

## **ASSIGNMENT OF LEASE**

THIS ASSIGNMENT OF LEASE ("Assignment") is made on \_\_\_\_\_, 2014, by and between JCM Panco Corporation, a Florida corporation ("Assignor") and Indmex, Inc., a Florida corporation ("Assignee").

### **RECITALS**

WHEREAS, Assignor is the current Tenant under the Amended and Restated Lease Agreement Tropical Smoothie Café, dated July 31, 2008, between M & M Smoothie, Inc., a Florida corporation d/b/a Tropical Smoothie Café, and the City of Orlando, Florida, for the premises ("Premises") having an address of 63 West Washington Street, Orlando, FL 32801 ("Lease");

WHEREAS, Assignor has agreed to sell its business conducted on the Premises and assign the Lease to Assignee in accordance with this Assignment and other agreements between Assignor and Assignee; and

WHEREAS, Assignor and Assignee intend that this Assignment shall also benefit the City of Orlando, Florida ("Landlord"), as Landlord under the Lease assigned hereby.

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, it is agreed as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated by reference the same as if fully set forth herein.
2. **Assignment and Assumption of Lease.** Assignor hereby assigns, sets over and transfers to Assignee all of Assignor's right, title and interest in, to and under the Lease. A true and correct copy of the Lease is attached hereto and made a part hereof as **Exhibit "A"**. Assignee hereby accepts this Assignment and assumes and agrees to fulfill all tenant obligations, terms and conditions of the Lease from this date forward for the remainder of the term thereof to the same extent as if it had been the original tenant under the Lease. This assignment of the Lease also includes the transfer of the security deposit referenced therein. Assignor hereby releases unto Assignee all of Assignor's right, title and interest in the deposit. Landlord shall continue to hold the deposit as security for the faithful performance of the Lease. Assignee shall as part of the assignment and assumption provide personal guaranties from Alfredo Manzan and Francisco Montiel, in form and substance the same as previously provided by Assignor. Landlord shall release and cancel the personal guaranty originally provided by Assignor to Landlord upon expiration of the Lease, so long as there is no default in the Lease at the time of expiration thereof. The parties acknowledge and **agree that neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise may effectuate a Transfer of this Lease, without Landlord's written consent, which may be withheld in Landlord's sole discretion.**
3. **Warranty.** Assignor represents and warrants to Assignee that it has good and marketable title to the Lease, free and clear of all liens and other encumbrances, restrictions, conditions, agreements, charges and encumbrances. Assignor agrees to warrant and defend title to the Lease unto Assignee,

its successors and assigns, against all persons and parties whomsoever.

4. Landlord's Rights Under this Assignment. Assignor and Assignee agree that Landlord shall have a right to rely upon the representations and warranties contained herein and to enforce the terms and conditions hereof as it deems appropriate. Assignee further agrees and acknowledges that all equipment, fixtures and other improvements placed on or installed in the Premises from time to time, including, but not limited to, walk-in refrigeration if any, freezers, HVAC, stove and hood ventilation systems, all other appliances, and ceiling fans, shall remain on the Premises and become the property of Landlord upon the expiration or termination of the Lease. Assignee agrees not to encumber such property with any liens or other obligations. Any other personal property and furniture not removed on or before the last day of the term of the Lease shall be considered abandoned and automatically become the property of Landlord. In the alternative, at Landlord's election Tenant shall remove any or all of the foregoing in accordance with written instructions from Landlord.

5. Notices. Section 11.5 of the Lease is hereby modified to provide that all notices to Tenant under the Lease and this Assignment shall be addressed to Assignee and sent to the Premises or otherwise in the manner as provided therein.

7. Execution in Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same assignment.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES OF  
PARTIES APPEAR ON FOLLOWING PAGES.)

ASSIGNOR:

JCM Panco Corporation,  
a Florida corporation

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

Cynthia L. Pantalone

As its President

Signed on \_\_\_\_\_, 2014

Witnesses:

(1) Sign: \_\_\_\_\_

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

(2) Sign: \_\_\_\_\_

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

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on October \_\_\_\_\_, 2014, by Cynthia L. Pantalone, President of JCM Panco Corporation, a Florida corporation on behalf of the corporation. She is personally known to me (\_\_\_\_) or produced a Florida driver's license as identification (\_\_\_\_). (Check one).

(Notary Seal)

\_\_\_\_\_  
Notary Public, State of Florida at Large

My commission expires: \_\_\_\_\_

ASSIGNEE:

Indmex, Inc., a Florida corporation

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

Alfredo Manzan

As its President

Signed on \_\_\_\_\_, 2014

Witnesses:

(1) Sign: \_\_\_\_\_

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

(2) Sign: \_\_\_\_\_

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

State of Florida  
County of Orange

The foregoing instrument was duly acknowledged before me on \_\_\_\_\_, 2014, by Alfredo Manzan, the President of Indmex, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me (\_\_\_\_) or produced \_\_\_\_\_ as identification (\_\_\_\_). (Check one)

\_\_\_\_\_  
Notary Public, State of Florida at Large  
My commission expires: \_\_\_\_\_

(Notary Seal)

CONSENT TO ASSIGNMENT

Tropical Smoothie Franchise Development Corporation, a Florida corporation hereby consents to the foregoing Assignment based upon Assignor's and Assignee's representations, warranties and covenants contained herein.

Tropical Smoothie Franchise Development Corporation, a Florida corporation

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

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

As Its President

Signed on \_\_\_\_\_, 2014.

Witnesses:

(1) Sign: \_\_\_\_\_

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

(2) Sign: \_\_\_\_\_

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

State of Florida  
County of Orange

The foregoing instrument was duly acknowledged before me on \_\_\_\_\_, 2014, by \_\_\_\_\_ as President of Tropical Smoothie Franchise Development Corporation, a Florida corporation, on behalf of the corporation. He/She is personally known to me (\_\_\_\_) or produced \_\_\_\_\_ as identification (\_\_\_\_).  
(Check one)

\_\_\_\_\_  
Notary Public, State of Florida at Large  
My commission expires: \_\_\_\_\_

(Notary Seal)

CONSENT TO ASSIGNMENT

The City of Orlando hereby consents to the foregoing Assignment based upon Assignor's and Assignee's representations, warranties and covenants contained herein. The consent to the foregoing assignment is granted on the terms and conditions set forth in the Assignment of Lease to which this consent is attached and related closing documents.

**CITY OF ORLANDO**

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

Mayor/Pro Tem

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

Attest:

Executed on \_\_\_\_\_, 2014

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

Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of the City of Orlando,  
Florida, only.

Witnesses:

\_\_\_\_\_, 2014.

(1) Sign: \_\_\_\_\_

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

\_\_\_\_\_  
Assistant City Attorney

(2) Sign: \_\_\_\_\_

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

State of Florida  
County of Orange

The foregoing instrument was duly acknowledged before me on \_\_\_\_\_, 2014, by \_\_\_\_\_ and Alana C. Brenner, the \_\_\_\_\_ and City Clerk respectively of the City of Orlando, Florida, a Florida municipal corporation, on behalf of the City. They are personally known to me (\_\_\_\_) or produced \_\_\_\_\_ as identification (\_\_\_\_). (Check one)

(Notary Seal)

\_\_\_\_\_  
Notary Public, State of Florida at Large  
My commission expires: \_\_\_\_\_

EXHIBIT “A”

(Lease is set forth on following pages)

**AMENDED AND RESTATED LEASE AGREEMENT  
TROPICAL SMOOTHIE CAFE**

THIS AMENDED AND RESTATED LEASE AGREEMENT is made and entered into this 31 day of July, 2008, by and between **City of Orlando**, a municipal corporation organized and existing under the laws of the State of Florida ("Landlord"), and **M & M Smoothie, Inc., a Florida corporation d/b/a Tropical Smoothie Café** (Tenant).

**RECITALS**

- A. Landlord owns the Jefferson Street Garage located near the intersection of W. Jefferson Street and N. Gertrude Avenue in downtown Orlando, Florida (the "Garage").
- B. The parties previously entered into a Lease Agreement dated February 6, 2008, but have found it necessary to amend the lease due in part to the requirements of the lender financing the assets which will be used to establish the business approved as the Intended Use under this lease.
- C. The original intent of the parties in entering into the lease has not changed; however, since the Tenant has not occupied or begun improving the premises for the Intended Use, it is also necessary to modify the commencement and termination dates of the lease.
- D. Landlord has also agreed to provide additional free rent as set forth herein as further assistance to enable Tenant to go forward with its planned improvements to the property, which will remain as part of the property upon expiration of the term of the lease.
- E. Rather than amend the original lease, the parties have elected to embody the changes to this agreement in the form of an amended and restated lease as provided herein thereby replacing the original lease in its entirety by this agreement.
- F. Tenant's shall hereby therefore lease a retail portion of the Garage for its sandwich shop/smoothie café business and will buildout the premises for such purposes, pursuant to the terms and conditions hereof.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

**ARTICLE 1. GRANT AND TERM**

**1.1 Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated into and made a part of the Lease, the same as if fully set forth herein.

**1.2 Premises and Parking.** Landlord does hereby lease, let and demise unto Tenant and Tenant does hereby lease from Landlord the Premises being shown and outlined on **Exhibit "A"** containing approximately thirteen hundred (1,300) gross square feet, having an address of 63 West Washington Street, Orlando, FL 32801, along with a right to use the Common Areas, as may be



determined from time to time. To have, hold and use the same as Tenant for and during the term of the Lease in accordance with and upon the covenants, agreements, promises and conditions stipulated and agreed upon between the parties as set out in this Lease. Tenant is encouraged to enter into an agreement with the City's Parking Division to accommodate the needs of staff, patrons and customers using the Premises, for parking charged at rates offered from time to time to the general public.

