitted Use (as defined in Article I, Section 1.2) and for no other purpose whatsoever.

Section 4.2 **Storage and Office Areas.** Tenant shall use only such minor portions of the Premises for storage and office purposes as are reasonably required therefore. Any goods, wares, merchandise, equipment or other property which is stored by Tenant within the Premises is stored at Tenant's sole risk, and Landlord shall not be liable to Tenant in any manner whatsoever for any loss which might occur.

Section 4.3 **Tenant Trade Name.** Unless otherwise approved by Landlord, Tenant shall conduct business in the Premises only in Tenant Trade Name. Tenant represents and warrants that it owns the Tenant Trade Name and is entitled to use the Tenant Trade Name without the consent of any other party.

Section 4.4 **Acceptance of Credit Cards.** Tenant must accept payment by credit card on all purchases made on the Premises, regardless of the amount of any such purchase, without limitation or restriction.

Section 4.5 **Operating Hours and Business Interruptions** Tenant shall cause its business to be conducted and operated in good faith and in such manner as shall assure the transaction of a reasonable volume of business in and at the Premises. Unless other hours are approved by Landlord in writing, Tenant shall cause the Premises to be open for business during all Operating Hours, as set forth in Article I and such additional hours as shall be determined by Landlord.

(b) If six months from Contract Commencement Date Tenant shall fail to cause its business to be operated throughout the Contract Term for any six month period as set forth in Article I, in addition to any other remedy available to Landlord under this Contract , Tenant shall pay to Landlord, as liquidated damages for such breach, a sum equal to ten percent (10%) , monthly of the Base Rent during which Tenant shall fail to so operate without Landlord's written approval.

ARTICLE V - **RENTAL**

Section 5.1      **Rentals Payable**

- (a) Tenant covenants and agrees to pay to Landlord the following:
  - (i) Base Rent as specified in Article I shall be paid commencing with the first month of the first Contract Year. Except as otherwise provided in Article I, if the Rent Commencement Date falls on a date other than the first day of a calendar month, or the termination date of the Term falls on a date other than the last day of a calendar month, the Base Rent for such fractional month shall be prorated.
  - (i.i) Utilities as specified in Article I shall be paid commencing with the first month of the first Contract Year.
  - (i.i.i) Such additional sums, charges or amounts of whatever nature required to be paid in accordance with the provisions of this Contract.
- (b) Not later than the 25<sup>th</sup> day of the month, the Landlord shall transmit a Rental Statement to the Tenant.
- (c) Tenant shall pay all Rentals as set forth in the applicable Rental Statement not later than the 5<sup>th</sup> day of the month following issuance.
- (d) Tenant's obligation for these payments shall survive the expiration or other termination of this Contract.

Section 5.2      **Statement of Gross Sales.** Tenant shall deliver the following to Landlord:

(a) Within 10 days after the end of each calendar month, Tenant shall deliver to Landlord a written report (substantially in the form of Exhibit B attached hereto) of Tenant's Gross Sales, less permitted exclusions, if any, for the previous month, with a sales verification signed by Tenant or its authorized representative (the "Sales Report"). If Tenant fails to deliver the Sales Report, in satisfactory form, within the requisite time period, Tenant shall pay the Landlord a late charge of Twenty Dollars (\$20) per day until such time as the Sales Report is received by Landlord.

(b) Within 60 days after the end of each Contract Year and after the termination of this Contract, an annual statement of Gross Sales for the Contract Year or portion of the Contract Year just ended which shall conform to and be in accordance with generally accepted accounting principles. The annual statement shall be accompanied by the signed certificate of an independent certified public accountant stating specifically that (i) the certifier has examined the report of Gross Sales for the preceding Contract Year, (ii) the examination included such tests of Tenant's books and records as the certifier considered necessary or appropriate under the circumstances, (iii) such report presents fairly the Gross Sales of the preceding Contract Year, and (iv) the Gross Sales conform with and are computed in compliance with the definition of Gross Sales herein. If Tenant shall fail to deliver such annual statement and certificate to Landlord within the sixty (60) day period, Landlord shall have the right thereafter to employ an independent certified public accountant to examine such books and records as may be reasonably necessary to certify the amount of Tenant's Gross Sales for such Contract Year, and Tenant shall pay to Landlord the cost thereof as examination.

(c) Landlord and its representatives shall have the right upon three (3) days prior written notice to Tenant to audit or examine all Tenant's sales records which Landlord may desire. In addition, if Gross Sales have been understated by more than four percent (4%) and Landlord is entitled to an increase in Percentage Rent as a result of such understatement, then Tenant shall

pay the cost of such audit, plus a fifteen percent (15%) administrative fee, which cost and fee shall be paid to Landlord without demand. In addition, if Gross Sales are found to have been understated by more than five percent (5%) as a result of such audit, an Event of Default shall be deemed to have occurred (with all remedies available to Landlord pursuant to this Contract, including without limitation termination of this Contract). In addition to and without limiting other rights and remedies for such Event of Default, Landlord shall have the right to retain a consultant to prepare and establish a proper recording system for the determination of Tenant's Gross Sales, and Tenant agrees that it shall use the system, books and records prescribed by such consultant for such purpose and pay to Landlord the fees and expenses of such consultant, plus an amount equal to forty percent (40%) of the Base Rent payable by Tenant during the period in question.

**Section 5.3 Payment of Rental** Tenant shall pay all Rent when due and payable, without any setoff, deduction or prior demand therefore whatsoever. All Rent shall be paid in the United States currency. Tenant shall not pay any Rental earlier than one (1) month in advance without the consent of Landlord. Any Rental which is not received by the tenth (10<sup>th</sup>) day of the month for which it is due shall bear interest at the Default Rate from the first day due until paid and, in addition to such interest, Tenant shall pay each month a late charge in the amount of \$100.00.

(b) Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord or a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between Landlord and Tenant regarding sums due and payable by Tenant hereunder, unless Landlord specifically deemed it as such in writing. Landlord may accept any such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

**Section 5.4 Security Deposit**

(a) Upon execution of this Contract by Tenant, Tenant shall deliver to Landlord a security deposit ("Security Deposit") in the form of a cash deposit (cash or check) in the amount of as set forth in Article I.

(b) The Landlord shall not be obligated to place such amounts in an interest bearing account.

(c) The Security Deposit shall be held by Landlord as security for the payment by Tenant of the Rental or other amounts agreed to be paid pursuant to the Contract, as well as for the full and faithful performance by Tenant of the covenants and other provisions contained in this Contract.

(d) Landlord shall be entitled at its sole discretion, to apply or retain all or any part of the Security Deposit in payment of: (a) any Rental then due, (b) any expense incurred by Landlord in curing any default and (c) any damages, costs or expenses (including reasonable attorneys' fees) incurred by Landlord due to Tenant's default.

(e) If Landlord draws uses or applies the Security Deposit, or any portion thereof for the purposes permitted under this Section, Tenant shall be obligated to restore the Security Deposit to its original amount within ten (10) days from receipt of Landlord's written demand.

(f) Each Security Deposit shall be for the benefit of Landlord and its successors and assigns, shall be expressly assignable.

(g) Within 180 days following the latter of expiration of the Term or vacation of the Premises, Landlord shall return any unused portion of the Security Deposit to Tenant provided no Event of Default then exist and Tenant has fully performed all material obligations under this Contract.

**ARTICLE VI – TAXES**

**Section 6.1 Real Property and Other Taxes:** Tenant shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, which are applicable during the Term, which may be assessed against Tenant or the CTA in relation to the Premises, the occupation or operation thereof, the revenue derived there from, or any personal property or fixtures located thereon (collectively referred to as "Taxes"). Tenant shall pay all Taxes directly to the applicable taxing authority before delinquency and before any fine; interest or penalty shall become due or be imposed by operation of law for their nonpayment.

**ARTICLE VII - IMPROVEMENTS**

**Section 7.1 Tenant's Improvements Plans**

**(a)** All Tenant Improvement Plans are subject to prior review and approval by Landlord and shall be in conformance with the Construction Guidelines (Exhibit C) and the Operators Handbook (Exhibit E), both as from time to time amended, as well as reasonable directives of the Landlord as from time to time established.

**(b)** Not later than 10 days after the Contract Commencement Date, Tenant shall provide and conform to the specifications stated in the Construction Guidelines (Exhibit C), a Tenant Concept Plan showing anticipated improvements and upgrades to the Premises. Such Tenant Concept Plan shall be subject to the review and approval of the Landlord.

**(c)** Not later than 30 days after the Contract Commencement Date, Tenant shall submit an Initial Tenant Improvement Plan for review and approval by the Landlord.

**(d)** At the time of any Renewal Notice, Tenant shall provide a Renewal Tenant Improvement Plan for review and approval by the Landlord.

**Section 7.2 Tenant Improvement Work**

**(a)** Tenant agrees, at its sole cost and expense, to complete all Tenant Improvements in accordance with approved Tenant Improvement Plan, using new and quality materials and equipment. Tenant agrees to commence remodeling of the Premises promptly upon such approval by Landlord. All Tenant Improvements must be completed prior to the Rent Commencement Date.

**(b)** Tenant may enter the Premises in accordance with the Operators Handbook (Exhibit E) , for the purpose of performing Tenant Improvements or other improvements to the Premises, if any, and for the purpose of installing any additional fixtures and other equipment, if any, provided:

- (i)** Tenant shall have obtained Landlord's written approval of the plans and specifications for such work; and
- (i.i)** Tenant shall have obtained all necessary approvals and permits for construction of its improvements (with all costs related thereto to be paid by Tenant); and
- (i.i.i)** Tenant shall have deposited with Landlord the policies or certificates of insurance required under this Contract; and
- (i.v)** if applicable, Landlord shall have received full payment from Tenant for any items of work which Landlord may have undertaken for the account of Tenant, or undertaken at Tenant's written request; and
- (v)** Tenant shall have met with Landlord's tenant construction coordinator (or such other person as Landlord may from time to time direct) and shall have provided to such coordinator for Landlord's approval, a list of all general contractors and subcontractors with respect to the Premises, all of whom shall have good labor relations, be capable of working in harmony with contractors retained by Landlord and by other tenants of the Premises and otherwise meet the standards set forth in Exhibits C and E; and
- (v.i)** Tenant shall have complied with all other requirements of Exhibits C and E which need to be met before Tenant's commencement of work in the Premises.

**(c)** Tenant shall not interfere with Landlord's activities, the activities of any other tenants and any other CTA operations.

**(d)** Tenant shall maintain the Premises in a clean and orderly condition at all times. All trash which may accumulate in connection with Tenant's activities shall be contained within the Premises and deposited at a location to be determined by Landlord. Tenant shall remove such trash daily at Tenant's expense.

(e) Tenant shall perform all duties and obligations imposed by this Contract, including without limitation, those provisions relating to insurance and indemnification.

