

STEVE HALL  
REGISTER OF DEEDS  
KNOX COUNTY

**Preservation Public  
LEASE AGREEMENT**

THIS INSTRUMENT WAS PREPARED BY

Preservation Public, 18 Market Sq  
NAME ADDRESS

#211  
Knoxville, TN  
37902

THIS LEASE AGREEMENT ("LEASE AGREEMENT"), made and entered into this 22<sup>nd</sup> day of November 2005 by and between Preservation Public LLC, whose address for purposes hereof is c/o 18 Market Square, Suite 211, Knoxville, TN 37902 (hereinafter referred to as "Lessor" or "Landlord"), and World Market<sup>2</sup> LLC., (hereinafter referred to as "Lessee" or "Tenant").

**WITNESSETH:**

**1. Description of Premises**

Lessor, in consideration of the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Lessee, and Lessee does hereby rent and lease from Lessor, that certain space (the "Demised Premises") known as 16 Market Square, Knoxville, TN., 37902 containing approximately 2400 rentable square feet of street level space and 5400 square feet of basement space in a building situated in the Market Square located in downtown Knoxville, Knox County, TN 37902 (the "Building") on that tract of land more particularly described in "Exhibit A" and "Exhibit A-1" attached hereto and by this reference made a part hereof, with no easement for light or air included in the Demised Premises, or being granted hereunder.

**2. Term**

Lessee takes and accepts from Lessor the Demised Premises upon the terms and conditions herein contained and in their present condition and as suited for the use intended by Lessee (for a term of 5 years with 3 consecutive renewable 5 year lease terms at an increase by 15% at each of the five year renewable options, to have and to hold the same for a term (the "Lease Term") beginning on November 22, 2003 (the "Commencement Date"). The Lease shall end at midnight upon the last day of the 60th consecutive calendar month thereafter (the "Termination Date") unless sooner terminated as herein provided. In the event the Termination Date shall occur on a Saturday, Sunday or national holiday the Lease Term shall be extended to midnight of the next business day.

**3. Possession**

Lessee shall take possession on the 22nd day of November, 2005.

**4. Rental**

Lessee shall pay to Lessor as rent, in legal tender of the United States, in advance on the first day of every calendar month during the Lease Term, without offset or deduction of any kind to the amounts itemized below per month for each year. A prorated monthly installment, based on a thirty-day month, shall be paid in advance for any fraction of a month if the Lease Term shall begin on any day except the first day or shall be terminated on any day except the last day of any month.

**Year 1 Commencing December 1, 2005 - the "Rental Commencement Date". Rent Shall be \$3250 per month for the next 60 months. Rent shall increase by 15% for the next optional 60 months. And increase again by 15% for the next optional 60 months.**

Year 1 - 5, \$3250 per month  
Year 5- 10, \$3737. per month  
Year 10-15, \$4298 per month

THIS BASE RENTAL INCLUDES does not include PROPERTY TAXES, BUILDING INSURANCE, utilities or any other common area maintenance charges, all of which shall be the responsibility of Lessee.



Instr: 200608250017727 Page: 1 OF 14  
REC'D FOR REC 08/25/2006 11:00:29AM  
RECORD FEE: \$72.00  
M. TAX: \$0.00 T. TAX: \$0.00

## 5. Payments

All payments of rent, additional rent and other payments to be made to Lessor shall be made on a timely basis and shall be payable to Lessor or as Lessor may otherwise designate by written notice. All such payments shall be mailed or delivered to Lessor's agent, Preservation Public LLC, 18 Market Square, Suite 211, Knoxville, TN 37902 (check payable to Preservation Public LLC) or at such other place as Lessor may designate from time to time in writing. If mailed, all payments shall be mailed in sufficient time and with adequate postage thereon to be received in Lessor's account by no later than the due date for such payment. Lessee agrees to pay to Lessor Fifty Dollars (\$50.00) for each check presented to Lessor in payment of any obligation of Lessee which is not paid by the bank on which it is drawn.

## 6. Late Charges

If base rental payments are received later than the 5<sup>th</sup> of each month when due, Lessee shall pay Lessor a late fee equal to \$50 for each payment has not been received after the 5<sup>th</sup> of each month. Any rental or other amounts payable to Lessor under this Lease Agreement shall also incur a monthly service charge at the rate of 18% per annum from and after the due date for such payment, if not paid by the fifth day of the month for which such rent is due, or by the due date specified on any invoices from Lessor for any other amounts payable hereunder. In no event shall the rate of interest payable on any late payment exceed the legal limits for such interest enforceable under applicable law.

## 7. Use Rules

The Demised Premises shall be used for **wholistic health, restaurant, performance venue, private events and classes** and no other purposes and in accordance with the Rules and Regulations attached hereto and made a part hereof and all laws and ordinances (federal, state, county, or municipal, including, without limitation, environmental) as well as applicable orders and requirements. Lessee covenants and agrees to abide by said Rules and Regulations in all respects as now set forth and attached hereto or as hereafter promulgated by Lessor. Lessor shall have the right at all times during the Lease Term to publish and promulgate and thereafter enforce such rules and regulations or changes in the existing Rules and Regulations as it may reasonably deem necessary in its sole discretion to protect the tenantability, safety, operation and welfare of the Demised Premises and of the Building or buildings of which the Demised Premises are a part.

## 8. Repairs by Lessor

(a) Lessor shall not be required to make any repairs or improvements to the Demised Premises except structural repairs necessary for safety and tenantability exclusive of all glass and all exterior doors. Lessee shall make no alterations in, or additions to, the Demised Premises without first obtaining, in writing, Lessor's consent for such alterations or additions. All such alterations or additions shall be at the sole cost and expense of Lessee and shall become a part of the Demised Premises and shall be the property of Lessor. Lessor shall deliver the demised Premises in the condition described under **Exhibit "B" - Landlord's Work**. "Landlord's Work" shall be attached and become a part of this Lease Agreement.