**1.3 Term of Lease.** The parties agree that the term of this Lease shall be for sixty (60) months commencing on July 1, 2008 (Commencement Date), and ending on June 30, 2013 (Expiration Date), unless extended or terminated as provided herein.

**1.4. Renewal of Lease.** So long as Tenant has abided by all terms and conditions of this Lease during the initial Lease Term or any renewal term as applicable, the Lease may be extended by the written mutual agreement of the parties for one (1) renewal term of five (5) years.

**1.5 Quiet Enjoyment.** Landlord covenants that Tenant is entitled to the quiet, peaceful enjoyment and use of the Premises during the term and any renewal term of this Lease, so long as Tenant shall faithfully keep and perform all covenants, promises and agreements of this Lease.

**1.6 Landlord's Access to Premises.** Notwithstanding the foregoing, Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, performing any services required of Landlord, showing the same to prospective purchasers, lenders, or tenants, taking such safety measures, making such alterations, repairs, improvements or additions to the Premises or to the other improvements in which the Premises are housed, as Landlord may reasonably deem necessary or desirable and for installing, using and maintaining utilities, services, pipes and conduits through the Premises and/or other premises, so long as there is no material adverse affect to Tenant's use of the Premises. Landlord at any time, on or about the Premises or the Garage may place any ordinary "For Sale" signs and Landlord may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs.

## **ARTICLE 2. RENT, TAXES, UTILITIES & SECURITY DEPOSIT**

**2.1 Monthly Rent.** Beginning on October 1, 2009 ("Rent Commencement Date") and continuing throughout the term of this Lease, Tenant shall pay to the Landlord, without prior demand and without any deduction or set-off, a combination of Monthly Rent and prorated Leasehold Tax, plus applicable Florida state sales tax. It is understood that the Rent Commencement Date shall be the first day of the month following fourteen (14) months after the Commencement Date of this Lease, in part to allow Tenant sufficient time to complete the buildout of the Tenant Improvements. Tenant shall pay to Landlord rent for the first year after the Rent Commencement Date in the amount of One Thousand Six Hundred Twenty-five and No/100 Dollars (\$1,625.00) per month (Monthly Rent), prorated to the extent necessary, beginning on the Rent Commencement Date and continuing on the first day of each and every calendar month thereafter during the first year following the Rent Commencement Date. The rental amount has been calculated on the basis of Fifteen and No/100 Dollars (\$15.00) per square foot of gross square feet within the Premises. At the beginning of the second year after the Rent Commencement Date and each year thereafter, the rent will increase five percent (5%) per year over the rental rate in

effect for the previous year. Should the term of this Lease be renewed, it is anticipated, but not finally agreed upon that the Monthly Rent will also increase five percent (5%) per year, as determined by the City in its sole and absolute discretion. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Monthly Rent, shall be generally known as Additional Rent. Except as otherwise provided, all Additional Rent payments are due and payable ten (10) days after delivery of an invoice and shall be collectible and otherwise enforceable on the same terms and conditions as Monthly Rent.

**2.2 Leasehold Tax.** In addition to the Monthly Rent, Tenant shall pay to Landlord the Leasehold Tax assessed against the Premises for the period of time commencing on the Rent Commencement Date, continuing thereafter for so long as this Lease remains in effect. The Leasehold Tax is an ad valorem tax assessed on the Premises by the Orange County Property Appraiser. The annual Leasehold Tax assessed on the Premises shall be prorated on a monthly basis and paid with the Monthly Rent in the amount shown below and held in a separate account by Landlord for payment of Tenant's tax obligation at such time prescribed by the Orange County Tax Collector. The amount collected is an estimate of the taxes owed by Tenant and is subject to adjustment based upon the actual Leasehold Tax due. In the event the amount of Leasehold Tax paid by Tenant to Landlord exceeds the actual tax liability, the excess tax paid by Tenant may be refunded to Tenant or retained for the succeeding year tax liability, whichever is deemed appropriate exclusively by Landlord. In the event the amount of Leasehold Tax paid by Tenant to Landlord is less than the actual tax liability, Tenant shall pay the balance due to Landlord no later than ten (10) calendar days from Tenant's receipt of written notice from Landlord that the balance is due. The prorated Leasehold Tax is calculated as follows, but is subject to change based upon the Property Appraiser's annual assessment:

$$\$4,800.00 \text{ (Estimated leasehold tax liability)} \div 12 \text{ months} = \$400.00 \text{ per month}$$

**2.3 Florida State Sales Tax.** Tenant shall be responsible for the payment of all applicable sales and use taxes (or any excise taxes imposed in lieu thereof) which may now or hereafter be levied by the State of Florida or any other governmental unit on all payments due under this Lease that may be classified as rent by such taxing authorities. Tenant shall pay such taxes to Landlord at the same time that rent payments or other payments classified as rent are made by Tenant to Landlord. The current State of Florida Sales Tax in Orange County, Florida is 6.5%.

**2.4 Returned Check Fee.** If any check for rent or other sums due hereunder received by Landlord is returned by a financial institution for insufficient funds, in addition to any other right or remedy available to Landlord as a result of such default, Tenant shall pay Landlord a returned check fee in the maximum amount allowed by Florida law to reimburse Landlord for the costs and expenses associated with such returned check. The current amount allowed is Forty Dollars (\$40.00).

**2.5 Late Payments.** All Monthly Rental payments shall become due and payable without notice or demand on the due date, but the Tenant shall not be deemed to be in default under this Lease unless a payment remains unpaid for more than ten (10) days after its due date. Any Monthly Rent payment made more than five (5) days after the due date (due date shall be as of 5:00 p.m. of the first day of the month regardless of holidays or weekends) shall be accompanied by a late charge of twenty-five dollars (\$25.00) on the sixth (6<sup>th</sup>) day after the due date, plus an additional five (\$5.00) dollars per day for each day thereafter until payment is received. Any late

charges becoming due under this paragraph if not paid with the late rent payment shall be added to and become due with the next Monthly Rent payment.

**2.6 Method of Payment.** All rental payments shall be paid in check, cash, cashier's check, or money order to City of Orlando and mailed or hand-delivered to the Real Estate Division Manager, City of Orlando, 4<sup>th</sup> Floor, City Hall, 400 South Orange Avenue, Orlando, Florida 32801. In the event two (2) payments received by Landlord are returned by the bank for insufficient funds within a twelve (12) month period, all future payments must be paid in cash, cashier's check or money order.

**2.7 Additional Rent.** Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Monthly Rent, shall be generally known as "Additional Rent." Except as otherwise provided, all Additional Rent payments are due and payable ten (10) days after delivery of an invoice and shall be collectible and otherwise enforceable on the same terms and conditions as Monthly Rent.

**2.8 Utilities.** Tenant shall arrange and be liable for and shall pay directly all charges, rents and fees (together with any applicable taxes or assessments thereon) when due for water, gas, electricity, air conditioning, heat, sewer, telephone, satellite and cable television and any other utility charges or similar items in connection with the use or occupancy of the Premises during the Term (collectively, the "Utility Charges"). Tenant shall be responsible for 100% of the Utility Charges for the Premises. Landlord shall not be responsible or liable in any way whatsoever for the impairment, interruption, stoppage, or other interference with any utility services to the Premises. In any event no interruption, termination or cessation of utility services to the Premises shall relieve Tenant of its duties and obligations pursuant to this Lease, including, without limitation, its obligation to pay all Rent as and when the same shall be due hereunder.

**2.9 Security Deposit.** A Security Deposit of Six Thousand and No/100 Dollars (\$6,000.00) has been paid by Tenant to Landlord at the time of the execution of this Lease. This Security Deposit shall be held by Landlord as security for the performance of all obligations of Tenant under this Lease. While Landlord holds the Security Deposit, Landlord shall have no obligation to pay interest thereon, unless required to do so by Florida law, and shall have the right to commingle the Security Deposit with Landlord's other funds. Landlord shall have thirty (30) days after such time when it should be paid, to return the Security Deposit or notify Tenant of Landlord's intention to impose a claim against the Security Deposit for damages, unpaid rent or other amounts due under the Lease. However, if the determination of any amount to be paid by Tenant to Landlord, or of Tenant's pro rata share of real estate taxes as set forth in this Lease, or the like, is not available at the expiration or earlier termination of the Lease, Landlord may retain such portion of the Security Deposit as Landlord believes in the exercise of Landlord's good faith judgment is an appropriate reserve against such future liability of Tenant and return only the balance of such deposit pending the final determination and payment of all such amounts owed by Tenant to Landlord.