(f) At Landlord's request, Tenant shall provide, or to cause its prime construction contractors to provide, Landlord with payment and performance bonds in an amount equal to one hundred percent (100%) of the cost of the construction of and the improvements to the Premises, which cost shall be based on Tenant's estimate as approved by Landlord. The bonds shall: (i) be in form and substance satisfactory to Landlord; (ii) name Landlord as obligee; and (iii) contain a corporate surety satisfactory to Landlord.

**Section 7.3 Mechanic's Liens** No work performed by Tenant pursuant to this Contract, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Landlord so that no mechanic's or other lien shall be allowed against the Landlord or the estate of Landlord by reason of any consent given by Landlord to Tenant to improve the Premises. Tenant shall place such contractual provisions as Landlord may request in all contracts and subcontracts for Tenant's improvements assuring Landlord that no mechanic's liens will be asserted against Landlord or Landlord's interest in the Premises or the Property of which the Premises are a part. Tenant shall pay on time all persons furnishing labor or materials with respect to any work performed by Tenant or its contractors on or about the Premise. If any mechanic's or other liens shall at any time be filed against the Landlord or Premises or the Property of which the Premises are a part by reason of work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall cause the same to be discharged of record to the satisfaction of Landlord. If Tenant shall fail to cause such lien to be so discharged within thirty (30) days after the filing of such lien, then, in addition to any other right or remedy of Landlord, Landlord may (but shall not be obligated to) discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord, including reasonable attorneys' fees incurred by Landlord either in defending against such lien or in procuring the discharge of such lien, together with interest thereon at the Default Rate, shall be due and payable by Tenant to Landlord.

**Section 7.4 Tenant's Contract hold Improvements and Trade Fixtures** All Tenant Improvements (as distinguished from trade fixtures) installed in the Premises at any time, whether by or on behalf of Tenant or by or on behalf of Landlord, shall not be removed from the Premises at any time, unless such removal is consented to in advance by Landlord; and at the expiration of this Contract (either on the Termination Date or upon such earlier termination as provided in this Contract ) all such Tenant improvements shall be deemed to be part of the Premises, shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in Landlord without payment of any nature to Tenant.

(b) Subject to the provisions of Section 7.4 and any rights available to Landlord by law, all trade fixtures (as distinguished from Tenant Improvements) owned by Tenant and installed in the Premises which would not be usable by any other tenant or occupant of the Premises (such as trade fixtures which bear Tenant's Trade Name or Tenant's logo) shall remain the Property of Tenant and shall be removable at any time, including upon the expiration of the Term, provided no Event of Default then exists, and provided, further, that Tenant shall repair any damage to the Premises caused by the removal of such trade fixtures and shall restore the Premises to substantially the same condition as existed before the installation of such trade fixtures. All trade fixtures installed in the Premises shall at the time of installation be new or reconditioned to have a like-new appearance.

(c) All such trade fixtures and all personal property not removed from the Premises by Tenant upon the expiration or other termination of the Term, or which Tenant is not entitled to so remove, and all installations, additions, partitions, hardware, light fixtures, non-trade fixtures and improvements, temporary or permanent, in or upon the Premises, whether placed there by Tenant or Landlord, shall, at Landlord's option, be Landlord's property, without compensation, allowance or credit to Tenant.

**Section 7.5 Security Interest** (a) To protect Landlord in the event Tenant defaults hereunder, Tenant hereby grants to Landlord a security interest in all goods, inventory, equipment, fixtures and all personal property belonging to Tenant or in which Tenant has an interest which are or may be affixed or attached to or otherwise placed upon the Premises during the Term, if any, all proceeds of the foregoing, and all of the other rights and property (the "Collateral") as more fully described on Exhibit D.

(b) Tenant shall keep the Collateral free and clear of all liens, claims, security interests, encumbrances and rights of others at all times during the Term and shall not acquire any goods, inventory, equipment, fixtures or personal property for the Premises pursuant to security agreements, conditional sales contracts, Contract s or other arrangements whereby a security



interest or title is retained or the right is reserved to remove or repossess such goods, inventory, equipment, fixtures or personal property.

(c) The security interest granted hereby shall secure all amounts to be paid by Tenant to Landlord hereunder, and any other indebtedness of Tenant to Landlord, and is in addition to the Security Deposit.

## ARTICLE VIII – TENANT OPERATIONS AND MAINTENANCE OF PREMISES

Section 8.1 **Character of Business** In conducting its business in the Premises, Tenant shall meet the standards of quality, service, cleanliness and decor of a first class business operated for the Permitted Use within the Chicago area. Tenant may not serve or sell items not within its Permitted Use. Tenant shall operate its business as a retail store, food and beverage or service establishment comparable with other stores of a similar size located in a first-class transit or high traffic location.

Section 8.2 **Design and Décor** At all times during the Term, with respect to any redecorating or remodeling undertaken by Tenant, the interior design and decor of the Premises shall be subject to Landlord's written approval, which shall not be unreasonably withheld. With respect to any construction work done by Tenant hereunder, Tenant agrees it shall employ a qualified architect or designer who is experienced in interior design of similar businesses and who will be required by Tenant under the terms of its employment to coordinate its design efforts closely with the Landlord. Landlord's approval of such architect or designer shall be required, which approval shall not be unreasonably withheld.

### Section 8.3 **Additional Provisions Regarding Operations:**

(a) With respect to the use and occupancy of the Premises, Tenant will at its expense: (i) keep the inside and outside of all glass in the doors, windows, store-fronts and any skylights of the Premises clean; (ii) keep all exterior store surfaces of the Premises clean; (iii) replace any cracked or broken glass of the Premises with glass of like color, kind and quality; (iv) maintain the Premises in a clean, orderly and sanitary condition, free of insects, rodents, and other pests, and if the Landlord requests, use the same pest control provider that Landlord has in place from time to time (it being understood that the present contractor may change over the course of the Term, including any Renewal Term);(v) keep any garbage, trash, rubbish or other refuse in rodent-proof containers within the interior of the Premises until removed; (vi) have such garbage, trash, rubbish and refuse removed on at least a daily basis; (vii) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; (viii) comply with all laws, ordinances, rules and regulations of governmental agencies and authorities (including, without limitation, liquor licensing laws and ordinances) and recommendations of Landlord's casualty insurer and other applicable insurance rating organizations now or hereafter in effect; (ix) light the windows of the Premises and exterior signs and turn the same off to the extent required by Landlord; (x) comply with and observe all the Operators Handbook established by Landlord from time to time for CTA Retail Tenants (a copy of the Operators Handbook current at the time of execution of this Contract is attached as Exhibit D); (xii) maintain sufficient inventory and have sufficient number of personnel to maximize sales volume in the Premises; (xiii) conduct its business in all respects in a manner in accordance with standards of operation consistent with a quality operation as determined by Landlord; (xiv) provide its own janitorial or cleaning services for the Premises, at its sole cost and expense, provided that if such services shall be performed by independent contractors and not Tenant's employees, such contractors shall be capable of working in harmony with all other contractors of Landlord, and subject to such other reasonable conditions as Landlord may specify, and (xv) comply, at Tenant's expense, with any requirements of Landlord at The Property for recycling of recyclable refuse. Landlord reserves the right to change the Operators Handbook at any time.

(b) With respect to the use and occupancy of the Premises and the Common Areas, Tenant will not (i) place or maintain any merchandise, trash, refuse or other articles in any vestibule or entry of the Premises, on the foot walks or corridors adjacent thereto or elsewhere on the exterior of the Premises; (ii) use or permit the use of any advertising medium which is in any manner audible or visible outside of the Premises, such as, without limitation, loudspeakers, audio players, public address systems, sound amplifiers, playing of radio or television broadcasts; (iii) permit undue accumulations of or burn garbage; (iv) cause or permit any odors to emanate or to be dispelled from the Premises; (v) solicit business in any area outside the Demised Premises;; (vi) distribute handbills or other advertising matter or sell, display, demonstrate or sample of any merchandise or food, or for any other business, outside the Demised Premises; (vii) receive or ship articles of any kind outside the designated loading areas for the Premises; (viii) conduct or permit to be conducted any auction, fire sale, going out of business sale, bankruptcy sale, unless directed by a court order, or other similar type sale in or connected with the Premises (but this provision shall not restrict the absolute freedom of Tenant in determining its own selling prices, nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales); (ix) use or permit the use of any portion of the Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for the CTA ; (x) place a load upon any floor

which exceeds the floor load which the floor was designed to carry; (xi) operate its heating or air-conditioning in such a manner as to drain heat or air-conditioning from the premises of any other tenant or occupant or from general CTA operations; (xii) display any vendor signage or display or use any articles, equipment or fixtures on which any vendor name or logo is visible unless it is part of the Landlord approved store design and does not conflict with the provisions of Sections 14.1 and 14.2; or (xv) sell, distribute, display or offer for sale any roach clip, water pipe, bong, coke spoon, cigarette papers, hypodermic syringe or other paraphernalia commonly used in the use or ingestion of illicit drugs, or any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, picture, representation or merchandise of any kind. Moreover, Tenant shall comply with the provisions of Sections 14.1 and 14.2 regarding Landlord's reservation of certain rights.

**Section 8.4 Signs and Advertising** Tenant shall not place or suffer to be placed or maintained on the exterior of the Premises (or any part of the interior visible from the exterior thereof) any sign, banner, advertising matter or any other thing of any kind and will not place or maintain any decoration, letter or advertising matter on any window or door of the Premises unless it has been placed and maintained in accordance with the written approval of Landlord and otherwise complies with the provisions of this Contract, including Exhibits C and E. Tenant shall, at its sole cost and expense, purchase the signage and maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times. In any case, any advertising used by the Tenant in conjunction with his business shall be in conformance with Ordinance No 008-147, "Amending the Chicago Transit Authority Advertising Guidelines", passed by the Chicago Transit Board on November 13, 2008 and any successor ordinances relating to advertising passed by the Chicago Transit Board.

**Section 8.5 Painting and Displays by Tenant** Tenant shall not paint or decorate any part of the exterior of the Premises. Tenant shall not paint or decorate any part of the interior of the Premises, including any color changes, without first obtaining Landlord's written approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant will install and maintain at all times, subject to the other provisions of this Section, displays of merchandise in the show windows (if any) of the Premises. All articles and the arrangement, style, color and general appearance thereof, in the interior of the Premises including, without limitation, window displays, advertising matter, signs, merchandise and store fixtures, shall be in keeping with the character and standards of the improvements within the Operators Handbook and the Construction Guidelines as determined by Landlord. Landlord reserves the right to require Tenant to correct any nonconformity upon the provision of reasonable notice thereof.

**Section 8.6 Redecoration** Tenant shall repaint, redecorate and refurbishing the interior of the Premises (including, but not limited to, the floor and wall coverings of the Premises) as and when reasonably necessary, as determined by Landlord, but in no event less often than once every five (5) Contract Years, including any Renewal Term.

**Section 8.7 Exterminator Service** Tenant shall cause extermination services (including treatment for insects, spiders, rats, mice, and other rodents) to be provided to the Premises minimally on a monthly basis throughout the Term, including any Renewal Term.