## 9. Repairs by Lessee

(a) Lessee covenants and agrees that it will take good care of the Demised Premises, its fixtures and appurtenances, and suffer no waste or injury thereto and keep and maintain same in good and clean condition.

(b) Lessee shall be liable for and shall hold Lessor harmless in respect of: damage or injury to Lessor, Demised Premises, and property or persons of Lessor's other tenants, or anyone else, if due to wrongful act or neglect of Lessee, or Lessee's agents, employees, licensees or invitees. Lessee shall use best efforts to at once report, in writing or by verbal notice to Lessor any defective or dangerous condition known to Lessee and not otherwise known to Lessor, and failure to so report any defective or dangerous condition known to Lessee which should have been reported to Lessor and could not have been known to Lessor except by report from Lessee shall make Lessee responsible and liable for damages resulting from such defective condition.

## 10. Lessor's Right of Entry



Lessor shall retain duplicate keys to all doors of the Demised Premises and Lessor and its agents, employees and independent contractors shall have the right to enter the Demised Premises at reasonable hours to inspect and examine same, to make repairs, additions, alterations, and improvements, to exhibit and card Demised "For Rent" or "For Sale" to prospective purchasers or tenants (provided that Lessor shall not exhibit the Demised Premises to prospective tenants except during the last 180 days of the Lease Term) and to inspect the Demised Premises to ascertain that Lessee is complying with all of its covenants and obligations hereunder, all without being liable to Lessee in any manner whatsoever for any damages arising therefrom. During such time as such work is being carried on in or about the Demised Premises, the rent provided herein shall not abate, and Lessee waives any claim or cause of action against Lessor for damages by reason of interruption of Lessee's business or loss of profits therefrom because of the prosecution of any such work or any part thereof. Notwithstanding anything to the contrary contained in Article 10 of this lease, if Lessee's use and occupancy of the Demised Premises are substantially disrupted by any repairs, additions, alterations or improvements made by Lessor so that Lessee is unable to operate its Business therein for a period exceeding two consecutive business days, then Lessee shall thereafter be entitled to an abatement of Base Rent until such work by Lessor is completed.

#### 11. Default

(a) The following events shall be deemed to be events of default by Lessee under this Lease Agreement: (i) Lessee shall fail to pay any installment of Base Rent, additional rent or any other charge or assessment against Lessee pursuant to the terms hereof when due which failure continues for five business days after written notice thereof from Lessor to Lessee; (ii) Lessee shall fail to comply in every material respect with any term, provision, covenant or warranty made under this Lease Agreement by Lessee, other than the payment of the Base Rent or additional rent or any other charge or assessment payable by Lessee, and shall not cure such failure within fifteen (15) days after notice thereof to Lessee or if such failure is not capable of being cured within 15 days, commence efforts to cure within 15 days and pursue such efforts diligently to completion; (iii) Lessee or any guarantor of the Lease Agreement shall become insolvent, or shall make a transfer in fraud of creditors or shall make an assignment other than a collateral assignment in a financing transaction for the benefit of creditors; (iv) Lessee or any guarantor of this Lease Agreement shall file a petition under any Section or Chapter of the National Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Lessee or any guarantor of this Lease Agreement a petition in bankruptcy or insolvency or a similar proceeding which is not dismissed within 90 days after Lessee receives notice thereof, or Lessee or any guarantor shall be adjudged bankrupt or insolvent in proceedings filed against Lessee or any such guarantor; (v) a receiver or trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Lessee or of any guarantor of this Lease Agreement; (vi) Lessee shall abandon or vacate all or any portion of the Demised Premises or fail to take possession thereof as provided in this Lease Agreement; or (vii) Lessee shall do, or permit to be done anything which creates a lien upon the Demised Premises which lien is not removed by payment or bond within 30 days after Lessee receives notice thereof.

(b) Upon the occurrence of any of the aforesaid events of default, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever: (i) terminate this Lease Agreement, in which event Lessee shall immediately surrender the Demised Premises to Lessor and if Lessee fails to do so, Lessor may without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Demised Premises and expel or remove Lessee and any other person who may be occupying said Demised Premises or any part thereof, by force, if necessary, as permitted by Tennessee law without being liable for prosecution or any claim of damages therefor; Lessee hereby agreeing to pay to Lessor on demand the amount of all Base Rent and other charges accrued through the date of termination; (ii) enter upon and take possession of the Demised Premises and expel or remove Lessee and any other person who may be occupying said Demised Premises or any part thereof, by force, if necessary, as permitted by Tennessee law, without being liable for prosecution or any claim of damages therefor and, if Lessor so elects, re-let the Demised Premises on such terms as Lessor may reasonably deem advisable, without advertisement, and by private negotiations provided that in such event Lessor shall use reasonable efforts to re-let the Demised Premises at then-prevailing rental rates for comparable space in the Building, and receive the rent therefor, Lessee hereby agreeing to pay to Lessor the deficiency, if any, between all rent reserved hereunder and the total rental applicable to the Lease Term hereof obtained by Lessor re-letting, and Lessee shall be liable for Lessor's expenses in restoring the Demised Premises and all costs incident to such re-letting; (iii) enter upon the Demised Premises by force if necessary as permitted by Tennessee law, without being liable for prosecution or any claim of damages therefor, and do whatever Lessee is obligated to do under the terms of



this Lease Agreement, and Lessee agrees to reimburse Lessor on demand for any expenses including, without limitation, reasonable attorney's fees which Lessor may incur in thus effecting compliance with Lessee's obligations under this Lease Agreement and Lessee further agrees that Lessor shall not be liable for any damages resulting to Lessee from such action, unless caused by negligence of Lessor.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Base Rent, additional rent or other charges and assessments payable by Lessee and due to Lessor hereunder or of any damages accruing to Lessor by reason of violation of any of the terms, covenants, warranties and provisions herein contained. No action taken by or on behalf of Lessor shall be construed to be an acceptance of a surrender of this Lease Agreement. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss or damage which Lessor may suffer by reason of termination of this Lease Agreement or the deficiency arising by reason of any re-letting of the Demised Premises by Lessor as above provided, allowance shall be made for expense of repossession.