### **ARTICLE 3. CONDUCT OF BUSINESS BY TENANT**

**3.1 Permitted Use of Premises.** Tenant may use the Premises for the Permitted Use only, which shall be as a café operating under a Tropical Smoothie franchise offering smoothies, specialty sandwiches, wraps, salads and coffee products, doing business under Tenant's trade name

of "Tropical Smoothie Cafe", in compliance with City of Orlando Land Development Code. The sale of alcoholic beverages, package or otherwise, for off-Premises consumption is prohibited. No other uses shall be permitted without the prior written consent of Landlord. Tenant shall continuously use and occupy the Premises only for the Permitted Use, in keeping with first-class standards of quality, respect, decorum, integrity, finesse, and stability. Tenant shall not use, permit or suffer the use of the Premises for any other purpose. Tenant shall conduct its business in the Premises solely under Tenant's trade name. Nothing contained in this Lease shall be construed as giving Tenant an express or implied exclusive use in the Garage, as any such provisions are for the benefit of Landlord in marketing the Garage. Tenant shall have no right to require that Landlord enforce any exclusive uses within the Garage, should Landlord elect not to do so. Tenant acknowledges however that there may be provisions in other lease agreements within the Garage, which grant exclusive use rights, and the provisions of this Lease and others for space within the Garage concerning the Permitted Uses are in the nature of restrictive covenants running with the land.

**3.2 Conduct of Business.** Beginning within six (6) months after the Commencement Date of the Lease and continuing throughout the Lease Term, Tenant shall actively and continuously conduct its business upon one hundred percent (100%) of the Premises for at least a minimum of eight (8) hours per day, five (5) days each week and four (4) hours each Saturday. ("**Minimum Business Hours**"). (Are these the minimum business hours you want to require?) Tenant shall also post the hours the Premises will be open for business. Interruption of Tenant's business because of any act of war, strike, fire, the elements, governmental action, or other cause beyond the reasonable control of Tenant shall not constitute a default under this article, but no interruption of business shall affect Tenant's responsibility to pay any form of rent due under this Lease. Tenant shall conduct its business in strict conformance with any rules and regulations promulgated by Landlord from time to time ("**Rules and Regulations**").

**3.3 Quality of Products and Service.** Tenant recognizes the quality of items sold and services performed at the Premises is a matter of highest concern and is the essence of this Agreement. Tenant shall serve only high quality products and provide a standard of service and quality comparable to high quality establishments in the Orlando area. All goods and services sold or offered for sale at the Premises shall conform in all respects to all applicable federal, state, and county health statutes, codes, ordinances and regulations. All products offered for sale at the Premises shall be stored and handled with due regard for sanitation.

#### **3.4 Personnel.**

A. If at any time Landlord finds the actions, performance, or conduct of any of Tenant's employees to be harmful or detrimental to the operation, image, or success of the Garage, then Landlord shall advise Tenant of the specific circumstances and the parties shall attempt to mutually resolve the situation. If resolution cannot be reached, Landlord may require removal of the employee from the Premises.

B. Tenant will maintain high standards of quality in its hiring and training practices. Tenant agrees that its employees shall be of sufficient number so as to properly conduct operations at a high standard of service quality. Tenant's employees shall maintain a high standard of grooming, uniform, and conduct

### 3.5 General Use Requirements

A. Tenant shall procure and maintain all permits, licenses and approvals, and pay all taxes, fees and other charges required for the transaction of its business on the Premises, and otherwise use the Premises in compliance with all applicable laws, rules and regulations of federal, state, county, municipal and all other regulatory authorities.

B. Tenant shall not commit or suffer any waste and will not make any use of the Premises which would constitute a nuisance or which would violate any municipal, county, state or federal statute, ordinance, rule or regulation.

C. Tenant shall not use the Premises for any purpose that will invalidate any policy of insurance, or increase any premium to be paid, now or hereafter written on any improvements located on the Premises, Common Areas or any other part of the Garage.

D. Tenant shall keep the Premises and the sidewalks, service ways and loading areas adjacent to the Premises neat, clean and free from rubbish, insects and pests at all times, and shall remove all trash and garbage from the Premises and properly place it in the receptacle provided by Landlord. Tenant shall be responsible for garbage disposal at the City's Solid Waste Division compactors.

E. All loading and unloading of goods shall be done only at such times and only in such areas and through such entrances as may be designated for such purposes by Landlord. Trailers or trucks shall not be permitted to remain parked overnight in any area of the Garage whether loaded or unloaded.

F. Tenant shall maintain all windows free of signs and other obstructions, in a neat, attractive condition, displaying only materials promoting the business authorized as a Permitted Use for the Premises. Tenant shall keep all windows, exterior lights and signs well illuminated during the hours that the Premises is to be open for business. In order to maintain an attractive exterior appearance Landlord shall have the right to approve all window coverings and any other items, which are visible from the exterior of the Premises.

G. Tenant shall not permit any objectionable or unpleasant odor to emanate from the Premises; place or permit any radio, television, loud speaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the Premises or in the Common Areas; place an antenna, awning or other projection on the exterior of the Premises; solicit business or distribute leaflets or other advertising material in the Common Areas; take any action which in the exclusive but reasonable judgment of Landlord would constitute a nuisance or would disturb or endanger customers or other tenants or unreasonably interfere with their uses of their respective premises; or do anything which in the exclusive but reasonable judgment of Landlord would tend to injure the reputation of Landlord. As part of the marketing in accordance with the Permitted Uses, Tenant may play music within the Premises, but the volume shall be limited so as not to disturb others outside of or on the sidewalks adjacent to the Premises.

H. Tenant shall use as its advertised business address as the address of the Premises. Tenant shall not use the Premises for any purpose other than as the address of the business to be conducted by Tenant in the Premises, and Tenant shall not acquire any property right in or to any

name, which contains the name of the Garage or as a part thereof. Any permitted use by Tenant of the name of the Garage during the term of this Lease shall not permit Tenant to use, and Tenant shall not use the name of the Garage after the termination of this Lease or at any other location. Tenant's agreement in this regard shall survive termination or expiration of this Lease.

I. Tenant shall comply with all Rules and Regulations as Landlord may establish from time to time applicable to the Premises and Garage. Tenant's failure to keep and observe the Rules and Regulations shall constitute a breach of this Lease in the same manner as if they were contained herein as covenants. Notice of rules, regulations, amendments and supplements thereto, if any, shall be given to Tenant, and Tenant agrees thereupon to comply with and observe all of them, provided that the same shall apply uniformly to any other tenants of the Garage.

J. Tenant covenants that it will not use, generate, store or dispose of hazardous waste materials upon the Premises and agrees to hold harmless and indemnify Landlord against all liability, loss and damage resulting from Tenant's breach of this covenant, including but not limited to court costs, attorney fees, fines, forfeitures, cleanup expenses, repairs, loss of use of property, and all similar or dissimilar losses. This indemnity shall continue in full force and effect after termination of this Lease and any renewal term hereof. The term "hazardous waste materials" includes all chemicals, substances, and materials, which are defined to be hazardous or toxic waste or hazardous substances in any federal or state statute, or any local ordinance, or any regulation adopted by any state, federal or local agency.

#### **ARTICLE 4. COMMON AREAS**

**4.1 Common Areas.** The term "Common Areas" for purposes of this Lease shall mean all areas and facilities outside the Premises and within the exterior boundary lines of the Garage, as well as sidewalk areas fronting the Premises to the extent not otherwise excluded by this Lease that are designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Garage and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, corridors, stairways and stairwells, public restrooms, elevators and escalators, loading and unloading areas, trash areas, sidewalks, walkways, ramps, landscaped areas and decorative walls.

**4.2 Common Areas, Maintenance, Rules and Regulations.** Tenant agrees to abide by and conform to the Rules and Regulations of Landlord as promulgated from time to time with respect to the Garage and Common Areas, and to cause its employees, suppliers, shippers, customers, and invitees to so abide and conform. Landlord or such person(s) as Landlord may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to modify, amend and enforce the Rules and Regulations. Landlord shall not be responsible to Tenant for noncompliance with the Rules and Regulations by other tenants, their agents, employees and invitees of the Garage. Landlord shall maintain the Common Areas.

**4.3 Common Areas-Changes.** Landlord shall have the right, in Landlord's sole discretion and without the consent of any tenant, from time to time:

A. To make changes to the Garage interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number and appearance thereof, including but not limited to windows, stairways, air shafts, elevators, escalators, restrooms,

entrances, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways;

B. To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

C. To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Garage or any portion thereof; and

D. To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Garage as Landlord may, in the exercise of sound business judgment, deem to be appropriate.

## **ARTICLE 5. IMPROVEMENTS**

**5.1 Tenant Improvements.** At its sole cost and expense and only after the prior written approval of Landlord, Tenant will build out the Premises and otherwise make such improvements, alterations, remodeling, renovations, repairs, or additions ("Tenant Improvements") to the Premises as necessary for the utilization of the Premises, for the purposes described in **Article 3** hereof. Unless otherwise agreed to by the parties, Tenant shall be solely responsible for the payment for all Tenant Improvements, including, but not limited to, design and construction costs, permit and impact fees and furniture, fixtures and equipment. Prior to commencing construction of Tenant Improvements, Tenant shall submit two (2) sets of plans and specifications of the proposed Tenant Improvements to Tenant's Real Estate Division Manager. The Real Estate Division Manager shall have twenty business (20) days from receipt of the plans and specifications to either approve, deny or request changes to the plans, and the failure to do so within such time period shall constitute approval of the plans. Landlord's review (and approval or denial) of such plans is based upon its ownership of the Premises and this Lease, and not in its capacity as a governmental or regulatory body. In addition to any of the other requirements of the Lease, Tenant shall also submit all required documents, drawings, plans, specifications, etc., to, and obtain all required license(s), permit(s), and approval(s), from the appropriate governmental or regulatory authority having jurisdiction thereof, including, but not limited to, the City of Orlando acting in its governmental or regulatory capacity, as necessary for the construction and operation of Tenant's business authorized as a Permitted Use on the Premises. Tenant shall not commence construction of the Tenant Improvements until receiving all required approvals. Failure to continuously, substantially and expeditiously construct the Tenant Improvements for a period in excess of ten (10) days shall be a default under this Lease at Landlord's election.