**Section 8.8 Trash and Garbage Removal** Tenant shall keep any garbage, trash, rubbish or other refuse in rodent-proof containers within the interior of the Premises and shall deposit any garbage, trash, rubbish or other refuse, on not less than a daily basis, in designated receptacles provided by Tenant's trash removal contractor.

(b) Tenant shall comply with Landlord directives and procedures related to specialty waste, such as grease.

(c) Tenant is encouraged to implement a recycling program throughout the Term.

**Section 8.9 Service Contracts** Within ten (10) days after Landlord's request at any time during the Term, Tenant shall furnish Landlord copies of all maintenance and extermination contracts in effect with respect to the Premises, including evidence to Landlord of payment for services performed under such contracts.

**Section 8.10 Environmental Requirements**

(a) During the Term: (i) Tenant shall, at its own cost, comply with all environmental laws, and, without limitation, any environmental rules, regulations, orders and codes (collectively, "Environmental Laws") pertaining to the Premises and the conduct of Tenant's business and Tenant's use of The Property and the Premises; (ii) Tenant shall not use any portion or all of The Property or the Premises for the generation, treatment, storage, accumulation, release or threat of release or disposal of "hazardous materials", "hazardous waste", "hazardous substances", "pollutants", "toxic materials" or "oil" (individually and collectively, "Hazardous Materials") as such terms are used in or defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended, the Resource

Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., as amended, the Toxic Substance Control Act, and any and all other present or future "environmental statutes" which regulate the use of hazardous and/or dangerous substances, and the regulations promulgated there-under and any and all present or future state and local laws, rules and regulations, without the express prior written consent of Landlord, and then only to extent that the presence or discharge of the Hazardous Materials is (1) properly licensed and approved by all appropriate governmental officials and in accordance with all applicable laws and regulations and (2) in compliance with any terms and conditions stated in the prior written approval by the Landlord; (iii) Tenant shall not dispose of Hazardous Materials in dumpsters provided by the Landlord for Tenant's disposal of ordinary refuse; (iv) Tenant shall not discharge Hazardous Materials into drains or sewers; (v) Tenant shall not cause or allow the Release of any Hazardous Materials on, to or from the Premises; (vi) Tenant shall, at its own cost, arrange for the lawful transportation and off-site disposal at a properly permitted facility of all Hazardous Materials that it generates or releases; (vii) Tenant shall keep such records and obtain such permits as may be required for Tenant's activities under any Environmental Law; and (viii) Tenant shall comply with any applicable Landlord storm water pollution prevention plan and spill prevention control and countermeasures plan as may be in effect from time to time. For purposes of this Section, the term "Release shall mean release, leaking, spilling, disposal or deposit of any Hazardous Materials on, in or from the Premises.

**(b)** Tenant may employ the normal and reasonable amounts of cleaning and pest control supplies reasonably necessary for maintenance of the Premises, so long as such Hazardous Materials are properly, safely and lawfully stored and used by Tenant, and the quantity of such Hazardous Materials does not equal or exceed a "recordable quantity" as defined under 40 C.F.R. 302, as amended; provided that such storage and use is in accordance with all applicable statutes, laws, rules and regulations and any manufacturer's instructions, and provided further that Tenant may not Release any Hazardous Materials except as provided by applicable statutes, laws, rules and regulations and specifically may not discharge any Hazardous Materials into any public sewer or any drain and drainpipe.

**(c)** Tenant shall notify Landlord immediately upon learning that any provision of this Section has been violated, that there has been a Releaser of any Hazardous Materials on a part of the Premises or The Property, that radon gas or urea formaldehyde has been detected on or in the Premises, or that the Premises are subject to any third party claim or action, or threat thereof, because of any environmental condition in or originating from the Premises or The Property. Tenant shall promptly provide Landlord with copies of all correspondence to or from third parties regarding such claims or actions or regarding environmental conditions in or originating from Tenant's operations in the Premises or The Property.

**(d)** In the event of a Release of any Hazardous Materials on, in or from the Premises, Tenant shall immediately cause complete remediation of the Release and restore the Premises to the condition that existed before the Contract Commencement Date or the date Tenant took possession of the Premises, whichever is earlier. Landlord shall have the right, but not the obligation, to enter the Premises and remediate any environmental condition on the Premises to comply with all laws, regulations and ordinances during which time Tenant shall not be entitled to any abatement of Rent.

**(e)** In addition to any other indemnity required of Tenant under this Contract, Tenant hereby indemnifies and agrees to defend and hold harmless Landlord, its officers, directors, officials, trustees, employees, partners, servants and agents (collectively, the "Environmental Indemnified Parties") from and against and, if and to the extent paid, reimburse them upon demand made in accordance with this Section, for any and all damages incurred due to breach of its obligations under this Section, Tenant's use or Release of any Hazardous Materials, or any other claim relating to or arising under any Environmental Law which may arise under Tenant's occupancy or use of the Premises or The Property. Tenant's obligations under this Section shall survive the termination or expiration of this Contract, and shall not be affected in any way by the amount of or absence in any case of insurance coverage, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises, or any part thereof.

**(f)** Nothing in this Contract shall limit or impair any rights or remedies of the Landlord against Tenant or any other person under any other agreement, any Environmental Law or otherwise at law or in equity, including, without limitation, any rights of contribution or indemnification. Rights granted to the Landlord under this Section shall be exercisable by Landlord's officers, employees, agents, licensees, contractors and designees.

**(g)** Without limiting other provisions of this Section or any other provisions of this Contract, Tenant shall be responsible for the proper disposal of all materials, construction and demolition debris, soil and other waste generated by Tenant's business operations, including, but not limited to the construction of any improvements to the Premises, all in accordance with all Environmental Laws. Tenant shall identify to Landlord any disposal site or transfer Property for materials, debris, soil or other waste of which Tenant is disposing, prior to its disposal, and shall complete and execute any form required by the Landlord identifying such site or Property. Tenant shall not use or allow to be used for disposal or transfer any site or

Property not properly licensed or to which Landlord objects. Any substitution, for whatever reason, shall be at Tenant's cost. Tenant shall pay the cost to remove waste to a properly licensed site or Property.

(h) Tenant must show evidence to the Landlord of, and keep current throughout the Term of this Contract, all permits of any kind (including waste hauling, special waste hauling and disposal permits) and insurance certificates required by federal, state, municipal or other local governmental body or agency pursuant to any Environmental Law; copies of all load tickets, manifests, bills of lading, scale tickets and other pertinent documents, including copies of all permits and licenses for the proposed transfer Property or landfill; safety and accident reports; and records, reports and permits required by the Illinois Environmental Protection Agency or the United States Occupational Safety and Health Administration. All such records and accounts shall be subject to review by the Landlord and shall be made available to the Landlord within ten (10) days following written request of the General Manager of Purchasing, or other shorter reasonable period requested by the General Manager. Landlord's review of any such records and accounts shall not limit Tenant's obligations or liability under the terms and conditions of this Contract or any Environmental Law.

(i) Landlord shall have no liability to Tenant (except as expressly provided in this Contract) or any permitted subtenant, assignee or occupant of the Premises, or any portion thereof, or any of their respective members, employees, agents, partners, shareholders, officers, directors, contractors, licensees or invitees, or other persons to whom Tenant has permitted entry or with whom Tenant has entered into a contract or understanding (oral or written) to use or occupy the Premises, as a result of Hazardous Materials hereafter located on the Premises.

(j) Landlord reserves the right to conduct an environmental audit and inspection of the Premises at any time during the Term and thereafter to determine whether Tenant is complying with or has complied with the terms of this Section and whether any Hazardous Materials exist in the Premises in violation of the terms of this Contract.

## ARTICLE IX LANDLORD'S AND TENANT'S PROPERTY

### Section 9.1 Landlord's Property.

All fixtures, equipment, improvements and appurtenances to or built into the Premises at the commencement of or during the term of this Contract, whether or not placed there by or at the expense of Tenant, and irrespective of when the Contract is terminated and whether Tenant has not fully amortized the costs of such items, shall be and remain part of the Premises, shall be deemed the Property of the Landlord (the "Landlord's Property") without compensation or credit to Tenant, and shall not be removed by Tenant unless Landlord requests their removal. If Landlord requests Tenant to remove any such fixtures, equipment, improvements and appurtenances, such removal shall be at the sole cost and expense of the Tenant.

### Section 9.2 Tenant's Property.

All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment whether or not attached to or built into the Premises, which are installed in the Premises by or for the account of Tenant without expense to Landlord and which can be removed without structural damage to the Premises or the Property and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises shall be and shall remain the Property of Tenant (the "Tenant's Property") and may be removed by Tenant at any time during the term of this Contract, provided Tenant is not in default hereunder. In the event Tenant's Property is so removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Property resulting from the installation and/or removal thereof.

### Section 9.3 Removal of Property.

At or before the Expiration Date of this Contract, or the date of any earlier termination hereof or within fifteen (15) days after such an earlier termination date, Tenant, at its expense, shall remove from the Premises all of Tenant's Property (except such items thereof as which Landlord shall have expressly permitted in writing to remain, which property shall become the Property of Landlord), and Tenant shall repair any damage to the Premises or the Property resulting from any installation and/or removal of Tenant's Property. Any other items of Tenant's Property which shall remain in the Premises after the Expiration Date of this Contract, or after a period of fifteen (15) days following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or disposed of by Landlord for its own account, without liability to Tenant, or parties claiming through Tenant in such manner as Landlord shall determine, at Tenant's expense.

Tenant shall indemnify Landlord for claims resulting from such removal. Notwithstanding the foregoing, if Tenant is in default under the terms of this Contract, it shall only remove Tenant's Property from the Premises upon the express, written direction of Landlord. If directed by Landlord in writing, Tenant shall also remove at its expense at or before the time specified for removal of Tenant's Property, any or all of the items of Landlord's Property installed or built on the premises as a part of the Alterations and Tenant shall repair any damage to the Premises or the Property resulting from the installation or removal of said item. In removing Tenant's Property, Tenant shall not impede, impair or interfere with the operation of Landlord's transit service or the flow of passengers to and from the train lines.

**ARTICLE X - REPAIRS AND ALTERATIONS**

**Section 10.1 Repairs to be Made by Landlord.** Landlord shall not be responsible for repair, maintenance or upkeep of any Tenant Improvement, except sprinkler systems following acceptance by the Landlord as provided herein. Landlord will, at its expense, make, or cause to be made:

(a) repairs to sprinkler system serving the Premises if and to the extent installed by Landlord or, if installed by Tenant, following such installation and acceptance by Landlord; and

(b) structural repairs to exterior walls, structural columns, roof (other than roof penetrations for Tenant Improvements or equipment) and structural floors (other than floor penetrations from Tenant Improvements) which collectively enclose the Premises (excluding all doors, door frames, store-fronts, windows and glass and window frames);

(c) repairs to base building systems outside the Premises which serve the Premises;

Tenant shall monitor the condition of the Premises and shall give Landlord notice of the necessity of any repairs to be made by Landlord under this Section of which Tenant becomes aware. If repairs are needed because of damage by Tenant, its agents, employees, invitees, licensees or contractors, all such repairs shall be made at Tenant's cost. Landlord shall not be liable to Tenant for any damage to any merchandise, trade fixtures, leasehold improvements, personal property or other property of Tenant in the Premises from any cause, including but not limited to water leakage from water lines, sprinkler or HVAC equipment, sewer lines, or the roof membrane, occurring within or without the Premises.