If Lessee shall vacate, abandon or fail to use the leased premises for a period in excess of 45 days for the use for which it was leased, Lessor may, at its option, exercise any and all of the remedies listed herein. No such remedy herein otherwise conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this lease to Lessor may be exercised from time to time and as often as the occasion may arise or as may be deemed expedient and/or proper.

#### **12. Waiver of Breach**

No waiver of any breach of the covenants, warranties, agreements, provisions or conditions contained in this Lease Agreement shall be construed as a waiver of said covenant, warranty, provision, agreement or condition or of any subsequent breach thereof, and if any breach shall occur and afterwards be comprised, settled or adjusted, this Lease Agreement shall continue in full force and effect as if no breach had occurred.

#### **13. Assignment and Subletting**

Lessee may, sublease or assign this lease agreement. Lessee shall have the right to make a collateral assignment of its interest hereunder to a reputable financial institution, provided such institution shall agree in a form satisfactory to Lessor to assume all duties and obligations of Lessee in the event that such institution shall exercise its right under said collateral assignment. Notwithstanding anything to the contrary contained in Article 13 of this Lease, Lessee shall be permitted, without the necessity of obtaining Lessor's prior written consent, to assign Lessee's interest hereunder to a parent, subsidiary or affiliated corporation of Lessee, provided Lessee shall remain liable hereunder, or to assign Lessee's interest hereunder to the surviving corporation of any merger provided said surviving corporation shall assume all of Lessee's obligations hereunder and shall have a net worth not less than the net worth of Lessee immediately prior to the merger.

#### **14. Destruction**

(a) If the Demised Premises are partially or totally destroyed by fire or other casualty insurable under standard fire insurance policies with extended coverage endorsement so as to become partially or totally un-tenantable, the same shall be repaired or rebuilt as speedily as practical under the circumstances at the expense of the Lessor, unless Lessor elects not to repair or rebuild as provided in Subparagraph (b) of this Article 14.

(b) If the Demised Premises are (i) rendered totally untenable by reason of an occurrence described in Subparagraph (a) or (ii) damaged or destroyed as a result of a risk which is not insured under standard fire insurance policies with extended coverage endorsement, or (iii) damaged or destroyed during the last eighteen (18) months of the Lease Term or (iv) damaged to such an extent that the Demised Premises cannot be repaired or rebuilt within 90 days from the date of such occurrence, or if the Building is damaged in whole or in part (whether or not the Demised Premises are damaged), to such an extent that the Building cannot, in Lessor's judgement, be operated economically as an integral unit, then and in any such events either party may at its option terminate this Lease Agreement by notice in writing to the other party within



sixty (60) days after the date of such occurrence. Unless either party gives such notice, this Lease Agreement will remain in full force and effect and Lessor shall repair such damage at its expense as expeditiously as possible under the circumstances.

(c) If Lessor should elect or be obligated pursuant to Subparagraph (a) above to repair or rebuild because of any damage or destruction, Lessor's obligation shall be limited to the original Building and any other work or improvements which may have been originally performed or installed at Lessor's expense. If the cost of performing Lessor's obligation exceeds the actual proceeds of insurance paid or payable to Lessor on account of such casualty, either party may terminate this Lease Agreement unless Lessee, within fifteen (15) days after demand therefor, deposits with Lessor a sum of money sufficient to pay the difference between the cost of repair and the proceeds of the insurance available for such purpose. Lessee shall replace all work and improvements not originally installed or performed by Lessor at its expense.

(d) In no event shall either party be liable for any loss or damage sustained by the other party by reason of casualties mentioned hereinabove or any other accidental casualty.

#### **15. Removal of Fixtures, Equipment & Effects**

Lessee may upon the expiration or termination of the Lease Term or any renewal thereof, remove all personalty and equipment not attached to the Demised Premises which it has placed upon the Demised Premises, provided Lessee restores the Demised Premises to the condition immediately preceding the time of installation thereof reasonable wear and tear excepted. If Lessee does not remove all such personalty and equipment, then Lessor within ten (10) days after the expiration of the Lease Term, shall have the right to notify Lessee to remove any or all such personalty and equipment and thereupon restore the Demised Premises to the condition immediately preceding the time of installation thereof reasonable wear and tear excepted. If Lessee shall fail or refuse to remove all effects, personalty and equipment from the Demised Premises upon the expiration or termination of this Lease Agreement for any cause whatsoever, Lessor may, at its option, remove the same in any manner that Lessor shall choose and store said effects, equipment and personalty without liability for any loss or damage thereto. Lessee shall pay Lessor on demand any and all expenses incurred by Lessor in such removal and storage, including, without limitation, court costs, attorney's fees, and storage charges. Lessor, at its option, may without notice, sell said effects, equipment and personalty or any part thereof at public or private sale and without legal process for such price as Lessor may obtain and apply the proceeds of such sale to any amounts due under this Lease Agreement from Lessee to Lessor after first paying the expense incident to the removal, storage and sale of said effects, equipment and personalty. Any proceeds remaining after payment of all amounts due under this Lease Agreement and all expenses, including reasonable attorneys fees, incident to the removal, storage and sale of such items shall be paid to Lessee. The covenants and conditions of this Article 15 shall survive any expiration or termination of this Lease Agreement.

#### **16. Lessor's Lien**

Lessor shall at all times have a valid lien upon all of the personal property of Lessee situated in the Demised Premises to secure payment of Base Rent, additional rent and other sums and charges due hereunder from Lessee to Lessor and to secure the performance by Lessee of each and all of the covenants, warranties, agreements and conditions hereof. The lien herein granted may be foreclosed in the manner and form provided by law for the foreclosure of security instruments or chattel mortgages, or in any other manner provided by law.