**5.2 Removal of Tenant Improvements.** Any Tenant Improvements, which constitute fixtures or whose removal would cause damage to the Premises shall remain a part of the Premises at Lease termination, and become the property of Landlord, at Landlord's election, with no compensation due to Tenant. If Landlord consents to the removal of any Tenant Improvements, Tenant shall repair all damage caused by the removal, to Landlord's satisfaction, in its sole discretion. In the alternative, at Landlord's request, Tenant shall remove any or all such improvements as directed by Landlord, prior to expiration of the Term and deliver the Premises to Landlord in "broom-clean" restored and repaired condition and as otherwise required in this Lease.

**5.3 Personal Property, Furniture, Equipment and Fixture Removal.** Tenant may furnish and install, at its sole cost and expense, any personal property, furniture, and equipment reasonably necessary for the operation of Tenant's business (PPF & E). Tenant shall keep the PPF&E in good condition and repair, normal wear and tear excepted. The PPF & E shall remain the property of Tenant, and at the expiration or earlier termination of the Lease, Tenant shall remove the PPF & E from the Premises and repair any damage to the Premises resulting from such removal. All equipment, which is affixed to the Premises, including, but not limited to, walk-in refrigeration and hood ventilation systems, shall remain on the Premises and become the property of Landlord upon the expiration or termination of the Lease, at Landlord's election. Any PPF & E, whether or not affixed to the Premises, which are not removed on or before the Termination Date, shall be considered abandoned and automatically become the property of Landlord, at Landlord's election. All fixtures and equipment in the nature of fixtures, which cannot be removed without damage to the Premises, whether or not owned by Tenant, shall remain on the Premises, as Landlord's property upon the expiration or termination of the Lease, at Landlord's election, or in the alternative Tenant shall remove them in accordance with written instructions from Landlord.

Tenant agrees that it shall not remove any PPF&E during any time while in default under the terms of this Lease and that such removal shall be a material breach of this Lease. If not in default Tenant may remove PPF&E from time to time during the term of this Lease, provided that such removal will not cause damage to the Premises.

Tenant shall give at least ten (10) business-days' notice to Landlord prior to removal of any PPF&E, which may cause damage to the Premises. Tenant's failure to comply with the notice requirement, coupled with subsequent removal of any property, which causes damage to the Premises, shall be a material default in this Lease. Landlord shall have ten (10) business days after receipt of Tenant's notice to advise Tenant if an additional security deposit shall be required. If Landlord does not respond within the stated time, no additional security deposit shall be required. If a reasonable additional security deposit is required and Tenant fails to pay within ten (10) business days of demand, such property shall be conclusively deemed to have become fixtures and part of the Premises at Landlord's election and Tenant shall not thereafter attempt to remove it. Upon removal of any PPF & E accompanied by attendant damage, Tenant shall repair to Landlord's satisfaction, any damage within thirty (30) days.

**5.4 Signs, Store Front.** Tenant shall not, without Landlord's prior written consent: (a) make any changes to or paint the store front; (b) install new or change out any exterior lighting, decorations or paintings; or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises except upon prior written consent of Landlord, which may be withheld for any reason in its sole discretion. All signage is subject to the sign regulations of Landlord, the Downtown Development Board and the Appearance Review Officer of the City of Orlando. Prior to the installation of any signs, Tenant shall deliver to Landlord for its review and written approval a sketch of Tenant's proposed sign rendering drawn to scale. Since the Garage is public property owned by Landlord, political campaign signs are prohibited on the Premises pursuant to Section 64.252, City Code. All signs shall be kept in good condition and in proper operating order at all times.

## **ARTICLE 6. MAINTENANCE, REPAIR AND CASUALTY**

### **6.1 Maintenance and Repair of Premises by Tenant.**



A. General Maintenance Responsibilities. At its own expense, Tenant shall at all times keep the Premises and all exterior entrances, and exterior lighting and other improvements made by Tenant, plate glass and other windows to the exterior of the Premises, including those adjacent to the Common Areas, glass and show moldings, partitions, doors, floors surfaces, fixtures, light bulbs, ballasts, furniture, other equipment and appurtenances thereof in good order, condition and repair and in a reasonably satisfactory condition of cleanliness, including reasonably periodic interior painting of the Premises. Tenant shall be solely responsible for maintaining all fixtures, including but not limited to HVAC and other equipment and the Premises in general, in good condition and repair. Any repairs, replacements or maintenance shall be performed in a good and workmanlike manner using contractors licensed in the State of Florida approved by Landlord in its sole judgment, and materials of equal or better quality and utility to the original work.

B. Fire Safety Equipment. Tenant shall install and maintain fire extinguishers, sprinkler systems and other fire protection devices as may be required from time to time by any agency having jurisdiction of such matters, or the insurance underwriters insuring the Garage.

C. Janitorial Service. Tenant shall provide janitorial service to the Premises on a regular basis at its sole expense.

D. Pest Control. Tenant, at its sole expense, shall engage exterminators to control vermin and pests on a monthly basis. Such extermination services shall be supplied in all areas where food is prepared, dispensed or stored and in all areas where trash is collected and deliveries are made.

E. Grease Traps and Recycling. Tenant shall comply with the City's Oil and Grease Management Program per Section 30.15 of the Orlando City Code ("Code"). Tenant shall be responsible for the professional removal of grease to avoid spillage and for grease recycling of shortening. Grease Traps shall be constructed, maintained and pumped in compliance with Section 30.15 of the Code.

If (a) Tenant does not maintain and repair the Premises as required hereunder to the reasonable satisfaction of Landlord within ten (10) calendar days' notice (or such shorter period as may be required in an emergency), or (b) Landlord, in the exercise of its sole discretion, determines that emergency repairs are necessary or (c) repairs or replacements to the Premises are otherwise made necessary by any act, omission or negligence of Tenant, its employees, subtenants, assignees, concessionaires, contractors, invitees, licensees or visitors, then in any of such events Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay as Additional Rent Landlord's cost for making such repairs plus fifteen percent (15%) for overhead, upon presentation of a bill. All bills shall include interest at the highest rate allowed by law from the date such repairs were billed by the contractor(s) making such repairs.

**6.2 Maintenance and Repair of Premises, Common Areas and Garage by Landlord.** Landlord shall maintain and repair the roof, building foundation, and structural integrity of the Garage and generally the Common Areas except as otherwise provided herein. Within a reasonable period after receipt of written notice from Tenant, Landlord shall make necessary structural repairs

to the exterior walls, roof, foundations, load-bearing items, plumbing, pipes, and conduits located outside the Premises and/or in the Common Areas. Landlord shall not be required to make any repairs made necessary by any act, omission or negligence of Tenant, any concessionaire, their respective employees, agents, invitees, licensees, visitors and contractors.

**6.3 Casualty Damage to Either Premises or Garage.** If at any time during the term of this Lease the Garage is damaged by fire or other casualty, unless caused by a negligent or willful act of Tenant (in which event Tenant shall make the repairs at Tenant's expense), which prevents Tenant from making substantial use of the Premises, Landlord may at Landlord's option either (i) repair such damage to the Garage, excluding the Premises and Tenant's fixtures, equipment or any other Tenant Improvements, in a reasonable manner and time at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease as of the date of the occurrence of such damage, in which event this Lease shall terminate as of that date. In the event Landlord repairs or restores the Garage pursuant to the provisions of this Section, and any part of the Premises is unusable prior thereto (including loss of use due to loss of access or essential services), the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated, provided (1) the damage was not the result of the negligence or malicious act of Tenant, and (2) such abatement shall only be to the extent the operation and profitability of Tenant's business as operated from the Premises is adversely affected. Except for the abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration. Landlord and Tenant agree that Landlord shall not be responsible in any way for costs, expenses or losses of Tenant, including, but not limited to, costs of relocation, replacement premises, or uninsured or underinsured loss of or damage to contents, improvements, betterments or equipment. If Landlord shall not complete the restoration and repair within six (6) months after such occurrence, Tenant may at Tenant's option cancel and terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement or completion, respectively, of such repair or restoration. In such event this Lease shall terminate as of the date of such notice. Tenant agrees to cooperate with Landlord in connection with any such restoration and repair.

## **ARTICLE 7. INSURANCE AND INDEMNITY**

**7.1 General Liability Insurance.** . Tenant agrees to maintain in full force and effect from the date upon which Tenant first enters the Premises for any reason and throughout the term of this Lease, and thereafter so long as Tenant occupies any part of the Premises, a nondeductible policy of general liability insurance providing coverage for bodily injury (or death) and property damage with an insurer approved by Landlord naming as additional insureds Landlord, its commissioners, officers, officials, agents, employees, successors and assigns with the broadest form of such coverage from time to time available in the area in which the Premises are located, for including but not limited to all matters arising out of the ownership, use, occupancy or maintenance of the Premises. The policy shall be non-cancelable and non-amendable with respect to Landlord and Landlord's said designees without thirty (30) days prior written notice to Landlord. A duplicate original policy or certificate of insurance evidencing the required coverage shall be delivered to Landlord at least ten (10) days prior to the time Tenant first enters the Premises for any reason, along with evidence of premium payment. Tenant shall also furnish Landlord evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy. The minimum single limit

coverage for bodily injury (or death) and property damage shall be One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000) with a minimum coverage amount of \$500,000 for property damage including but not limited to that caused by fire. Failure to provide evidence of the required coverage within one (1) day after demand shall be a material breach of this Lease.