**Section 10.2 Repairs to be Made by Tenant.**

(a) Tenant shall make all repairs to the Premises or any installations, equipment or facilities therein at its expense, other than those repairs required to be made by Landlord pursuant to Section 10.1. If the subject Tenant repair is for more than \$1,000 Tenant is required to notify Landlord of such repair, within a reasonable period of time.

(b) Without limiting the generality of the foregoing, Tenant will keep the interior of the Premises, together with all electrical, plumbing and other mechanical installations therein (excepting those portions of the heating, ventilating and air-conditioning system located in the Premises, which shall be repaired by Landlord at Tenant's expense as may be required elsewhere in this Contract) in good order and repair and will make all replacements from time to time required thereto at its expense.

(c) Tenant shall not overload the electrical wiring serving the Premises or within the Premises, and will install at its expense, subject to the provisions of Section 9.2 any additional electrical wiring which may be required in connection with Tenant's apparatus. Any damage or injury sustained by any person because of mechanical, electrical, plumbing or any other equipment or installations, whose maintenance and repair shall be the responsibility of Tenant shall be paid for by Tenant.

(d) Notwithstanding the direction provided to the Tenant in this Section, Tenant shall not make any repairs or improvements to the roof of the Premises.

**Section 10.3 Damage to Premises.** Tenant shall repair at its expense any damage to the Premises. Any damages caused by or arising from the installation or removal of property in or from the Premises that causes damage to the Premises roof or elsewhere on CTA Property shall be repaired by the Landlord. However, if the Tenant is found to be the cause of the need for repair, the Landlord will provide the Tenant with an invoice to cover the repair and the Tenant agrees to pay the costs associated with the repair. If Tenant shall fail to pay such repairs within five (5) days after notice to do so, Tenant agrees to pay such costs including interest thereon at the Default Rate until paid.

Section 10.4 **Alterations by Tenant.** Tenant shall not make any alterations, renovations, improvements or other installations in, or to any part of the Premises (including, without limitation, any alterations whatsoever of the storefront, signs, structural alterations, or any cutting or drilling of any kind into any part of the Premises or any securing of any fixtures, apparatus, or equipment of any kind to any part of the Premises) except in accordance with the provisions of this Contract applicable to the initial work required to prepare the Premises for Tenant's occupancy, including, without limitation, the provisions of Exhibit C hereto.

Section 10.5 **Changes and Additions to the Property.** Landlord reserves the right at any time and from time to time to (a) make or permit changes or revisions in the plan for The Property (including additions to, subtractions from, rearrangements of, alterations, modifications, or supplements to, the Property, walkways, driveways, parking areas, or other Common Areas), (b) construct other buildings or improvements in The Property (including any portion of the Common Areas) and make alterations thereof or additions thereto (including any portion of the Common Areas) and build additional retail stores, carts or kiosks, install vending machines or ATM machines on or in any such building(s) (or Common Areas) and build adjoining same, and (c) make or permit changes or revisions in the Property, including additions thereto and alterations thereof. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of Rental from Landlord for any injury, inconvenience or loss of business thereby, provided that Landlord makes reasonable efforts to complete any work or repairs in a timely manner.

Section 10.6 **Roof and Walls.** Landlord shall have the exclusive right to use all or any part of the roof or ceiling plenum of the Premises for any purpose and to install, maintain, use, repair and replace within the Premises and demising walls pipes, ducts, conduits, wires and all other mechanical equipment serving other parts of the Property. Any such facilities or equipment of Landlord located within the Premises serving other areas of the Property will not unreasonably restrict Tenant's use of the Premises.

## ARTICLE XI **LANDLORD'S RIGHTS**

Section 11.1 **Common Areas** Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Premises, all of the Property, including, without limitation, exterior Property walls, core corridor walls and doors and any core corridor entrance, any terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other Property facilities, and the use thereof, as well as access thereto through the Premises for the purposes of operation, maintenance, decoration and repair, are reserved for the exclusive use by Landlord. Landlord reserves the right, and Tenant shall permit Landlord, to install, erect, use and maintain pipes, ducts and conduits in and through the Premises.

Section 11.2 **Landlord's Rights of Access.** Landlord and its agents shall have the right to enter and/or pass through the Premises at any time or times (a) to examine the Premises and (b) to make such repairs, alterations, additions and improvements in or to the Premises and/or in or to the Property or its facilities and equipment as Landlord is required or desires to make, provided, however, that Landlord shall use reasonable efforts to avoid disturbing Tenant, Tenant's employees and Tenant's business operations. Landlord shall be allowed to take all materials into and upon the Premises that may be required in connection there with, without any liability to Tenant and without any reduction of Tenant's covenants and obligations hereunder, including the covenant and obligation to pay Rent hereunder. During the period of twelve (12) months prior to the expiration date of this Contract, Landlord or its agents may exhibit the Premises to prospective tenants. In conjunction with Landlord's Rights of Access, Tenant agrees to provide Landlord with key(s) to the Premises sufficient to allow the Landlord and its agents to access the Premises when the Tenant is not open for business.

Section 11.3 **Landlord's Right to Repair and Maintain.** If at any time any windows of the Premises are temporarily darkened or obstructed by reason of any Landlord emergency, repairs, improvements, maintenance and/or cleaning in or about the Property, or if any part of the Property, other than the Premises, is temporarily or permanently closed or inoperable, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Contract. Landlord reserves the right, at any time, without incurring any liability to Tenant therefore, and without affecting or reducing any of Tenant's covenants and obligations hereunder, to decorate and to make, at Landlord's expense, repairs, alterations, additions and improvements (structural or otherwise), in or to the Premises, the Property or any part thereof and during such operations to take into and through the Premises or any part of the Property all material required, and to close or temporarily suspend operation of entrances, doors, corridors, elevators or other facilities. Landlord may do any such work during regular business hours, and Tenant shall pay Landlord for overtime and for any other expenses incurred if such work is done during other hours by agreement between Landlord and Tenant.

Section 11.4 **Other Landlord Rights.** Landlord shall have the following rights exercisable without notice, without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for set off or abatement of Rent: (i) To adopt any name for Property and to change the Property's name or street address; (ii) To install, affix and maintain all signs on the exterior and/or interior of the Property; (iii) To designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings, or other similar items and all internal lighting that may be visible from the exterior of the Premises; (iv) To grant to any party the exclusive right to conduct any business or render any service in or to the Property, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose permitted hereunder, (v) To have access for Landlord and other tenants of the Property to any mail chutes and boxes located in or on the Premises according to the rules of the United States Post Office; (vi) To close the Property after normal business hours; and (vii) To decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy at any time after Tenant vacates or abandons the Premises or suspends active business operations for a period of thirty (30) days.

Section 11.5 **Interference with Transit Operations:**

(a) Tenant shall not interfere with the operation by the Landlord of its transit system. It is mutually agreed that the rights and privileges granted herein shall be exercised by the Tenant subject to the paramount right of the Landlord, in its absolute and unfettered discretion, to operate, maintain and improve its transit system. The Landlord shall not be liable to Tenant for any compensation or reduction of Fee by reason of inconvenience or annoyance, or for loss of business arising from any requirement that the Landlord or its agents enter the area for any of the purposes reserved to it herein, or to repair the Premises or any portion of the Property, except in the case of substantial impairment to do business by blocking the public entrance to the Premises or by blocking off a portion of the Premises from the Tenant, in which case the parties will negotiate a reasonable abatement in Fee. If parties cannot agree on the amount of the abatement, this Contract may be terminated in whole or in part with no recourse against the Landlord.

(b) The Landlord reserves the right to stop any service or utility system, when necessary by reason of accident or emergency, or until necessary repairs have been completed, provided, however, that, in each instance of stoppage, the Landlord shall exercise reasonable diligence to eliminate the cause thereof. Except in case of emergency repairs, the Landlord will use all reasonable efforts to give Tenant reasonable advance notice of any contemplated stoppage and will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

Section 11.6 **Right to Close the Property or Portions Thereof:** Landlord reserves the right at any time to close a portion of or an entire Property, for any reason, including for the purposes of demolishing the building in which the Premises are located and to reconstruct on any of the Property owned by Landlord, a new building or buildings or other transit facilities. In the event the Landlord elects to exercise said right to close all or part of the Property, this Contract shall be canceled without liability to either Landlord or Tenant. The Landlord agrees to give the Tenant two (2) months prior written notice of the effective date of the Closing of all or part of the Property. For purposes of this Section, the Landlord and Tenant agree that Tenant's improvements will be amortized over the first five years of the Contract Term. If the Landlord closes the Property at any time during the initial five years of the Contract Term, Landlord agrees to compensate Tenant for any unused portion of the amortized improvements made by Tenant at Tenant's expense with such amortization to be computed on a straight-line basis. Tenant shall be compensated for the unamortized portion of improvements made by Tenant only if one of the following events occurs, 1) the entire Property is closed; 2) the Tenant's concession space is closed; 3) There is a mutual agreement by the parties. Tenant shall not be entitled to any financial compensation for the improvements made by Tenant if Landlord closes all or a portion of the Property after the fifth year of the Contract, and requires Tenant to vacate the concession space

ARTICLE XII - **UTILITIES**

Section 12.1 **Water, Electricity, Telephone and Sanitary Sewer**

(a) Landlord will allow Tenant the use of existing facilities to points of connection at the Premises to enable Tenant to obtain for the Premises water, electricity, telephone and sanitary sewer service. Tenant shall arrange for such utility services and shall pay all charges for water, electricity, telephone, and sanitary sewer services used by it and supplied by a public utility company or public authority or any other person, firm or corporation, including Landlord, supplying the same in the area in which the Property is located.

(b) Landlord, at its sole discretion, shall have the right, from time to time, to change the method and source of supply of electricity to the Premises, and Tenant agrees to execute and deliver to Landlord such documentation as may be required to effect such change.

Section 12.2 **Heating, Ventilating and Air Conditioning; Natural Gas; No Propane.** Tenant shall install its portion of the facilities for heating, ventilating and air-conditioning the Premises (to the extent such facilities do not presently exist) and shall operate facilities the Tenant installs (if any) during the Term. The Tenant at its own expense shall maintain and repair its facilities serving the Premises and shall bear the cost and expenses of repairing any damage to the Landlord's facilities caused by the Tenant's negligence in maintaining and repairing its facilities. If the costs for repairs to Landlord facilities are determined to be caused by the Tenants negligence in maintaining and operating its facilities, the cost of such repairs will be at the Tenant's expense. If such a situation occurs, the Landlord will invoice the Tenant for the cost of such repairs as allowed for in Article X, Section X.3.