#### **17. Utility Bills**

Lessee shall pay all utility bills or prorations of said bills including but not limited to water, sewer, gas, electricity, fuel, garbage, light, and heat bills for the Demised Premises. If Lessee fails to pay any of said utility bills, Landlord may pay the same and such payment may be added to the rental of the premises next due as additional rental.

#### **18. Taxes/Tax Escalation/Insurance/Common Area Maintenance**

Lessee shall have separately metered water, electric and gas and Lessee shall be responsible for paying all of the utilities associated with the Premises. Lessee shall pay for its pro-rata share of the property taxes and building insurance costs associated with the Premises. Lessee shall pay for its own liability insurance in an amount not less than \$1,000,000 and shall name Lessor as additional insured. Lessee shall pay for its own insurance covering the contents of its Premises and shall name Lessor as additional insured.



## 19. Attorney's Fees and Arbitration

In the event of litigation commenced by either Lessor or Lessee to enforce any obligation of the other party hereunder, all reasonable attorney's fees and expenses of the prevailing party in such litigation shall be paid by the party against whom an adverse final, non-appealable judgement is entered.

Any controversy or claim arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## 20. Time

Time is of the essence of this Lease Agreement and whenever a certain day is stated for payment or performance of any obligation of Lessee, or Lessor, the same enters into and becomes a part of the consideration hereof.

## 21. Subordination & Attornment

(a) Lessee agrees that this Lease Agreement shall be subordinate to any mortgage now or hereafter encumbering the Demised Premises or the Building or buildings of which the Demised Premises may be a part or any component thereof, and to all advances made or hereafter to be made upon the security thereof. The terms of this provision shall be self-operative and no further instrument of subordination shall be required by any mortgagee. Lessee, however, upon request of any party in interest, shall execute promptly such instrument or certificates as may be reasonably required to carry out the intent hereof, whether said requirement is that of Lessor or any other party in interest, including, without limitation, mortgages.

(b) If any mortgagee elects to have this Lease Agreement superior to its mortgage and signifies its election in the instrument creating its lien or by separate recorded instrument, then this Lease Agreement shall be superior to such mortgage. The term "mortgage" as used herein, includes any deed to secure debt, deed or trust or security deed and any other instrument creating a lien in connection with any other method of financing or refinancing. The term "mortgagee" refers to the holder of the indebtedness secured by a mortgage.

(c) Within ten (10) days after request therefor by Lessor, Lessee agrees to execute and deliver to Lessor in recordable form an estoppel certificate addressed to any mortgagee or assignee of Lessor's interest in or purchase of the Demised Premises or the Building or buildings of which the Demised Premises may be a part or any part thereof, certifying (if such be the case) that this Lease Agreement is unmodified and is in full force and effect (and if there have been modifications, that the same is in full force and effect as modified and stating said modifications); that there are no defenses or offsets against the enforcement thereof or stating those claimed by Lessee; and stating the date to which Base Rent, additional rent and other charges have been paid. Such certificate shall also include such other information as may reasonably be required by such mortgagee, proposed mortgagee, assignee, purchaser or Lessor.

(d) In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage made by Lessor covering the Demised Premises or the Building or buildings of which the Demised Premises are a part, or in the event of termination of any lease under which Lessor may hold title, Lessee shall attorn to the purchaser at foreclosure or under power of sale, or to the assignee or transferee of Lessor's interest or to the lessor of the Lessor upon such lease termination, as the case may be, and shall recognize such person as the Lessor under this Lease Agreement provided such purchaser, assignee, transferee or other party in interest shall agree in a form reasonably acceptable to Lessee not to disturb Lessee's tenancy hereunder. Lessee agrees that the institution of any suit, action or other proceeding by any mortgagee to realize on Lessor's interest in the Demised Premises or the Building or buildings of which the Demised Premises may be a part pursuant to the powers granted to a mortgagee under its mortgage, shall not by operation of law or otherwise, result in the cancellation or termination of the obligations of the Lessee hereunder. Lessor and Lessee agree that notwithstanding that this Lease Agreement is expressly subject and subordinate to any mortgages, any mortgagee, its successors and assigns, or other holder of a mortgage or of a note secured thereby, may sell the Demised Premises or the Building or buildings of which the Demised Premises or the Building or buildings of which the Demised Premises are a part, in the manner provided in the mortgage and may, at the option of such mortgagee, its successors and assigns, or other holder of the mortgage or note secured thereby, make such sale of



~~Demised Premises or Building or buildings of which the Demised Premises are a part subject to this Lease Agreement.~~ In addition, Lessor and Lessee covenant and agree that Lessor's right to transfer or assign Lessor's interest in and to the Demised Premises, or any part or parts thereof, shall be unrestricted, and that in the event of any such transfer or assignment by Lessor which includes the Demised Premises, Lessor's obligation to Lessee hereunder shall cease, Lessee looking only and solely to Lessor's assignee or transferee for performance thereof, provided, that such assignee or transferee assumes Lessor's obligations hereunder and agrees to be bound by the terms of this Lease.

## **22. No Estate**

This Lease Agreement shall create the relationship of landlord and tenant only between Lessor and Lessee and no estate shall pass out of Lessor. Lessee shall have only a usufruct, not subject to lien, levy and sale and not assignable in whole or in part by Lessee except as provided herein. Lessor acknowledges that Lessee's interest hereunder is not lienable and agrees that any asserted lien claim thereon shall not constitute an event of default hereunder.

## **23. Cumulative Rights**

All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative to, but not restrictive of, or in lieu of those conferred by law.

## **24. Holding Over**

If Lessee remains in possession after expiration or termination of the Lease Term with or without Lessor's written consent, Lessee shall become a tenant-at-sufferance, and there shall be no renewal of this Lease Agreement by operation of law.