**7.2 Property Insurance.** Tenant shall maintain property insurance, including fire and extended coverage, insuring against damage caused by fire, vandalism, wind, and water, for the replacement cost of Tenant Improvements located on the Premises, and all personal property owned or entrusted to Tenant.

**7.3 Workers' Compensation/Employer Liability Insurance.** Tenant shall maintain Workers' Compensation Coverage to the extent required by law.

**7.4 Insurance Policy Requirements.** All policies shall be non-cancelable and non-amendable with respect to Landlord and Landlord's said designees, without thirty (30) days prior written notice to Landlord. Tenant shall require that Landlord, its elected and appointed officials, officers, agents, employees, successors and assigns, be named as additional insureds on all insurance policies with the exception of workers' compensation, with the broadest form of such coverage from time to time available in the area in which the Premises are located, for including but not limited to all matters arising out of the ownership, use, occupancy or maintenance of the Premises. Duplicate original policies of insurance evidencing the required coverage shall be delivered to Landlord at least ten (10) days prior to the time Tenant first enters the Premises for any reason, along with evidence of premium payment. Tenant shall also furnish Landlord evidence of renewals of each such policy on an annual basis, no less than thirty (30) days prior to the expiration thereof. Landlord reserves the right to modify any aspect of the insurance requirements, including the addition of new types of coverage, as the result of reasonable and prudent risk management review of the activities upon or associated with the Premises. Tenant shall notify Landlord in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said action. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, which are licensed and authorized to do business under the laws of the State of Florida. Notwithstanding Landlord's requirement that Tenant obtain the foregoing insurance coverage, Landlord has not thereby waived its sovereign immunity protections allowed to Landlord under Florida law.

**7.5 Indemnification.** Tenant shall indemnify Landlord, its elected and appointed officials, officers, agents, employees and hold them harmless from any suits, actions, damages, liability, and expenses in connection with loss of life, bodily or personal injury, property damage or otherwise arising from or out of any occurrence in, on, at, or from the Premises, or the occupancy or use by Tenant of the Premises, Common Areas, Garage, sidewalks adjacent thereto or any part thereof or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, concessionaires and any other person or entity for whose acts Tenant may be responsible. This indemnity and hold harmless agreement shall include indemnity resulting from Landlord's own negligent acts, and against all costs, expenses, and liabilities, including attorney's fees incurred by Landlord, its elected and appointed officials, officers, agents, employees in connection with any claim, action, trial, appellate, bankruptcy court or probate proceedings related thereto. If any such action or proceeding is instituted against

Landlord, its elected and appointed officials, officers, agents, employees, Tenant, upon written notice from Landlord, will defend such action or proceeding by counsel approved in writing by Landlord, such approval not to be unreasonably withheld or delayed.

**7.6 Tenant's Risk.** To the maximum extent this agreement may be made effective according to law, Tenant agrees to use and occupy the Premises at Tenant's own risk, and Landlord shall have no responsibility or liability for any loss or damage to fixtures or other personal property of Tenant, or for any loss or damage resulting to Tenant or those claiming by, through, or under Tenant, for any reason including but not limited to breaking, bursting, stopping, or leaking of water, gas, sewer, or steam pipes. The terms of this Section shall be applicable regarding all matters, transactions and things occurring from and after the execution of this Lease and until the end of the term of this Lease, and during such further period as Tenant may use or be in occupancy of any part of the Premises.

**7.7 Injury Caused By Third Parties.** To the maximum extent this agreement may be made effective according to law, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage that may be occasioned by or through the actions or omissions of persons using, occupying, or visiting the Premises.

**7.8 Waiver of Subrogation.** Landlord and Tenant shall have no liability to one another, or to any insurer, by way of subrogation or otherwise, on account of any loss or damage to their respective properties, the Premises or the contents thereof or the Garage, regardless of whether such loss or damage is caused by the negligence of Landlord or Tenant, arising out of any of the perils or casualties insured against by the property insurance policies carried, or required to be carried, by the parties pursuant to this Lease. The insurance policies obtained by Landlord and Tenant pursuant to this Lease shall permit waivers of subrogation, which the insurer may otherwise have against the non-insuring party. In the event the policy or policies do not allow waiver of subrogation prior to loss, either Landlord or Tenant shall, at the request of the other party, deliver to the requesting party a waiver of subrogation endorsement in such form and content as may reasonably be required by the requesting party or its insurer. For purposes of interpreting this subrogation provision, the terms "Landlord" and "Tenant" shall include elected and appointed officials, officers, agents, employees, contractors, subtenants, servants, licensees, concessionaires and invitees, any of whom may be responsible for any loss.

## **ARTICLE 8. DEFAULT**

**8.1 Events of Default.** The occurrence of one or more by Tenant of the following shall constitute a material event of default under this Lease:

A. Failure to pay Monthly Rent within ten (10) days of its due date, without notice from Landlord;

B. Failure to make any other payment required of Tenant hereunder, within ten (10) days after written notice that it is due;

C. Failure to perform any other covenant contained herein on its part to be observed, for ten (10) days after receipt of written notice from Landlord to Tenant of such breach; provided, however, that if the nature of Tenant's noncompliance is such that more than ten (10) days are reasonably required for its cure, Tenant shall not be deemed to be in default if Tenant commenced such cure within the ten (10) day period and thereafter diligently pursues such cure to completion;

D. Failure to conduct business during the Minimum Business Hours; or

E. Being made (i) a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto [unless, in the case of a petition filed against Tenant, and the same is not dismissed within sixty (60) days], (ii) having a trustee or receiver appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iii) suffering an attachment, execution or other judicial seizure of substantially all of its assets located at the Premises or of its interest in this Lease, where such seizure is not discharged within thirty (30) days; or

F. Vacation or abandonment of the Premises including any failure to occupy the Premises for a continuous period of ten (10) days or more, whether or not the rent is paid.

**8.2 Default Remedies.** In the event Tenant fails to cure any default within any applicable time period, without further notice Landlord may elect to take any of the following actions:

A. Terminate this Lease and enter into the Premises, or any part thereof, either with or without process of law, and expel Tenant, or any person occupying the same in or upon the Premises, using such force as may be necessary to do so, and repossess and enjoy the Premises;

B. Enter into possession of the Premises as agent of Tenant and relet the Premises without any obligation to do so, applying any rent received from new tenants on the balance due under this Lease, and in such event, Tenant shall be responsible for no more than the balance then due, should a balance exist, plus all Landlord's fees, costs and expenses in taking such actions;

C. Declare the entire balance of the rent due and payable forthwith and maintain a distress proceeding, chattel lien foreclosure proceeding, or other proceeding for the recovery of the rent due and have in aid thereof, with or without notice, the appointment of a receiver, issuance of a writ of injunction, or such other remedies as may be necessary to secure the relief sought; and

D. Exercise in addition to the foregoing any and all other rights and remedies according to the laws of the State of Florida

## **ARTICLE 9. TERMINATION FOR CONVENIENCE**

This Lease may be terminated by either party, at its convenience, upon sixty (60) calendar-days' prior written notice to the other.

## ARTICLE 10 - EMINENT DOMAIN

**10.1 Rights of Termination for Taking.** If the Premises, or such portion thereof as may render the balance (if reconstructed to the maximum extent practicable under the circumstances) unsuitable for Tenant's purposes, shall be taken by condemnation or right of eminent domain, or by purchase in lieu thereof, either Landlord or Tenant shall have the right to terminate this Lease by notice to the other of its desire to do so. Further, if so much of the Garage shall be taken such that continued operation of the Garage would not be economically feasible in Landlord's reasonable judgment, Landlord shall have the right to terminate this Lease by giving notice to Tenant.

**10.2 Payment of Award.** Landlord shall have and hereby reserves, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Garage site, the Premises, the building in which the Premises are located, and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking, damage, or destruction.

**10.3 Abatement of Rent.** In the event of any taking of the Premises, the Monthly Rent, or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall be suspended or abated, as appropriate and equitable under the circumstances.

## ARTICLE 11. GENERAL PROVISIONS

**11.1 Assignment and Subletting.** Neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise may effectuate a Transfer of this Lease, without Landlord's written consent, which may be withheld in Landlord's sole discretion. For purposes of this Lease, "Transfer" shall mean any of the following: (a) an assignment or sublease of this Lease; (b) any transfer of control of Tenant, which shall be defined as any issuance or transfer of stock in any corporate tenant or subtenant or any interest in any noncorporation entity tenant or subtenant, by sale, exchange, merger, consolidation, option agreement, operation of law, or otherwise, or creation of new stock or interests, by which an aggregate of fifty percent (50%) or more of Tenant's stock or equity interests shall be vested in one or more parties who are not stockholders or interest holders as of the Lease Commencement Date, or any transfer of the power to direct the operations of any entity (by equity ownership, contract, or otherwise), to one or more parties who are not stockholders or interest holders as of the Lease Commencement Date, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions. Consent by Landlord to a Transfer shall not relieve Tenant from the obligation to obtain Landlord's consent to any further Transfer. Further, in no event shall any permitted transferee Transfer its interest without Landlord's consent. The joint and several liability of Tenant and any successor in interest of Tenant (by assignment or otherwise) under this Lease shall not in any way be affected by any agreement that modifies any of the rights or obligations of the parties under this Lease or any waiver of, or failure to enforce, any obligation under this Lease. **Any Transfer by Tenant in violation of this Section shall be void.**

**11.2 Tenant Business Plan.** The parties acknowledge one of the purposes of this leasing arrangement is to foster the growth of small businesses within the community; therefore, Tenant will actively seek technical assistance from an economic development organization or company, approved by the Business Development Division Manager of the City of Orlando on an as-needed basis, as determined by Landlord in its reasonable discretion, to address Tenant's business strategy and marketing needs. Tenant has submitted its business plan to Landlord and will provide Landlord

updates thereto at such times as Landlord so requests. Tenant agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this Lease.