(a) Tenant shall pay Landlord's standard charges in effect from time to time (which shall not exceed market rates) for condenser water, chilled water or domestic water provided to the Premises. Such charges shall be payable fifteen (15) days after billed by Landlord.

(b) If Tenant requires natural gas for the normal operation of Tenant's business, it shall obtain and maintain natural gas utility service from the local gas provider, who shall provide the gas through the mains located in locations selected by Landlord. All costs and expenses relating to the provision of gas to the Premises from such mains, including any installation of lines and equipment not presently existing, shall be at Tenant's expense. Tenant shall be responsible for the repair of any damage caused by installing and maintaining natural gas utility service. The location of the equipment and lines utilized in connection with natural gas utility service are subject to Landlord's approval.

(c) Tenant is not permitted to bring propane gas onto The Property or use propane gas.

Section 12.3 **Miscellaneous Utilities.** Tenant shall be solely responsible for and shall promptly pay all charges for miscellaneous utilities not furnished by Landlord such as, but not limited to, telephone, electronic alarm services, guard or security services, janitors or any other utility services used or consumed in the Premises.

Section 12.4 **Fire Protection Sprinkler System.** Landlord shall repair and maintain the fire protection sprinkler system if installed in the Premises. Any fire protection sprinkler system required for the Premises, shall be installed by and at the expense of the Tenant, subject to review and approval as required law and by the Landlord to ensure compatibility with the quality and design of the existing systems and conformance with Exhibits C and E. Upon installation, inspection and approval by the Landlord and other applicable government jurisdictions of the Tenant installed fire protection sprinkler system, Tenant shall provide Landlord with a bill of sale for same and it shall become the Property of Landlord.

Section 12.5 **Discontinuances and Interruptions of Utility Services** Landlord reserves the right to cut off and discontinue, upon notice to Tenant, furnishing of any heating, ventilation, air conditioning or other utility services furnished by Landlord at any time when Tenant has failed to pay when due any amount (whether as Rental or otherwise) due under this Contract .

(a) Tenant acknowledges and agrees that Landlord and its agents shall not be liable in damages, by abatement of Rental or otherwise, for failure to furnish or delay in furnishing any service required to be furnished by Landlord when such failure or delay is occasioned, in whole or in part, by repairs, renewals or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Property after reasonable effort to do so, by terrorism, by any accident or casualty whatsoever, by the act or default of Tenant or its agents or employees, or by any cause beyond the reasonable control of Landlord.

(b) No such failures or delays by Landlord in any service required to be furnished by Landlord, nor any inability of Tenant to obtain utility service, nor any failure or delay of any utility service provider to provide utility service shall be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rental or performing any of its obligations under this Contract.

(c) Landlord agrees, except in the event of an emergency, to furnish Tenant with reasonable notice whenever Landlord must interrupt utility service in order to perform maintenance or repairs on the facilities for such utilities.

#### ARTICLE XIII - **INDEMNITY AND INSURANCE**



Section 13.1 **Indemnity by Tenant.** The Tenant must indemnify and hold harmless to the maximum extent permitted by law the Landlord, its agents, Board members, officials, and employees (the "Landlord Parties") against all injuries, death, losses, damages, claims, suits, liabilities, judgments, costs, and expenses that may in any manner accrue against the Landlord as a consequence of the execution and award or performance of this Contract or which may in any way result therefrom whether or not it is alleged or determined that any loss for which the Landlord seeks indemnity is caused or contributed to or was caused in whole or in part through the negligent act or omission of the Tenant or its employees Board members, officials or agents or any of its sub-Tenants or any of their Board members, employees, officials, agents, or sub-Tenants (collectively the "Tenant Parties"); provided that this indemnity will not extend to circumstances where the loss, injury, death or damage is determined to be caused solely by the negligence of the Landlord. The Tenant must, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising in connection with this indemnity. If any judgment is rendered against the Landlord Parties, the Tenant must at its own expense satisfy and discharge the judgment. If the indemnity pursuant to this Section is not permitted by the applicable law, then, to the maximum extent permitted by law, the Tenant will make full contribution to the Landlord for its percentage share of any liability that is attributable to the Tenant Parties' acts or omissions. The Tenant expressly waives any legal limitations on its liability to the Landlord Parties for contribution, including but not limited to limitations related to the payment of workers compensation benefits. The Tenant expressly understands and agrees that any bond or insurance protection required by this Contract or otherwise provided by the Tenant, must in no way limit the Tenant's responsibility to indemnify and defend the Landlord Parties pursuant to this Section. The indemnification contained herein will survive the termination of this Contract.

Section 13.2 **Landlord Not Responsible for Acts of Others.** Except as otherwise prohibited by law, Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining the Premises or any part of the premises adjacent to or connecting with the Premises, or otherwise, or for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting stoppage or leaking of electrical cable and wires, or water, gas, sewer or steam pipes. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises, and to use such other portions of the CTA Property as Tenant is herein given the right to use, at Tenant's own risk. Nothing contained in this Contract is meant to waive any tort immunity defense that Landlord, as a governmental entity, may have in connection with any claim filed naming the Landlord as a party to such claim.

Section 13.3 **Tenants Insurance:** The Tenant and its Contractors will take out and maintain, during the entire Term of this Contract, insurance that meets with the requirements, if any, set forth in the attached in Exhibit G: Insurance Requirements. Tenant shall submit to the Landlord proof of insurances meeting the standards set forth in Exhibit G.

#### ARTICLE XIV - **DAMAGE AND DESTRUCTION**

##### Section 14.1 **Landlord's Obligation to Repair**

(a) If the Premises shall be damaged by fire, the elements, accident or other casualty, including damages or casualties of war (any of such causes being referred to in this Contract as a "Casualty"), and the Casualty is not determined to be the fault of the Tenant or Tenant's employees direct or indirect actions but the Premises are not thereby be rendered wholly or partially untenantable, then, Landlord shall cause such damage to be repaired and there shall be no abatement of Rental. For purposes of this Section, the term "untenantable" shall mean that Landlord has reasonably determined that the Premises cannot be used for the conduct of its usual business.

(b) If, as the result of Casualty, the Premises shall be rendered wholly or partially untenantable, then, Landlord shall cause such damage to be repaired, except for items which are Tenant's responsibility. Landlord shall advise the Tenant of Landlord's reasonable estimate of the time which will be required to substantially complete its repair.

(c) Any repair to be performed by Landlord as a result of a Casualty shall be subject to modifications required by zoning and building codes and other laws then in effect. Landlord's repairs shall made with reasonable diligence subject to reasonable delays for insurance adjustments, zoning laws, building codes, and other laws then in effect and matters beyond Landlord's reasonable control.

(d) All Rental (except for Percentage Rents) shall be abated proportionately as to the portion of the Premises rendered untenantable during the period Landlord is performing such repairs. In addition, the applicable Breakpoint shall be reduced by the amount obtained by multiplying the applicable Breakpoint by a fraction, the numerator of which shall be the product of the period Landlord is performing such repairs multiplied by the proportion of the Premises rendered untenantable, and the denominator of which shall be the period in which Landlord is performing such repairs.

(e) Landlord shall not be liable for interruption to Tenant's business or for damage to or replacement or repair of Tenant's personal property (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Contract ) or to any Contract hold improvements installed in the Premises by or on behalf of Tenant pursuant to this Contract, including Exhibit C, repair, replacement and restoration of which shall be Tenant's responsibility.

(f) Tenant will commence and proceed with reasonable diligence to repair, replace and restore its Contract hold improvements in accordance with the terms of this Contract applicable to work performed by Tenant, including the terms of Exhibit C. Tenant will take such action as is necessary to make available applicable insurance proceeds on Tenant's Contract hold improvements and personal property in the Premises which Tenant is required to insure.

Section 14.2 **Landlord's Option to Terminate Contract** If as a result of a Casualty:

(a) the Premises are (i) rendered wholly un-tenantable as reasonably determined by Landlord, (ii) damaged as a result of any cause which is not covered by Landlord's insurance, or (iii) damaged or destroyed in whole or in part during the last 24 months of the Term, or

(b) the cost of replacement of the Premises shall exceed 50% of the then insured value thereof, or

(c) any Ground Lease is terminated.

Then, in any of such events, Landlord may elect to terminate this Contract by giving to Tenant notice of such election within 60 days after the occurrence of such event. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, except for obligations of Tenant accruing prior to such termination. In such case, Rental (other than any Percentage Rents) shall be adjusted as of the date of such termination.

Section 14.3 **Insurance Proceeds:** If there is a Casualty and if this Contract is not terminated, Tenant shall use the proceeds of its insurance required to be carried under this Contract for repair and restoration of its Contract hold improvements and personal property in the Premises. All insurance proceeds payable with respect to the Premises (excluding Tenant's proceeds so used for repair and restoration) shall belong to and shall be payable to Landlord. In case of termination of this Contract, all insurance proceeds payable with respect to Contract hold improvements and fixtures shall be paid to Landlord.

## ARTICLE XV – **CONDEMNATION**

Section 15.1 **Taking Resulting in Termination of this Contract.** If all or part of The Property is taken by right of eminent domain, whether by condemnation or deed in lieu thereof and: (i) in the opinion of Landlord, the portion of the Property not so taken will not constitute a suitable and practical improvement for the remaining land or operation of the Property in the same manner as before is not economically feasible, (ii) the portion of the Property or Premises so taken (if not all is taken) is such that a reasonable amount of reconstruction of the balance not so taken would not reasonably allow Tenant to use the Premises for the Permitted Use, or (iii) the entire Premises are taken, then this Contract shall expire and terminate on the date when title vests in the condemning authority, and Tenant shall not be responsible for any payments of Rental hereunder with respect to any period after such date.

Section 15.2 **Partial Taking.** If a portion (but not all) of the Property or Premises is taken by right of eminent domain, whether by condemnation or deed in lieu thereof, but the Contract does not terminate as provided in Section 15.1, then if any reconstruction of the Property or Premises is necessary to reasonably allow Tenant to use the Premises for Permitted Use, Landlord shall promptly undertake and complete such reconstruction to the extent of available condemnation proceeds (if permitted under the terms of any Mortgage and Ground Contract ) subject to modifications required by zoning and building codes and other laws then in effect. All Rental (other than Percentage Rents) shall be reduced as of the date title vests in the condemning authority in the same proportion as the square footage of the Premises so taken bears to the entire Premises. The applicable Breakpoint shall also be reduced as of such date based on the proportion taken.

Section 15.3 **Effective Date of Termination.** If any notice of termination is given pursuant to this Section, this Contract and the rights and obligations of the parties under this Contract accruing thereafter shall terminate as of the date of such notice, and Rental shall be adjusted as of the date of such termination.