## **25. Surrender of Premises**

Upon the expiration or other termination of this Lease Agreement Lessee shall quit and surrender to Lessor the Demised Premises, broom clean in the same condition as at the commencement of the original Lease Term, reasonable wear and tear only excepted, and Lessee shall remove all of its personalty from the Demised Premises. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease Agreement.

## **26. Notices**

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given, whether actually received or not, on the third business day after such notice is deposited, postage prepaid, in the United States Mail, certified, return receipt requested, and addressed to Lessor or Lessee at their respective address set forth hereinabove or at such other address as either party shall have theretofore given to the other by notice as herein provided. **If notice is given by hand delivery, notice shall be deemed given on the day received.** Landlord's notice is outlined in the first paragraph of page 1, Tenant's address shall be 18-20 East Market Square, Knoxville, TN 37902.

## **27. Damage or Theft of Personal Property**

All personal property brought into the Demised Premises by Lessee, or Lessee's employees or business visitors, shall be at the risk of Lessee only, and Lessor shall not be liable for the theft thereof or any damage thereto occasioned by any act of co-tenants, occupants, invitees or other users of the Building or buildings of which the Demised Premises may be a part or any other person. Lessor shall not at any time be liable for damage to any property in or upon the Demised Premises, which results from gas, smoke, water, rain, ice or snow which issues or leaks from or forms upon any part of the Building or buildings or which the Demised Premises may be a part, or from the pipes or plumbing work of the same, or from any other place whatsoever, unless such damage results from defects or conditions or which Lessee has given Lessor written notice and Lessor has failed to perform Lessor's obligation to correct same in a prompt and timely manner.

## **28. Eminent Domain**



(a) If title to any part of the Demised Premises is taken for any public or quasi-public use by virtue of the exercise of the power of eminent domain or private purchase in lieu thereof, or if title to so much of the Building or buildings of which the Building may be a part is taken that a reasonable amount of reconstruction thereof will not in Lessor's sole discretion result in the Demised Premises, or the Building or such other buildings being a practical improvement and reasonably suitable for use for the purpose for which they are designed, then, in either event, this Lease Agreement shall terminate, at the option of Lessor, on the date that the condemning authority actually takes possession to the part so condemned or purchased. If title to the whole of the Demised Premises or such Building or buildings is taken by eminent domain or private purchase in lieu thereof, then this Lease Agreement shall terminate as of the date possession is so taken by the condemning authority.

(b) If this Lease Agreement is terminated under the provisions of this Article 28, rent shall be apportioned and adjusted as of the date of termination. Lessee shall have no claim against Lessor (but Lessor shall not prevent Lessee from having any claims against the condemning authority so long as Lessee looks solely to the condemning authority for the resolution of such claim) for the value of any leasehold estate or for the value of the unexpired Lease Term. However, Lessee may claim any unamortized costs of leasehold improvements made by Lessee (excluding those costs paid by the construction allowance hereunder) and any relocation expenses recoverable under applicable law.

(c) If there is a partial taking of the Demised Premises, the Building or such other buildings and this Lease Agreement is not thereupon terminated under the provisions of this Article 28, then this Lease Agreement shall remain in full force and effect, and Lessor shall, within a reasonable time thereafter, repair and restore the remaining portion of the Demised Premises, should they be affected, to the extent necessary to render the same tenantable, and shall repair or reconstruct the remaining portion of the Building to the extent necessary to make the same a complete architectural unit; provided that such work shall not exceed the scope of the work required to be done by Lessor in originally constructing such Building or the Demised Premises. Lessor shall also provide to Lessee an allowance not exceeding \$25,000 toward Lessee's costs of improvements for repair or reconstruction of the remaining portion of the Demised Premises; provided, however, Lessor shall not be required to expand more than the net proceeds of the condemnation award which are paid to Lessor in complying with its obligations hereunder.

(d) All compensation awarded or paid upon a total or partial taking of the Demised Premises or the Building or such other buildings shall belong to and be the property of Lessor without any participation by Lessee (except as otherwise provided in subparagraph (b) hereinabove or as hereafter provided). Nothing herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority from loss of business, damage to, and cost of removal of, trade fixtures, furniture and other personal property belonging to Lessee; provided, however, that no such claim shall diminish or adversely affect Lessor's award.

(e) After any partial taking of the Demised Premises which does not result in a termination of this Lease Agreement the Base Rent (as escalated) for the remainder of the Lease Term shall be reduced by the same percentage as the floor area of the space taken bears to the total floor area originally in the Demised Premises, and any other charges provided for hereunder shall be equitably adjusted.

## 29. Parties

The term "Lessor", as used in this Lease Agreement, shall include Lessor and its assigns and successors in title to the Demised Premises. The term "Lessee" shall include Lessee and its heirs, legal representatives and successors, and shall also include Lessee's assignees and sublessee, if this Lease Agreement shall be validly assigned or the Demised Premises sublet for the balance of the Lease Term or any renewals or extensions thereof.

## 30. Liability of Lessee

Lessee hereby indemnifies Lessor from and agrees to hold Lessor harmless against, any and all liability, loss, cost, damage or expense arising from injury to Lessee or Lessee's servants or employees or any other invitee or business visitor or person while in or upon the Demised Premises unless same results from the negligence or willful misconduct of Lessor. Lessee hereby indemnifies Lessor and agrees to hold Lessor harmless from and against all claims for damages to persons or property arising by reason of the negligence or willful misconduct of Lessee in the use or occupancy of the Demised Premises, including all attorney's fees and other expenses incurred by Lessor as a result thereof. Lessee hereby further indemnifies Lessor and agrees to hold Lessor harmless in connection with damage or injury to Lessor, the Demised Premises, or property or persons of Lessor's other tenants or any other party or parties, person or persons, if due to wrongful act or neglect of Lessee, or any of its employees, servants, agents,





~~representatives or invitees, or otherwise occurring in connection with any default of Lessee hereunder. The provisions of this Article 30 shall survive any termination of this Lease Agreement.~~

### **31. Relocation of the Premises**

There shall be no relocation of the Demised Premises unless otherwise agreed to by Lessor and Lessee in writing.