**11.3 Landlord's Entitlement to Review Tenant's Business Books and Records.**

Tenant shall maintain complete books, records, and accounts of its gross sales, both for cash and on credit, and expenses for the business conducted on the Premises. Landlord and its agents and employees, upon reasonable notice, shall have the right at any and all times, during Tenant's Minimum Business Hours, to examine and inspect all of Tenant's books and records, including sales tax reports and returns, pertaining to Tenant's business conducted in, upon or from the Premises, which Tenant shall produce upon demand by Landlord or Landlord's agents. Failure to maintain adequate books and records and provide them to Landlord as required herein shall be a material breach of this Lease.

**11.4 Merchant Association Membership.** Tenant is encouraged to become an active voting member of the Downtown Orlando Partnership ("Association"), and maintain its active membership status throughout the term this Lease is in effect. Upon presentation to the Landlord of proof of payment for an annual membership, Landlord will credit the amount paid up to One Hundred Twenty-five and No/100 Dollars (\$125.00) against the next rental payment coming due under the Lease. If Tenant becomes a member, Tenant agrees to regularly participate in the Association, including but not necessarily limited to at least two (2) events per year. The participation requirements for each event shall be satisfied by either making monetary donations or else providing four (4) volunteer hours in each event. Should the Association cease to exist, Tenant shall consult with the Downtown Development Board regarding Merchant Association Membership.

**11.5 Notice.** Any notice required or permitted to be given under this Lease shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as Federal Express) or by United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective Party at the Party's notice address. A notice shall be deemed to have been delivered and received on the earlier of the date actually received (by whatever means sent, including means not authorized by this article) or on the date of transmittal by telecopier, or the first (1<sup>st</sup>) business day after having been delivered to a nationally recognized overnight air courier service for "next business day" delivery, or on the third (3<sup>rd</sup>) business day after having been deposited with the United States Postal Service registered or certified mail, return receipt requested. If any communication is returned to the addressor because it is refused, unclaimed, or the addressee has moved, or is otherwise not delivered or deliverable through no fault of the addressor, effective notice shall still be deemed to have been given. Addresses for delivery of notice shall be as follows:

Tenant:       Maureen Riley  
                  Tropical Smoothie Cafe  
                  63 W. Washington Street  
                  Orlando, Florida 32801

Landlord:      Real Estate Division Manager  
                  City of Orlando  
                  400 South Orange Avenue  
                  Orlando, Florida 32801

and

Parking Division Manager  
City of Orlando  
53 West Central Boulevard  
Orlando, Florida 32801

**11.6 Section Titles, Interpretation.** The titles to the sections contained in this Lease are for convenience and reference only. Any gender used herein shall be deemed to refer to all genders. Use of the singular herein shall be deemed to include the plural, and the plural shall be deemed to include the singular.

**11.7 Surrender of Premises.** Upon the termination of this Lease, Tenant shall return all keys and surrender possession the Premises in neat and clean condition and in good order, condition and repair.

**11.8 Holding Over.** Any holding over by Tenant after the expiration of the term of this Lease shall be treated as a tenancy at sufferance at double the rent and other charges specified herein, prorated on a daily basis, and shall otherwise be on the terms and conditions set forth in this Lease, so far as applicable.

**11.9 Construction Liens.** The estate or interest of Landlord in and to the Premises, and the Garage shall not be subject to construction liens of persons or entities not in privity with Landlord. Tenant further agrees immediately to discharge (either by payment or by filing the necessary bond or otherwise) any construction liens against the Premises, the Garage or Landlord's interest therein purporting to be for labor, services, or materials furnished to Tenant in, on or about the Premises or the Garage. A duly executed instrument by which such construction lien is satisfied, released from the Premises or the Garage or transferred to bond, shall be recorded within ten (10) days after such construction lien is filed or recorded.

**11.10 Self-Help.** Landlord has the right to pay such sums or to do any act which may be necessary or appropriate by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and Tenant agrees to pay Landlord upon demand all such sums with interest at the highest rate allowed by law from the date payment is made by Landlord, and if Tenant defaults Landlord has the same rights and remedies as for the failure of Tenant to pay Monthly Rent.

**11.11 Recording.** Tenant agrees not to record this Lease, but each party hereto agrees, on the request of the other, to execute a declaration or memorandum of this Lease in recordable form in compliance with applicable law and reasonably satisfactory to Landlord and its attorneys.

**11.12 Binding Effect.** Except as otherwise expressly provided, the terms hereof shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns, respectively, of Landlord and Tenant. This reference to successors and assigns of Tenant is not intended to constitute Landlord's consent to assignment by Tenant, but has reference only to those instances in which Landlord may give consent to a particular assignment.



**11.13 Entire Agreement.** This Lease constitutes the entire agreement between the parties relating to the matters set forth herein, and shall supersede all prior written or oral agreements or understandings that may have been had between the parties.

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

**11.15 Waiver.** Failure on the part of Landlord or Tenant to complain of any act or failure to act on the part of the other shall never be a waiver of any respective rights hereunder; however, the foregoing shall not apply to provisions of this Lease, where a right of Tenant is dependent upon notice to be given within a specified period. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. No payment by Tenant or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of 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, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

**11.16 Estoppel Certificates.** Within twenty (20) days after request in writing by either party, the other party will furnish a written statement in form and substance reasonably acceptable to the non-requesting party, duly acknowledging the fact that (a) this Lease is in full force and effect, (b) rents payable hereunder are current, (c) there are no uncured defaults hereunder by Landlord or Tenant, if that be the case, and additional information concerning such other matters as reasonably requested. Failure of either party to deliver such estoppel certificate within such twenty (20) day period shall entitle the requesting party to conclusively presume that the Lease is in good standing without default, which statement or representation may be relied upon as being true and correct by any prospective purchaser or mortgagee.

**11.17 Landlord's Lien.** In addition to any rights that may be given Landlord by Florida law, Tenant hereby grants to Landlord a security interest in and a lien upon any and all furniture, fixtures, equipment, goods and other personal property of any kind in which Tenant has an interest that is now or hereafter located on the Premises, as security for the payment of all rents and other sums to be paid by Tenant to Landlord hereunder, and for the purpose of securing the performance of Tenant's duties and obligations in accordance with the terms of this Lease.

**11.18 Transfer of Landlord's Interest.** In the event of any transfer of Landlord's interest in the Premises or in the real property of which the Premises are a part, Landlord shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer.

**11.19 No Brokerage Commission.** Tenant represents and warrants that it has had no dealings with any broker or leasing agent in connection with the negotiation or execution of this

Lease other than Landlord's broker, if any. In the event any broker or leasing agent other than Landlord's broker, if any, shall make a claim for a commission or fee in connection with the negotiation or execution of this Lease, Tenant shall be responsible for the payment thereof, and Tenant agrees to hold Landlord harmless from and indemnify Landlord against any such claim or liability.

**11.20 Landlord's Exculpation.** Anything to the contrary contained in this Lease notwithstanding, Landlord's elected and appointed officials, officers, agents, employees, representatives, successors and assigns, shall have absolutely no corporate or personal liability with respect to the performance of any of the terms, covenants, conditions and provisions of this Lease. Such exculpation of liability shall be absolute and without exception whatsoever. Nothing in this Lease shall constitute a waiver of Landlord's sovereign entity.

**11.21 Discrimination Not Permitted.** Landlord and Tenant for themselves, their successors and assigns covenant and agree that no person shall be excluded from participation in, denied benefits of, or otherwise subjected to unlawful discrimination in the use of the Premises, the construction of any improvements thereon or the furnishing of services therein.

**11.22 Non-Military Certification.** Tenant hereby certifies warrants and represents to Landlord that Tenant, if an individual, is not on active duty in the Armed Forces of the United States.

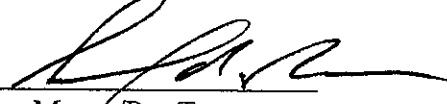
**11.23 Relationship of the Parties.** The relationship between the parties hereto is solely that of landlord and tenant and nothing contained herein shall constitute or be construed as establishing any other relationship between the parties, including, without limitation, the relationship of principal and agent, employer and employee or parties engaged in a partnership or joint venture. Without limiting the foregoing, it is specifically understood that neither party is the agent of the other and neither is in any way empowered to bind the other to use the name of the other in connection with the construction, maintenance or operation of the Premises, except as otherwise specifically provided herein.

**11.24 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES OF PARTIES  
APPEAR ON FOLLOWING PAGES.)**

IN WITNESS WHEREOF, the parties hereto have executed this instrument for the purpose herein expressed, the day and year first above written.