Section 15.4 **Condemnation Awards.** All compensation awarded for any taking of the Premises or The Property or any interest therein shall belong to and be the Property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto. Tenant may petition for reimbursement from the condemning authority (if permitted by law) for moving expenses or the expense of removal of Tenant's trade fixtures, but only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord, and any such right of Tenant shall be subject and subordinate to rights of any Mortgagee or Ground Lessor with respect to condemnation proceeds.

#### ARTICLE XVI - **ASSIGNMENTS, TRANSFERS AND SUBLETTING**

Section 16.1 **Prohibition:** Tenant shall not whether voluntarily, or by operation of law, or otherwise (a) assign or otherwise transfer this Contract or the Term and estate hereby granted, (b) sublet the Premises or any part thereof, or offer or advertise to do so, or allow the same to be used or occupied by anyone other than Tenants, or (c) mortgage, pledge, or encumber this Contract or the Premises or any part thereof in any manner whatsoever, without in each instance obtaining the prior written consent of Landlord. Said consent shall not be unreasonably withheld, delayed or conditioned. Landlord agrees that Tenant may enter into franchise agreements for operation of the Premises without Landlord's prior approval. Landlord shall not be a party to said franchise agreement(s). The parties acknowledge that said franchise agreement(s) do not and will not constitute a sub-lease or assignment of this Contract. The parties further agree that all communications regarding the Contract shall be between Landlord and Tenant and not with Tenant's franchisee. The parties further agree that all Contract payments will be made to Landlord directly by Tenant and not by a franchisee. Any violation of the provisions herein set forth shall constitute a default in this Contract and, thereupon, Landlord shall have the option to cancel the same and proceed in accordance with the provisions set forth herein. The meaning of the term "assign", as used herein, shall include without limitation any transfer or transfers of-shares or interests that, in the aggregate comprise a majority or controlling number of the outstanding shares or interests of Tenant or that result in a transfer of the controlling interest in Tenant to another party.

Section 16.2 **Notice of Proposed Assignment Sublease or Transfer:** Subject to Section 16.1, Tenant shall give Landlord written notice no later than thirty (30) days prior to the effective date of any proposed assignment of the Contract or sublease of the Premises, or any part thereof or other transfer of this Contract of the Premises. Such notice of any proposed assignment or sublease or other transfer of this Contract of the Premises, shall fully and specifically set forth: (a) the proposed financial terms and all conditions of the assignment, sublease or other transfer, (b) the identity of the proposed assignee, subtenant or other transferee, and (c) such financial and credit information, business history and business references concerning the proposed assignee, subtenant or other transferee, as Landlord may request

Section 16.3 **Recapture of Space:** Upon receipt of notice of a proposed sublease, Landlord shall have the option, in its sole discretion, to terminate this Contract in its entirety or, if Tenant proposes to sublease less than all of the Premises, to terminate this Contract with respect to the portion proposed to be subleased or transferred (collectively, the "Recapture Option") Landlord may, exercise the Recapture Option by giving Tenant written notice thereof within fourteen (14) days after receipt by Landlord of Tenant's notice of the proposed sublease. In the event Landlord exercises the Recapture Option, then the termination shall be effective on either a date selected by Landlord in its sole discretion, not less than thirty or more than ninety days following the date on which Landlord notifies Tenant of the exercise of such option. Tenant shall surrender possession of the space as to which this Contract has been terminated to Landlord on said effective date of termination. Effective as of the date the Contract is terminated pursuant to the Recapture Option, the amount of Base Rent and Additional Rent due thereafter shall be reduced in the same proportion as the number of square feet of rentable area contained in the portion of Premises as to which this Contract is terminated hereunder bears to the number of square feet of rentable area in the recaptured leased hereunder. Landlord may, at its option, lease the space recaptured hereunder to Tenant's proposed assignee or to any other party.

Section 16.4 **Landlord's Right of Approval:** If Landlord does not elect to exercise its right to recapture space pursuant to this Article, Landlord may, in its sole judgment, for any reason withhold its consent to any assignment, sublease, or other transfer or encumbrance of any of Tenant's interests in the Contract or the Premises for any reasonable business concern or purpose. Tenant acknowledges and agrees that Landlord's right to withhold consent for reasonable business concerns and purposes is a material consideration for the rental rate and terms contained in this Contract. Tenant acknowledges and agrees that Landlord has certain vital business concerns, including for illustration and without limitation, the nature, variety and location of tenants in the Property and the fact that the tangible net worth of the proposed assignee, subtenant or transferee is not less than that of Tenant as of the commencement date of this Contract. All assignments are subject to the approval of the Chicago Transit Board.

Tenant further acknowledges that Landlord has an interest in the rental rates for all available space in the Property and may, therefore, withhold consent to the proposed assignment, sublease or other transfer. In the event Landlord does not elect to recapture the space and withholds its consent to the proposed assignment, sublease or other transfer, this Contract shall continue to be in full force and effect.

**Section 16.5 Rights of Landlord.** Notwithstanding anything to the contrary contained in this Article, no assignment, sublease, use or occupancy by others or other transfer or encumbrance of any of Tenant's interests in the Premises or this Contract shall relieve the original Tenant of any of its obligations or covenants under this Contract, except to the extent that this Contract is terminated, in whole or in part, at Landlord's option pursuant to this Article. Tenant covenants that notwithstanding any assignment or other transfer and notwithstanding Landlord's acceptance of rent from any assignee, subtenant, transferee or other party, Tenant shall remain fully liable for the timely payment of all Rent and for the other obligations of this Contract. No assignment or transfer of this Contract by Tenant consented to by Landlord shall be effective, unless the assignee or transferee shall, at the time of such assignment or transfer, assume all the terms, covenants and conditions of this Contract thereafter to be performed by Tenant and shall agree to be bound thereby. Reference in this Contract to the use or occupancy by others (that is, anyone other than Tenant) shall not be construed as limited to subtenants and those claiming under or through subtenants, but as including also licensees and others claiming under or through Tenant immediately or remotely.

Tenant and any subtenant, assignee, or other transferee shall certify to Landlord, on request in writing the amount received by Tenant from its subtenant, assignee or transferee.

#### ARTICLE XVII - DEFAULT

Section 17.1 **"Event of Default" Defined.** Any one or more of the following events shall constitute an "Event of Default" for which Landlord shall have the remedies provided for it in Section 19.3:

- (a) Failure of Tenant to pay any Rental or other sum of money within ten calendar (10) days after the same is due hereunder; provided, however, if Tenant shall have failed to pay any Rental when due three (3) or more times in any twelve (12) month period, no notice or further opportunity to cure shall thereafter be required as to any subsequent failure to pay Rental when due (such failure to pay Rental when due automatically being an Event of Default).
- (b) Failure by Tenant to perform or observe any covenant or agreement of this Contract (other than default in payment of Rental), which failure is not cured within ten (10) days after the giving of notice thereof by Landlord, unless such failure is of such nature that it cannot be cured within such ten (10) day period, in which case no Event of Default shall occur so long as Tenant shall commence the curing of such failure within such ten (10) day period and shall thereafter diligently prosecute the curing of same but in no event later than ninety (90) days after the date notice is given by Landlord to Tenant.
- (c) Tenant vacates or abandons the Premises or fails to take possession of the Premises when available for occupancy, whether or not Tenant thereafter continues to pay the Rent due under this Contract .
- (d) A failure by Tenant to timely commence and continuously conduct and operate its business in accordance with the provisions of this Contract .
- (e) Tenant vacates or abandons the Premises before the last day of the Term of this Contract .
- (f) If Tenant or an agent of Tenant shall knowingly falsify any report or disclosure document or misrepresents other information required to be furnished to Landlord pursuant to the terms of this Contract .
- (g) Tenant's failure to obtain and maintain the Security Deposit required under this Contract .
- (h) The making by Tenant or any such guarantor of an assignment for the benefit of its creditors, or if in any other manner Tenant's interest in this Contract shall pass to another by operation of law.
- (i) The sale of Tenant's interest in the Premises under attachment, execution or similar legal process or, if Tenant is adjudicated a bankrupt or insolvent.

(j) The filing of a voluntary or involuntary petition proposing the adjudicating of Tenant or any guarantor of Tenant's obligations hereunder as a bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, whether pursuant to the United States Bankruptcy Code, 11 U.S.C. § 101, et. seq., as amended or superseded from time to time (the "Bankruptcy Code") or any similar federal or state proceedings, unless such petition is filed by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of filing.

(k) Evidence in writing by Tenant of its inability to pay its debts when due.

(l) The appointment of a receiver or trustee for the business or property of Tenant or any such guarantor, unless such appointment shall be vacated within ten (10) days of its entry.

(m) The occurrence of any other event described as constituting an "Event of Default" or a default elsewhere in this Contract .

(n) The occurrence of any event described as constituting an event of default under any other agreement that Tenant may have with the Landlord.

Section 17.2 **Bankruptcy.** Upon the filing of a petition by or against Tenant under the Bankruptcy Code and upon such filing of the petition, Tenant, as debtor or as debtor in possession, agrees:

(a) To perform promptly and fully each and every obligation of Tenant under this Contract , until such time as this Contract is either rejected or assumed by order of a United States Bankruptcy Court or other United States Court of competent jurisdiction; or deemed rejected by operation of law, pursuant to 11 U.S.C. § 365(c) (4).

(b) Notwithstanding anything in this Contract to the contrary, that all amounts payable by Tenant to or on behalf of Landlord hereunder, whether or not expressly denominated as rent, shall constitute "rent" for the purposes of Section 502(b) (7) of the Bankruptcy Code, including, without limitation, reasonable attorneys' fees incurred by Landlord by reason of Tenant's bankruptcy.

(c) That included within and in addition to any other conditions or obligations imposed upon Tenant in the event of assumption and/or assignment are the following:

(i) In the event of assignment, the execution and delivery to Landlord of an instrument by which the assignee assumes all of the obligations arising under this Contract from and after the date of assignment pursuant to the provisions of the Bankruptcy Code.

(i.i) The cure of any defaults and the compensation of pecuniary loss resulting from any such default, within 30 days after assumption.

(i.i.i) In the event of assignment, the assignee may not exercise any option to extend the Term of the Contract.

(i.v) Adequate assurance of future performance under the Contract, for the purpose of assumption or assignment, shall include adequate assurance:

(A) of the source of rent and other consideration due under the Contract, and in the event of assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be at least equal to the financial condition and operating performance of the Tenant and its guarantors, if any, as of the time the Tenant became the lessee under the Contract ;

(B) that any percentage rent due under the Contract will not decline substantially;

(C) that any assumption or assignment of the Contract is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, use or exclusivity

provisions, and will not breach any such provisions contained in any other lease, financing agreement, or master agreement relating to the Property;

(v) The adequate assurance and demonstrations in writing by a debtor, debtor in possession or assignee of such debtor in possession of such party's sufficient background, including, but not limited to, substantial retailing experience in shopping centers of comparable size and financial ability to operate out of the Premises pursuant to the terms and conditions of this Contract and to meet all other reasonable criteria of Landlord as did Tenant upon execution of this Contract.