### **32. Force Majeure**

In the event of strike, lockout, labor trouble, civil commotion, Act of God, or any other cause beyond either party's control (collectively "force majeure") resulting in such party's inability or delay to supply the services or perform the other obligations required hereunder, this Lease Agreement shall not terminate and such performance shall be excused for a reasonable time given the nature of the cause. Nothing contained herein shall be construed to provide for an abatement of Base Rent, additional rent or any other charge or sum due and payable by Lessee hereunder.

### **33. Lessor's Liability**

Lessor shall have no personal liability with respect to any of the provisions of this Lease Agreement. If Lessor is in default with respect to its obligations under this Lease Agreement, Lessee shall look solely to the equity of Lessor in and to the Building for satisfaction of Lessee's remedies, if any. It is expressly understood and agreed that Lessor's liability under the terms of this Lease Agreement shall in no event exceed the amount of its interest in and to the Building. Notwithstanding that Lessor may own or have some other interest in any parking facility in the vicinity of the Building, the use of any such facility by Lessee, provided under this Lease Agreement, shall not be deemed to be an appurtenance to the Demised Premises and Lessor makes no representations or warranties with respect to said facilities or their availability.

### **34. Security Deposit/Prepaid Rent**

As security for the faithful performance by Lessee throughout the Lease Term of all the terms and conditions of the Lease Agreement on the part of Lessee to be performed, Lessee has deposited with Lessor the sum equal to the first month's rent as of the beginning of this lease. Such amount shall be returned to Lessee, without interest, on the day set forth for the expiration of the Lease Term, provided Lessee has fully and faithfully observed and performed all of the terms, covenants, agreements, warranties, and conditions hereof. Lessor shall have the right to apply all or any part of said deposit toward cure of any default of Lessee.

### **35. Submission of Lease**

The submission of this Lease Agreement for examination does not constitute an offer to lease and this Lease Agreement shall be effective only upon execution hereof by Lessor and Lessee.

### **36. Severability**

If any clause or provision of the Lease Agreement is illegal, invalid or unenforceable under present or future laws, the remainder of the Lease Agreement shall not be affected thereby, and in lieu of each clause or provision of this Lease Agreement which is illegal, invalid or unenforceable, there shall be added as a part of this Lease Agreement a clause or provision as nearly identical to the said clause or provision as may be legal, valid and enforceable.

### **37. Guaranty**

The undersigned guarantors hereby **jointly, severally and irrevocably** guarantee the payment of the rent and all other sums to be paid by Tenant under and pursuant to the Lease (for a term of 3 years), as well as the proper performance by Tenant thereunder, and the undersigned jointly and severally promise to pay all of Landlord's expenses, including, but not limited to, reasonable attorneys' fees, incurred in enforcing any obligations of Tenant under the Lease or incurred in enforcing the Lease or this guaranty. The undersigned hereby agree that Landlord (without in any way limiting or relieving the liability of the



~~undersigned hereunder) may at any time to time, and in reliance on this guaranty, without notice to or further consent from the undersigned, retain, obtain or release any collateral securing any of Tenant's obligations under the Lease, retain, obtain or release any party primarily or secondarily liable with respect to any of Tenant's obligations under the Lease and extend, renew or modify any of Tenant's obligations under the Lease, regardless of whether or not said extension, renewal or modification might be deemed to increase the risk of the undersigned hereunder. If Lessor accepts an assignment of this Lease, Guarantor shall be relieved of any further liability under the Lease. The undersigned expressly waive the right to require Landlord to take action against Tenant as provided for in any existing Tennessee or Knox County code, as amended, and further waive and renounce any and all homestead or exemption rights they or their families may have under or by virtue of the constitution or laws of Tennessee, any other State or United States, as against the liability hereby created.~~

### **38. Entire Agreement**

This Lease Agreement contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise between the parties not embodied herein shall be of any force or effect. No failure of either party to exercise any power given such party hereunder, or to insist upon strict compliance with any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

### **39. Obligation to Insure**

On or before the Commencement Date and thereafter during the Lease Term, or any renewals or extensions thereof, on or before the first day of the first month of each Lease Year, Lessee shall deliver to Lessor a certificate of a policy or renewal policy of public liability insurance insuring Lessor and Lessee, and their officers, employees, agents and representatives against loss or damage arising from injury to persons or property occurring within the Demised Premises, which policy, or renewal policy, shall (a) provide that it is noncancellable without thirty (30) days prior written notice to Lessor, (b) have such limits as may be consistent with required insurance coverages in other similar retail leases in downtown Knoxville, (c) name Lessor as an additional insured; and (d) be accompanied by proof of payment of the premium therefor. Lessor shall maintain casualty and public liability insurance with such coverages and limits as Lessor deems reasonable and appropriate. Lessee shall maintain satisfactory property damage insurance on it's own property.

### **40. Headings**

The use of headings herein is solely for the convenience of indexing the various paragraphs hereof and shall in no event be considered in construing or interpreting any provision of this Lease Agreement.

## **AGENCY DISCLOSURE**

**41.** Lessor and Lessee hereby acknowledge that there are no agents involved in this lease agreement and that no real estate commissions shall be due to any real estate agents for this lease agreement.