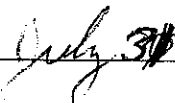
**LANDLORD: CITY OF ORLANDO**

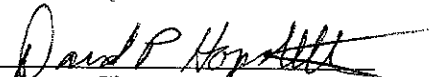
By:   
Mayor/Pro Tem

Attest:  
  
City Clerk

APPROVED AS TO FORM AND LEGALITY

for the use and reliance of the  
City of Orlando, Florida, only.

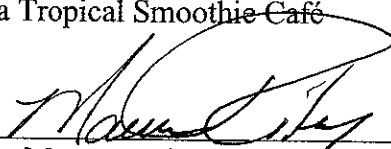
 , 200 8.

  
Assistant City Attorney

**TENANT:**

M & M Smoothies, Inc., a Florida corporation  
d/b/a Tropical Smoothie Café

By

  
Maureen Riley, President

Witnesses:

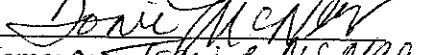
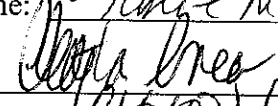
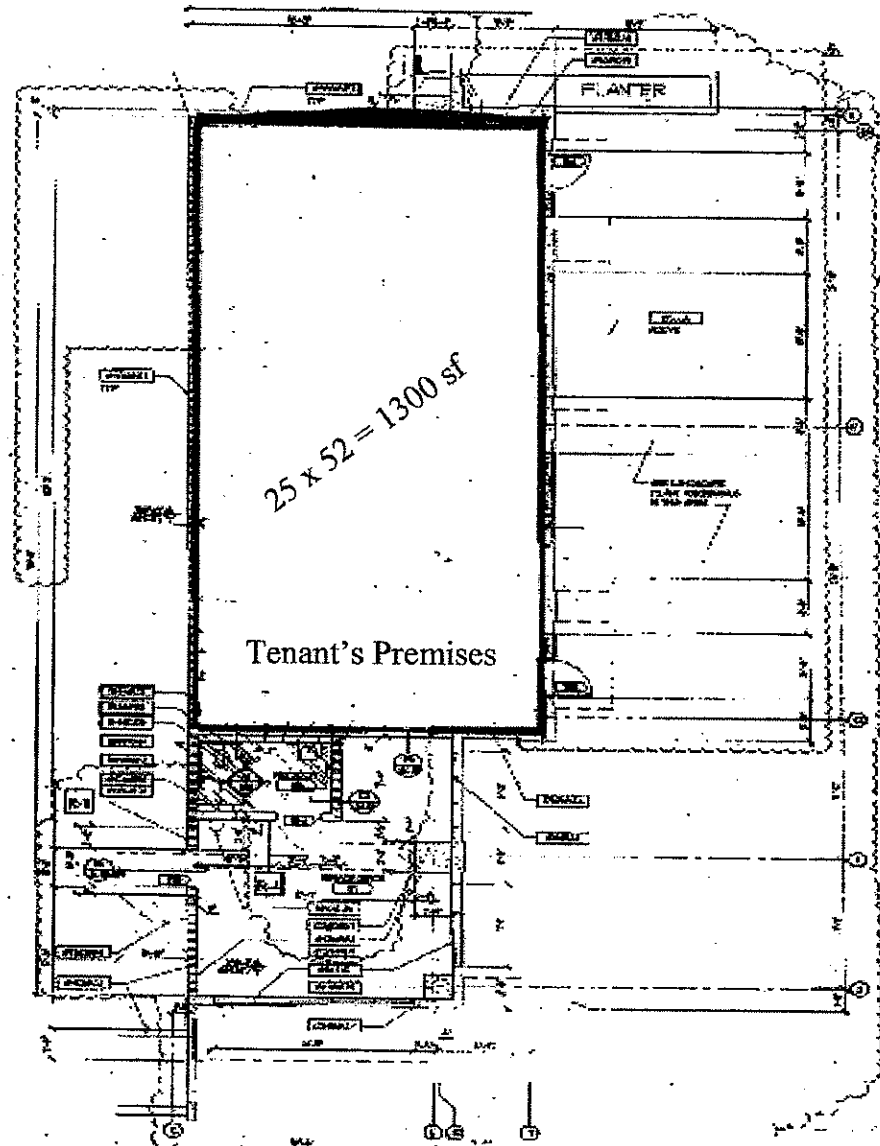
- (1) Sign:   
Print Name: Janice McNeal
- (2) Sign:   
Print Name: CLARK D. GREEN

Exhibit A



GROUND LEVEL ENLARGED REFERENCE/DIMENSION FLOOR PLAN - FUTURE RETAIL



NORTH

## LEASE GUARANTY

In consideration for Landlord's leasing the Premises to Tenant, the undersigned Guarantors (sometimes here collectively referred to as "Guarantor") guarantee the performance of all Tenants under the lease ("Lease") on the following terms and conditions:

1. Description of Lease Guaranteed. Guarantor hereby guaranties the following described lease:

Landlord(s): City of Orlando.

Tenant(s): M & M Smoothies, Inc., a Florida corporation

Property: 63 West Washington Street, Orlando, FL 32801.

Commencement Date: February 1, 2008

Initial Expiration Date: January 31, 2013.

Monthly Rent: \$1,1625.00, plus annual increases and other amounts due under the Lease.

2. Guaranty of Guaranteed Obligations. Guarantor hereby unconditionally and irrevocably guarantees to Landlord:

(a) full and punctual payment when due of all rent for the original and all extended terms of the Lease, as may be provided for under the Lease to the Landlord, as Landlord under the Lease, by Tenant, and by any successor lessee permitted under the Lease; and

(b) payment by Tenant of all other obligations coming due under the Lease for the initial and all extended terms of the Lease, including but not limited to taxes, insurance, utilities, license fees and any other costs incurred for the Premises. The obligations of Tenant described in paragraph (a), above, and this paragraph (b) are herein referred to as the "Guaranteed Obligations".

3. Scope and Extent of Guaranty. Guarantor shall be primarily liable, jointly and severally, with Tenant and any other guarantor of Tenant's obligations in respect to the payment of the Guaranteed Obligations. Guarantor's agreement to guarantee the Guaranteed Obligations is expressly subject to the right of Guarantor to assert any defenses (whether substantive or procedural), set offs and counterclaims that Tenant could itself assert against Landlord under the Lease with the same force and effect as if Guarantor had executed the Lease directly, which right is hereby reserved by Guarantor (except as expressly set forth to the contrary in Section 5 below). Guarantor hereby waives all notices of protest, dishonor, and notices of acceptance of this Guaranty, and waives all notices of existence, creation, or incurring of new or additional obligations from Tenant to Landlord under the Lease. Guarantor acknowledges that, under the terms of the Lease, Landlord may terminate the Lease or Tenant's right of possession thereunder as a result of a Tenant "Event of Default" under the Lease and, upon any such termination. Guarantor agrees that this Guaranty is intended to continue in full force and effect following the termination of the Lease or the termination of Tenant's right of possession thereunder as a result of a Tenant "Event of Default" under the Lease, and that Guarantor shall (except as may be otherwise agreed in writing by Landlord) continue to guarantee the Guaranteed Obligations as contemplated hereunder if any other third party becomes "Tenant" under the Lease, as a result of an Event of Default under the Lease by

Tenant. In any such event, Guarantor shall execute any such documentation ratifying or confirming Guarantor's obligations hereunder, including a new guaranty in the same form as this Guaranty, as Landlord may reasonably require.

4. Period of Guaranty. Subject to the following sentence, the obligations of Guarantor as to the Guaranteed Obligations shall continue in full force and effect against Guarantor in accordance with the terms hereof until the expiration of the Term (as defined in the Lease) of the Lease, whereupon this Guaranty shall terminate and Guarantor shall have no further liability hereunder, for liabilities accruing after termination of the Lease, except for any costs and expenses incurred in enforcing the Lease Guaranty. This Guaranty covers any and all of the Guaranteed Obligations, whether presently outstanding or arising subsequent to the date hereof. This Guaranty is irrevocably binding upon and enforceable against Guarantor and the successors of Guarantor in accordance with the terms hereof, and shall inure to the benefit of the Landlord under the Lease, and its successors and assigns.

5. Primary Liability of Guarantor. This is a primary and continuing guaranty of payment of the Guaranteed Obligations, independent of Tenant's obligations under the Lease. Guarantor waives any right or claim to require Landlord (a) to proceed against any person or entity (including Tenant or its successors) to look for payment of the Guaranteed Obligations, or join any such person or entity in any suit under this Guaranty (provided, however, that Landlord agrees that Guarantor shall be an initial party-defendant in any legal proceeding asserted by Landlord against the Tenant that may result in any liability of Guarantor under this Guaranty, but Landlord may enforce the provisions of this Guaranty and assert claims against Guarantor hereunder without first pursuing any right or remedy against Tenant), (b) to proceed against or exhaust any security given to secure Tenant's obligations under the Lease, or (c) to pursue or exhaust any other remedy within the Landlord's power. Guarantor agrees not to assert any claim that Guarantor may have against Landlord by virtue of Landlord's failure to exercise any rights against Tenant. Guarantor waives any right or claim to force Landlord to proceed first against Tenant and agrees that no delay or refusal of Landlord to exercise any right or privilege Landlord has or may have against Tenant shall operate to impair the liability of Guarantor hereunder. Guarantor agrees that neither bankruptcy, insolvency, other disability, cessation of existence or dissolution of Tenant shall in any manner impair, affect, or release the liability of Guarantor hereunder, and Guarantor shall be and remain fully liable hereunder in accordance with the terms hereof. Guarantor understands and acknowledges that, by virtue of this Guaranty, Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Tenant or its successors. Guarantor hereby acknowledges and agrees that the Guaranteed Obligations shall not be reduced by the amount of any funds which Landlord is required to return to Tenant (or the legal estates thereof) pursuant to a bankruptcy or reorganization case or proceeding with respect to Tenant. Guarantor waives any right to participate in any security now or hereafter held by Landlord. The Landlord may, without notice or demand and without affecting Guarantor's liability hereunder, from time to time, compromise, extend or otherwise modify any or all of the terms of the Lease. Guarantor further waives all defenses afforded guarantors based on suretyship or impairment of collateral under applicable law, other than payment and performance in full of the Guaranteed Obligations. Until all of Tenant's obligations to the Landlord with respect to the Guaranteed Obligations have been discharged in full, any and all rights of subrogation which Guarantor may have or be entitled to against Tenant shall be and are hereby subordinated to the rights of the Landlord against Tenant with respect thereto.