(vi) The Premises, at all times, remain a single store and no physical changes of any kind are made thereto unless in compliance with the applicable provisions of this Contract.

(d) Nothing contained in this Section shall be deemed in any manner to limit Landlord's rights and remedies under the Bankruptcy Code, as presently existing or as may hereafter be amended.

(e) No default of this Contract by Tenant, either before or after the filing of any such petition, shall be deemed to have been waived unless expressly done so in writing by Landlord.

### Section 17.3 **Remedies.**

(a) Upon the occurrence of an Event of Default (or otherwise as provided in (b) below), Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(i) perform on behalf and at the expense of Tenant, any obligation of Tenant under this Contract which Tenant has failed to perform the cost of which performance by Landlord, together with interest thereon at the Default Rate from the date of such expenditure;

(ii) terminate this Contract ;

(iii) terminate the right of Tenant to possession of the Premises without terminating this Contract , whereupon the right of Tenant to possession of the Premises or any part thereof shall cease;

(iv) distrain for rent;

(v) may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein;

(vi) enforce any security interest granted under this Contract as permitted by law, including the sale at public or private sale of any Collateral;

(vii) exercise any other legal or equitable right or remedy which it may have.

(b) Regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in clause (i) without any notice to Tenant if Landlord in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(c) Any costs and expenses incurred by Landlord (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Contract or performing Tenant's obligations shall be repaid to Landlord by Tenant upon demand.

Section 17.4 **Right to Re-Enter.** If Landlord terminates this Contract or terminates Tenant's right of possession as provided above, Tenant shall surrender possession and vacate the Premises and immediately deliver possession thereof to Landlord. Landlord may re-enter and take complete and peaceful possession of the Premises, without resort to legal process, full and complete license to do so being hereby granted to Landlord, and Landlord may remove all occupants and property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without relinquishing Landlord's right to Rental or any other right given to Landlord hereunder or by operation of law.

Section 17.5 **Current Damages.** If Landlord terminates the right of Tenant to possession of the Premises without terminating this Contract on account of an Event of Default, Landlord shall have the right to immediate recovery of all Rental then due hereunder. Such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rental hereunder for the full Term as set forth in Article I as they become due under this Contract to the stated end of the Term. In any such case, Landlord may relet the Premises or any part thereof for the account of Tenant for such rent, for such time (which may be for a term extending beyond the Term of this Contract) and upon such terms as Landlord shall determine and collect the rents from such re-letting. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such re-letting. Also, in any such case, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary or desirable and in connection therewith change the locks to the Premises, and Tenant upon demand shall pay the cost of all the foregoing together with Landlord's expenses of re-letting. The rents from any such re-letting shall be applied first to the payment of the expenses of reentry, redecoration, repair and alterations and the expenses of re-letting and second to the payment of rent herein provided to be paid by Tenant. Any excess shall operate only as an offsetting credit against the amount of Rental due and owing as the same thereafter becomes due and payable hereunder, and the use of such offsetting credit to reduce the amount of Rental due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess, and any such excess shall belong solely to Landlord. Tenant shall not be entitled to a credit on its indebtedness to Landlord in excess of the aggregate Rental which would have been paid by Tenant for the period for which the credit to Tenant is being determined, had no Event of Default occurred. No such reentry or repossession, repairs, alterations and additions, or re-letting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Contract, unless a written notice of such intention is given to Tenant, or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, and Landlord, at any time, may sue and recover judgment for any deficiencies remaining from time to time after the application of the proceeds of any such re-letting from time to time.

Section 17.6 **Final Damages.** If this Contract is terminated by Landlord on account of an Event of Default, Landlord shall be entitled to recover from Tenant all Rental accrued and unpaid for the period up to and including such termination date, as well as all other charges payable by Tenant, or for which Tenant is liable or with respect to which Tenant has agreed to indemnify Landlord under any of the provisions of this Contract, which then may be owing and unpaid, and all costs and expenses, including court costs and attorneys' fees incurred by Landlord in the enforcement of its rights and remedies hereunder. In addition, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty (a) the unamortized portion of Landlord's contribution to the cost of improvements and betterments to the Premises, if any, installed by either Landlord or Tenant pursuant to this Contract, (b) the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate Rental which would have been payable after the termination date had this Contract not been terminated, including, without limitation, Base Rent, the Percentage Rent, the Marketing and Advertising Contribution and the Common Area Expense Adjustment for the remainder of the Term, over the then present value of the then aggregate fair rental value of the Premises for the balance of the Term (as determined by an independent real estate appraiser or broker chosen by Landlord), such present worth to be computed in each case on the basis of an annual percentage discount equal to Prime Rate from the respective dates upon which such rentals would have been payable hereunder had this Contract not been terminated, and (c) any additional damages, including reasonable attorneys' fees and court costs, which Landlord has sustained as a result of the breach of any of the covenants of this Contract other than for the payment of Rental.

Section 17.7 **Removal of Property** All property of Tenant removed from the Premises by Landlord pursuant to any provisions of this Contract or of law may be handled, removed or stored by Landlord at the cost and expense of Tenant, and Landlord in no event shall be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord for all expenses incurred by Landlord for such removal and storage as long as the same is in Landlord's possession or under Landlord's control. All such property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after the end of the Term, however terminated, at Landlord's option, shall be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant.

Section 17.8 **Attorneys' Fees.** Tenant shall pay all of Landlord's costs, charges and expenses, including court costs and attorneys' fees, incurred in enforcing Tenant's obligations under this Contract, incurred by Landlord in any action brought by Tenant in which Landlord is the prevailing party, or incurred by Landlord in any litigation, negotiation or transaction in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned.

#### ARTICLE XVIII – TERMINATION FOR DEFAULT AND CONVENIENCE

Section 18.1 **Default, and termination by reason of default:** In the event that Tenant shall neglect or fail to pay any installment of Fee or other sum herein specified to be paid within ten (10) calendar days of the due date during the term hereof, the Landlord shall have the right at any time thereafter to terminate this Contract by giving Tenant ten (10) calendar days

written notice of Landlord's decision to terminate for non-payment of Fee. Tenant shall not be entitled to cure any such default by tendering payment after the expiration of the ten (10) day grace period. If Tenant was in default two (2) times once within any twelve (12) month period, and then is in default again within such twelve (12) month period, the Landlord may terminate this Contract by sending Tenant a written notice of Termination. Tenant shall also be in default if it:

- (1) fails to perform or observe any of the other covenants or agreements contained in this Contract, or
- (2) makes any assignment for the benefit of creditors or files a petition for relief under bankruptcy law, or
- (3) if such petition is filed against Tenant and is not dismissed within sixty (60) days, or
- (4) has its estate in the Premises taken by process of law, proceeding in bankruptcy or insolvency or otherwise

and such default continues after twenty (20) days' written notice given by the Landlord to Tenant to cure, the Landlord may terminate this Contract.

In the event of an emergency situation that, in the sole judgment of the Landlord, threatens the public safety, the Landlord may require Tenant to cease operations on the Premises until such threat to the public safety has abated. The Landlord and Tenant agree to an equitable adjustment of Fee for any such period Landlord requires.

Upon such termination as provided herein, the Landlord may enter into the Premises and repossess the Premises and expel Tenant and those claiming through or under Tenant and remove Tenant's effects without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of Tenant created by this Contract shall terminate. Tenant agrees to pay any cost and expense, including reasonable attorney's fees, incurred by the Landlord in enforcing any of Tenant's obligations under this Contract.

In the event this Contract is terminated pursuant to this provision, the Landlord may retain the security deposit, if any, without prejudice to its right to claim additional damages.

Furthermore, in the event that this Contract is terminated under any of the foregoing provisions, or otherwise for breach of Tenant's obligations hereunder, Tenant covenants as an additional and cumulative obligation after any such termination or entry to pay punctually to the Landlord all the sums and perform all the obligations which Tenant covenants in this Contract to pay and to perform in the same manner and to the extent and at the same time as if this Contract had not terminated. In calculating the amounts to be paid by the Tenant under the preceding sentence, Tenant shall be credited with any amount actually paid to the Landlord as a security deposit hereunder and not used by the Landlord during previous defaults, and any Fee actually obtained by the Landlord relating to the Premises, after deducting the expenses, including attorney's fees, of collecting the same.

Nothing herein contained shall, however, limit or prejudice the right of the Landlord to prove and obtain in proceedings for bankruptcy or insolvency or reorganization or arrangement with creditors an amount equal to the maximum allowed by any statute or rule of law in any proceedings in which such damages are to be proved, whether or not such amount be greater than, equal to, or less than the amounts referred to above.

Failure of the LANDLORD to exercise its right to terminate this Contract as a result of the Tenant's default pursuant to the terms, conditions and covenants in this Section 12 shall not be construed as, or operate as a waiver of LANDLORD's right to exercise its right to terminate this Contract for cause at any time during the term of this Contract.

**Section 18.2 Termination for Convenience** The Landlord may terminate this Contract, in whole or part, without cause, at any time, by written notice to the Tenant whenever the Landlord determines that such termination is in its best interest. Upon receipt of written notice of termination for convenience, all services and any other performance hereunder by the Tenant shall cease to the extent specified in the notice of termination. Tenant shall be entitled to payment of its costs incurred due to any termination as specified in Section 11.6.

## ARTICLE XIX - NOTICES



Section 19.1 **Notices**

(a) Any notice, request, demand, approval or consent given or required to be given under this Contract shall be in writing and shall be given by United States registered or certified mail, return receipt requested, or by commercial delivery service, with all delivery and postage charges prepaid, and shall be deemed to have been given on the day actually received or refused, or if unclaimed, on the third day following the day on which the same shall have been sent by commercial delivery service or deposited with the United States Postal Service. All notices or other communications required or permitted to be given under this Agreement shall be in writing (unless otherwise specifically provided herein), delivered personally or by mail, addressed as follows:

Chicago Transit Authority  
567 W. Lake Street, 4th floor  
Chicago, IL 60661  
ATTENTION: General Manager, Purchasing

And

Chicago Transit Authority  
567 W. Lake Street, 5th floor  
Chicago, IL 60661  
ATTENTION: General Manager, Real Estate and Asset Management

I. (b) Except that payment of Rental and reports of Gross Sales shall be delivered to Landlord as set forth in Article I.

(c) Any such communication to Tenant shall be addressed to Tenant at the Tenant Notice Address set forth in Article I.