**42.** Intentionally Omitted.

**43. Delivery Date/Commencement Date/Delays:** Notwithstanding anything to the contrary contained in this Lease, if Landlord is unable to deliver the Premises with the tenant improvements (as outlined in Exhibit "B" attached hereto) "substantially complete" by the Commencement Date, for any reason other than delay caused by Lessee, the Commencement Date shall be delayed by a period equal to the number of days of delay not caused by Tenant and the Expiration Date, Extension Period dates, dates for exercise of extension Options, and other dates specified in this Lease that are based upon the original date specified as the commencement Date shall be delayed by like period.

**44. Signage:** All of Tenant's Signage (except for signage located within the inside of Tenant's Premises) shall conform to Knox County, City of Knoxville or other applicable codes and must be approved by Landlord. If Tenant places any signage within the exterior of the Premises or facade of the building in



which the Premises are located, without Landlord's approval, Landlord reserves the right to remove such signage at Tenant's expense.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

"LESSOR" - Preservation Public, LLC,

By: Sam West

Its: OWNER

Witness: \_\_\_\_\_

"LESSEE" - World Market Squared, LLC

By: Susie Dew

Its: Chief Organizer, Owner

Witness: \_\_\_\_\_

State of Tennessee  
County of Knox

On November 22, 2005, personally appeared before me Scott West + Susie Dew, whom I know personally or whose identity I verified to be the signer, and they above and he/she acknowledged that he/she signed \_\_\_\_\_



Lisa M. Ingle  
My commission expires 2-4-07



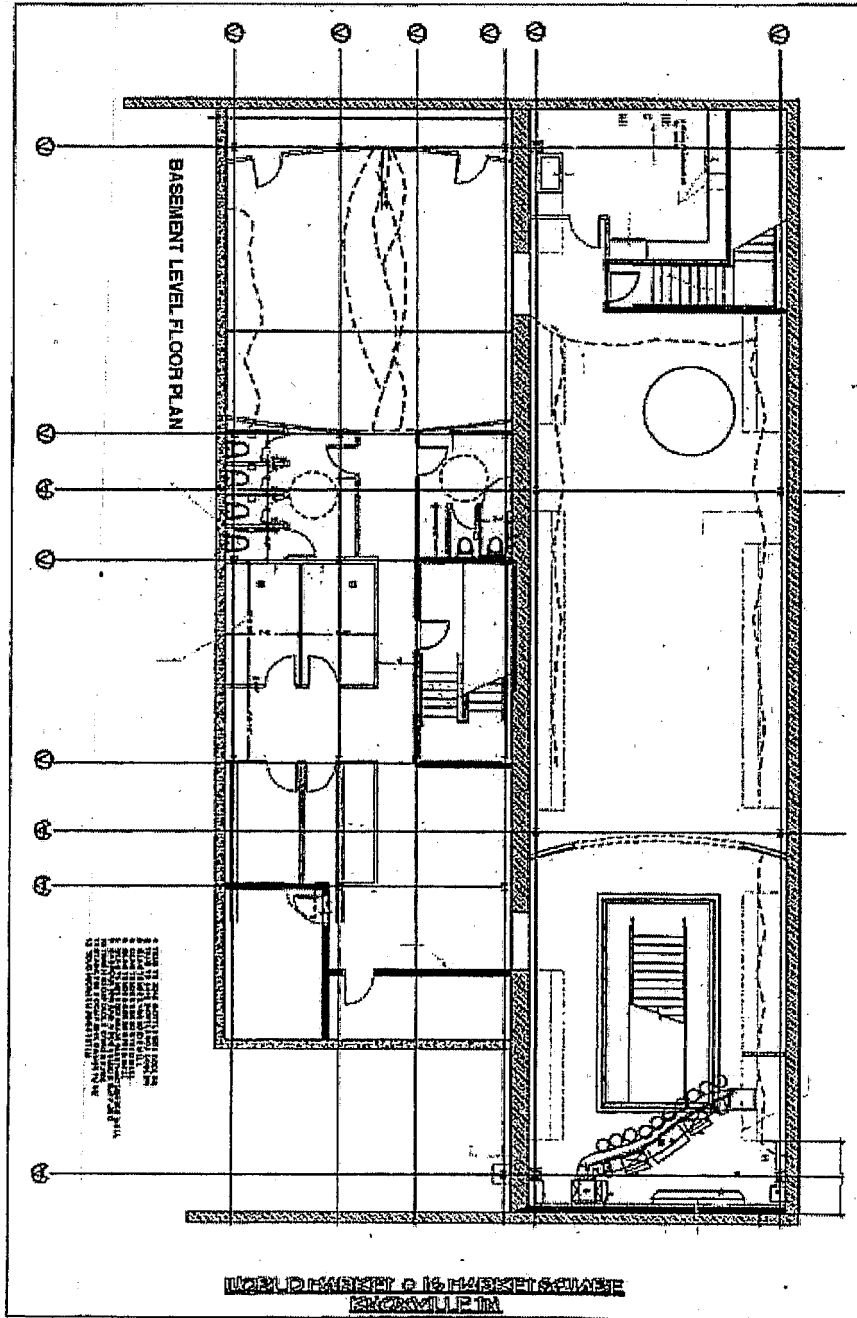
**Exhibit "B" - "Lessor's Work"**

Prior to the Commencement Date (outlined in Paragraph 43 herein), Lessor shall, at Lessor's expense, have performed the following "Tenant Improvements" at the Premises. Lessor agrees to construct the Tenant Improvements for the Premises in a good and workmanlike manner. Notwithstanding the foregoing, all changes, modification, substitutions or additions to the Tenant Improvements shall be at the sole cost and expense of Lessee, which cost and expense shall be due and payable to Lessor in full at the time each change order is approved by Lessee. If Lessee's, changes, modifications, substitutions or additions to the Tenant Improvements cause Lessor to deliver the Premises later than the Commencement Date, rent shall not abate for such period (as outlined in paragraph 43 herein).