6. Place of Performance. All payments to be made hereunder shall be payable in Orlando, Florida.

7. Applicable Law. This Guaranty shall be governed by and construed in accordance with the laws of the United States of America and the State of Florida, and is intended to be performed in accordance with and as permitted by such laws. Wherever possible each provision of this Guaranty shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Guaranty or application thereof shall be prohibited by or be invalid under such law, such provision or application (as the case may be) shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or other applications or the remaining provisions of this Guaranty.

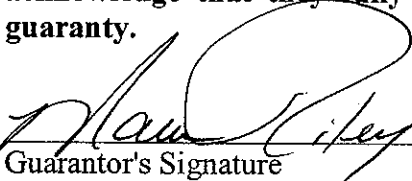
8. No Third Party Beneficiaries. There shall be no third party beneficiaries of this Guaranty.

9. Notices. Any notices given to Guarantor or Landlord hereunder shall be given in the manner set forth in Section 11.5 of the Lease, but to the respective addresses set forth beneath the parties' signatures below or at such other addresses as the parties may hereafter designate in writing from time to time.

10. Multiple Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

11. Modifications. This Guaranty may not be modified except by a writing signed by the parties hereto.

**Guarantors hereby acknowledge receipt of a copy of the above-referenced lease and acknowledge that they fully understand all terms and provisions thereof, as well as this guaranty.**

  
Guarantor's Signature

6/12/08  
Date

Maureen Riley

10503 Oakview Pointe Terrace, Gotha, FL 34734  
Printed address



**ADDENDUM TO LEASE AGREEMENT**  
**CONDITIONAL ASSIGNMENT OF LEASE**

**Landlord: City of Orlando, Florida**  
400 South Orange Avenue,  
Orlando, FL 32801

**Tenant: M & M Tropical Smoothies, Inc.,**  
a Florida corporation

Address: 63 West Washington

Franchisor: Tropical Smoothie Franchise Development Corporation  
4100 Legendary Drive – Suite 250 – Destin, FL 32541

Date: Effective as of the Date of the Lease Between Landlord and Tenant (the  
“Lease”)

Landlord, Franchisor, and Tenant agree as follows:

1. Tenant is a Tropical Smoothie Franchisee. The Leased Premises shall be used for the operation of a smoothie beverage shop, or a smoothie beverage/sandwiches/gourmet wraps/salads/soups/coffee drinks shop, offering for sale a wide range of smoothie drinks and other products, at retail, and related products or services approved by the Franchisor under the trade name **TROPICAL SMOOTHIE, TROPICAL SMOOTHIE CAFÉ**, or any name authorized by the Franchisor. The Landlord acknowledges that such use shall not violate any existing exclusives granted to any other existing tenant of the Landlord. Further, the Lease shall not constitute an exclusive use in favor of Tenant or Franchisor.

2. Upon request by Franchisor and the consent of Tenant hereby given and which may not be withdrawn except on consent of the Franchisor, Landlord shall provide to Franchisor all revenue information and other information Landlord may have related to the operation of Tenant's Franchise Tropical Smoothie or Tropical Smoothie Cafe.

3. Landlord shall provide Franchisor with copies of any written Notice of Default (“Default”) given to Tenant under the Lease and grants to Franchisor, at Franchisor's option, the right (but not the obligation) to cure any Default under the Lease (should Tenant fail to do so) within 15 days after the expiration of the period in which Tenant may cure the Default, in the same manner and to the same extent allowed Tenant. Notwithstanding the foregoing, Landlord shall not be liable in any manner for any failure to send such notices unless the failure was due to the malicious misconduct of Landlord.

4. In the event of a Default of the Lease by Tenant, or the default of the Franchise Agreement by Tenant, and upon written notice to Landlord of an assignment and written agreement signed by both Franchisor and Tenant along with a copy of such assignment (“Assignment Notice”), (i) Franchisor shall become the lessee of the leased premises and shall become liable for all obligations under the Lease arising after the date of the Assignment Notice and (ii) Lessor shall recognize Franchisor as the lessee of the leased premises effective as of the date of the Assignment Notice.

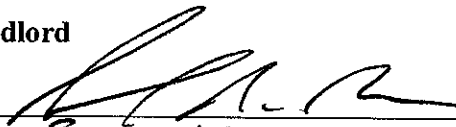
5. Landlord shall provide Franchisor with at least fifteen (15) days written notice prior to any modification or cancellation of the Lease, at the address set forth above. Notwithstanding the foregoing, Landlord shall not be liable in any manner for any failure to send such a notice and such failure shall not affect the validity of the action so

City Council Meeting: 6-23-08  
Item: 0-8 Documentary: 080623 208

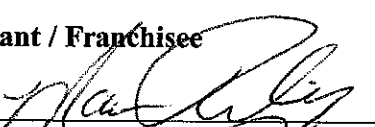
Addendum to Lease Agreement  
Conditional Assignment of Lease  
Page 2

taken, unless the failure to provide notice was due to the malicious misconduct of Landlord.

Landlord

By:   
Name: Samuel B. Fugate  
Its: Mayor Pro Tem

Tenant / Franchisee

By:   
Name: Maureen Riley  
Its: \_\_\_\_\_

TROPICAL SMOOTHIE FRANCHISE DEVELOPMENT CORPORATION /  
FRANCHISOR

By:   
~~Eric J. Smith, President~~

JIM VALENTINO

CHIEF OPERATING OFFICER

## AGREEMENT

Dated: 7/31/08

This Agreement between the undersigned and CIT Small Business Lending Corporation is entered into in connection with a loan or other financing transaction between CIT Small Business Lending Corporation and its customer M & M Smoothies Inc. dba Tropical Smoothie Cafe ("Tenant"), and relates to (a) the following "Premises": 63 West Washington Street, Orlando, FL 32801; and (b) the "Collateral" listed or described on Exhibit A hereto.

The undersigned City of Orlando ("Landlord"), holding an interest in the Premises as owner, lessor, sublessor, mortgagee, beneficiary of a deed of trust or otherwise, hereby agrees that: (a) the Collateral may be located at the Premises and, at all times, shall be deemed to be personal property; (b) the Collateral may be removed from the Premises by CIT Small Business Lending Corporation in the exercise of its secured creditor or other rights **except to the extent specifically set forth in Exhibit A attached**; (c) the undersigned hereby subordinates any claim or lien against the Collateral to CIT Small Business Lending Corporation and will permit CIT Small Business Lending Corporation or its designated agent to enter upon the Premises to remove the Collateral within 15 days from Lender's receipt of notice of default by Tenant from Landlord; (d) the undersigned agrees to use reasonable efforts to provide CIT Small Business Lending Corporation written notice of default by tenant and reasonable opportunity to cure this default. Notice to Lender shall be sent to 1 CIT Drive, Livingston, NJ 07039, Attn. PAG; and (e) this Agreement shall be binding on the successors and assigns of the undersigned and shall benefit and be enforceable by CIT Small Business Lending Corporation and its successors and assigns.

CIT Small Business Lending Corporation agrees to pay for any damage to the Premises directly caused by removal of the Collateral from the Premises by CIT Small Business Lending Corporation or its designated agent. Landlord shall not in any way be responsible for the safekeeping of the Collateral.

## LANDLORD:

By: Print Name: Samuel B. EngleTitle: Mayor Pro Tem

## LENDER:

CIT Small Business Lending Corporation

By: 

Authorized Representative

## EXHIBIT A

### Description of Collateral

Re: Customer: M & M Smoothies Inc. dba Tropical Smoothie Cafe

All of the following property whether now owned or hereafter acquired and wheresoever located as well as the proceeds and products thereof:

All equipment and machinery, including power-driven machinery and equipment, leasehold improvements, furniture, and fixtures now owned or hereafter acquired, together with all replacements thereof, all attachments, accessories, parts, equipment and tools belonging thereto or for use in connection therewith. **Leasehold improvements not included as Collateral are as follows: any leaseholds paid for by landlord and including but not limited to: HVAC, sinks, plumbing and plumbing fixtures, carpeting, flooring, walls, ceilings, doors, windows, lighting and lighting fixtures, electrical fixtures.** Lender will not remove the aforementioned leasehold improvements no matter who paid for them.

All inventory, raw materials, work in progress, and supplies now owned or hereinafter acquired.

All accounts, deposit accounts, and health care insurance receivables now outstanding or hereafter arising.

All chattel paper, instruments, and general intangibles now in force or hereafter acquired.

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