(d) Either party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

ARTICLE XX **ORDER OF PRECEDENCE OF COMPONENT PARTS OF THE CONTRACT DOCUMENTS:**

Section 20.1 In the event of any conflict or inconsistency between the terms set forth in the Agreement, any subsequent written amendments to the Agreement, the Response Documents, or the Request for Proposals, the governing order of precedence will be as follows:

- I. Any written amendments or change orders to this Agreement agreed to by both Landlord and Tenant after the execution of this Agreement.
- II. This Agreement (Contract No. \_\_\_\_\_), including exhibits and attachments hereto.
- III. Tenant's Best and Final Offer (BAFO), dated \_\_\_\_\_
- IV. Landlord's Request for Proposal No. \_\_\_\_\_
- V. Tenant's Technical Proposal, dated \_\_\_\_\_
- VI. Tenant's Revenue Proposal, dated \_\_\_\_\_
- VII. Tenant's DBE Proposal, dated \_\_\_\_\_
- VIII. Insurance Requirements

Section 20.2 Any Addenda, which may be issued, shall be a part of these Contract Documents and shall take precedence over any other part of the Contract Documents wherever they conflict therewith. The foregoing order of precedence shall govern the interpretation of the Contract Documents in all cases of conflict or inconsistency therein, except as may be otherwise expressly provided in other component parts of the Contract Documents.

#### ARTICLE XXI – MISCELLANEOUS

Section 21.1 **Inspections and Access by Landlord.** Tenant will permit Landlord, its agents, employees and contractors to enter all parts of the Premises during Tenant's business hours to show them to prospective purchasers or lenders of The Property, to inspect the same and to enforce or carry out any provision of this Contract, including, without limitation, any access reasonably necessary for the making of any improvements or repairs which are Landlord's right or obligation hereunder. For the period of twelve (12) months before the expiration of the Term, Landlord shall have the right to show the Premises and all parts thereof to prospective tenants during normal business hours, and if the Premises are vacated during such period, make improvements to or otherwise prepare the Premises for subsequent Contract. If Tenant shall not be personally present to open and permit an entry into the Premises at any time when an emergency exists, Landlord or Landlord's agents may enter the same by a master key, or may forcibly enter the same, without rendering Landlord or such agents liable therefore, and without in any manner affecting the obligations and covenants of this Contract.

Section 21.2 **Remedies Cumulative.** All rights and remedies of Landlord hereunder shall be cumulative and not exclusive. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Contract or of any breach by any other tenant under any other Contract of any portion of The Property shall affect or alter this Contract in any way whatsoever.

Section 21.3 **Successors and Assigns.** This Contract and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns and shall inure to the benefit of Tenant and only such assigns and subtenants of Tenant to whom the assignment or subleasing of this Contract by Tenant has been consented to in writing by Landlord, if so required pursuant to the terms of this Contract. Upon any sale or other transfer by Landlord of its interest in the Premises and in this Contract, and the assumption by Landlord's transferee of the obligations of Landlord hereunder, Landlord shall be relieved of all obligations accruing thereafter. Landlord may deliver any Security Deposit to the purchaser or transferee of Landlord's interest in Premises and this Contract, in the event that such interest is transferred, and thereupon Landlord shall be discharged from any further liability with respect to such Security Deposit.

Section 21.4 **Compliance with Laws and Regulations.** Tenant, at its sole cost and expense, shall comply, and shall cause the Premises and all work performed by Tenant, its agents and contractors, to comply with (a) all federal, state, county, municipal and other governmental statutes, laws, rules, codes, orders, regulations and ordinances affecting any part of the Premises, or the use thereof, including, but not limited to, those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (b) all rules, orders and regulations of the National Board of Fire Underwriters, Landlord's casualty insurers and other applicable insurance rating organizations or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises.

Section 21.5 **Americans with Disabilities Act.** The Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, which may apply to the Premises. The parties hereby allocate compliance with Title III of the ADA as follows, notwithstanding that either or both may be liable for compliance with Title III ADA requirements: (a) Tenant shall be responsible for all ADA Title III compliance and costs in connection with the Premises, including structural work, if any, and including any Contract hold improvements or other work to be performed in the Premises under or in connection with this Contract, and (b) Landlord shall perform, and Tenant shall be responsible for the cost of, any ADA Title III "path of travel" requirements triggered by any construction activities or alterations in the Premises or use of the Premises.

Section 21.6 **Captions and Headings.** The Table of Contents and the Article and Section captions and headings are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Contract .

Section 21.7 **Joint and Several Liability.** If two or more individuals, corporations, partnerships, limited liability companies or other business associations (or any combination of two or more thereof) shall sign this Contract for Tenant, the liability of each such individual, corporation, partnership, limited liability company or other business association to pay Rental and perform all other obligations hereunder shall be deemed to be joint and several and all notices, payments and agreements given or made by, with or to any one of such individuals, corporations, partnerships or other business associates shall be deemed to have been given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other business association, the members of which are, by virtue of statute or federal law, subject to personal liability, the liability of each such member shall be joint and several.

Section 21.8 **Broker's Commission.** In the event that Tenant employs a broker or finder in connection with this Contract, Tenant understands, acknowledges and agrees that Landlord shall not pay any fees, and Tenant agrees to defend, indemnify and hold harmless Landlord from and against any loss, cost, expense, liability or damage arising from any claim by any broker or finder with respect to payment of any broker fees or commissions.

Section 21.9 **Non-Discrimination.** This Contract involves the use of public property and activities which service the public. Tenant covenants and agrees that in all matters pertaining to the performance of this Contract, it shall, at all times, conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons in accordance with the law. It is the Landlord's policy that all customers, employees, licensees and invitees of all tenants and licensees shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of The Property without discrimination because of race, creed, color, sex, age, national origin, disability or ancestry. To that end, Tenant shall not discriminate in the conduct and operation of its business at The Property, including in its hiring, promotion and disciplinary practices as an employer, against any person or group of persons because of the race, creed, color, sex, age, national origin, disability (provided that, with respect to employment, the disability is unrelated to ability to perform the work required) or ancestry of such person or group of persons).

Section 21.10 **No Joint Venture.** Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed. The provisions of this Contract in regard to the payment by Tenant and the acceptance by Landlord of a percentage of Gross Sales of Tenant and others is a reservation for rent for the use of the Premises.

Section 21.11 **No Modification.** This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated in this Contract. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Contract. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Contract other than those specifically set forth in this Contract. This Contract can be modified only by a writing signed by the party against whom the modification is enforceable.

Section 21.12 **Construction.** This Contract shall not be construed more strictly against Landlord merely by virtue of the fact that it has been prepared by Landlord or its managing agent or counsel, it being recognized both of the parties hereto have contributed substantially and materially to the preparation and negotiation of this Contract.

Section 21.13 **Severability.** If any portion of any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

Section 21.14 **No Recording.** Neither this Contract nor a short form of memorandum thereof shall be recorded in the public records.

Section 21.15 **Corporate Tenants; Fictitious Names**

(a) If Tenant is a corporation requiring qualification to do business in the State of Illinois, the persons executing this Contract on behalf of Tenant hereby represent and warrant that: Tenant is a duly constituted corporation qualified to do business in the State of Illinois; all of Tenant's franchise and corporate taxes have been paid to date; all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws will be filed by Tenant when due; and such persons are duly authorized by the board of directors of such corporation to execute and deliver this Contract on behalf of the corporation.

(b) If Tenant is a limited partnership or limited liability company, the persons executing this Contract on behalf of Tenant hereby represent and warrant that Tenant is duly created and existing under the laws of the State of Illinois.

(c) Tenant certifies that if it is operating under a fictitious name that the name has been duly recorded according to the laws of the State of Illinois and attaches hereto a copy of the registration form.

Section 21.20 **Applicable Law**. This Contract and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Illinois. Tenant hereby submits itself irrevocably to the jurisdiction of the courts located in Cook County, Illinois, and covenants and agrees that if it should bring any action against Landlord, it shall do so in those and only those courts.

Section 21.21 **Waiver of Jury Trial**. Tenant waives any and all rights which it may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction involving a claim for possession of the Premises by Landlord.

Section 21.22 **Limitation of Right of Recovery Against Landlord**. The liability of Landlord (which for purposes of this Section shall include all board members, partners, both general and limited, of any partnership, members and managers of any limited liability company, and the officers, directors and shareholders of any corporation and includes any officials of any governmental entity which is Landlord or which owns or operates The Property) under this Contract shall be limited to its interest in The Property. Any judgments rendered against Landlord shall be satisfied solely out of duly appropriated funds, if Landlord continues to be a governmental entity, or, if Landlord is ever a private (nongovernmental) person or entity, then solely out of the proceeds of sale of its interest in The Property. No personal judgment shall lie against Landlord upon extinguishment of its rights in The Property and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any Mortgagee or Ground Lessor. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Contract, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under this Contract.

Section 21.23 **Tenant's Intellectual Property**. Tenant represents and warrants that it has and will have full and sufficient right to use or grant the rights to use the logos, service marks, trademarks and any and all intellectual property that Tenant will use or authorize to be used, from time to time, in operation and promotion of its business, and the proposed uses of the intellectual property do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or similar rights of any person or entity, nor has any claim (whether or not embodied in any action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against the Tenant (or, insofar as Tenant is aware), against any entity from which the Tenant has obtained any rights.

Section 21.24 **Time of Essence**. Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings and conditions to be performed hereunder by Tenant.

Section 21.25 **Affidavit of Ownership Interest**. Prior to or concurrently with Tenant's execution and delivery of this Contract, Tenant has delivered to Landlord for Landlord's review and approval a Disclosure of Ownership and Interests Affidavit in the form attached hereto as Exhibit F. Tenant represents and warrants that the information contained in the Affidavit of Ownership Interests delivered to Landlord is true, correct and complete.

Section 21.26 **Orange Line Provision**. **As stated in Section 3.3, this provision applies only to the following Orange Line Stations:** Halsted, Ashland, 35th/ Archer, Western, Kedzie, Pulaski, Midway. In addition to any other provisions of this Agreement regarding termination, this Agreement is subject to termination pursuant to Section 3.6 of the Agreement for the Operation and Maintenance Agreement of the Southwest Transit Project between the City of Chicago and the Chicago Transit Authority dated December 22, 2005 (the "O&M Agreement") in the event that the O&M Agreement is terminated.

Section 21.27 Execution of Contract. THE SUBMISSION OF THIS CONTRACT FOR EXAMINATION DOES NOT CONSTITUTE A RESERVATION OF, OR OPTION FOR, THE PREMISES OR ANY OTHER SPACE WITHIN THE PROPERTY. THIS CONTRACT SHALL BECOME EFFECTIVE ONLY UPON EXECUTION AND LEGAL DELIVERY THEREOF BY THE PARTIES HERETO. THIS CONTRACT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS, EACH OF WHICH SHALL CONSTITUTE AN ORIGINAL DOCUMENT. THIS CONTRACT WILL ONLY BE EFFECTIVE FOLLOWING APPROVAL AND EXECUTION BY THE CHICAGO TRANSIT BOARD.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Contract as of the date and year first above written.

**CHICAGO TRANSIT AUTHORITY**

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

[INSERT NAME OF TENANT]

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

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

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

**ARTICLE XXII – EXHIBIT A: SITE MAP – LOCATION OF PREMISES**