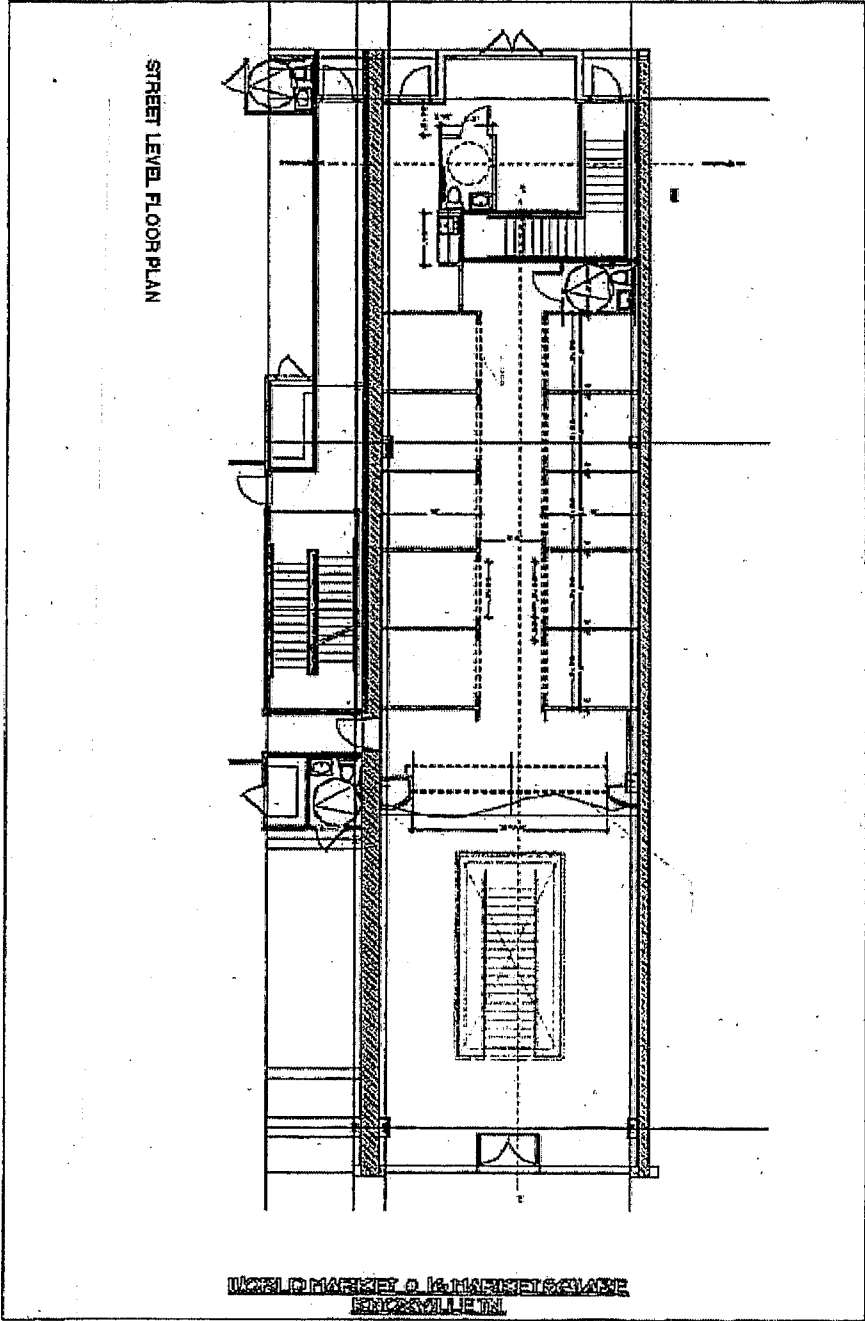
Tenant Improvements, to be paid for by Lessor, will include the following:

- (1) Inside surface drywall (or brick when practical) for outer building walls and installed building standard window storefronts. A concrete, wood or VCT (or combination thereof) sub floor which is ready for finish flooring (by Tenant). If Premises has a demising wall, demising wall shall be dry-walled, taped and ready to paint. Walls will be exposed brick or plaster (where the brick can be practically restored) or drywall at each side that can be left exposed or can be covered by Tenant.
- (2) Complete sprinkler system.
- (3) Electrical System to supply adequate power and lighting to meet the code requirements.
- (4) Fireproofing materials and labor to obtain the proper fire code deemed necessary by the Fire Marshall.
- (5) Completed building standard HVAC system installed; including ductwork or diffusers. The building standard HVAC system shall be capable of delivering 1 ton (HVAC) per 300 square feet leased, and will be independently mounted. Tenant shall be responsible for the ongoing maintenance, repair and replacement of HVAC.
- (6) Installed, separate electric meter, 200 amp distribution panel, with minimal outlets located along the perimeter of the Premises and lighting. All additional wiring and lighting will be Lessee's responsibility.
- (7) Three restrooms areas stubbed with hot/cold water and waste which shall accommodate a lavatory and, sink, per bathroom (fixtures to be installed by Lessee, and adequate lighting in each restroom. To include pump systems necessary for proper function.
- (8) Refurbished storefront and entrance will be provided, by Lessor.
- (9) Lessee shall be responsible for all other plumbing and/or venting related to Lessee's need to vent for cooking. **Lessor shall not provide any venting for Lessee's cooking needs.**
- (10) Lessor shall have a plumbing water line stubbed in or below Lessee's Premises.

Except as expressly set forth above, Lessor is not required to perform any further work in regard to making the Demised Premises available for Lessee, and any and all additional work in excess of that described above shall be performed by Lessee at its sole cost and expense.



STREET LEVEL FLOOR PLAN



WORLD MARKET & HARDWARE  
SPRINGVILLE, TN



Earth to Old City

**Preservation Public  
LEASE AGREEMENT**

THIS LEASE AGREEMENT ("LEASE AGREEMENT"), made and entered into this 1st day of August, 2005 by and between Preservation Public LLC, whose address for purposes hereof is 18 Market Square, Knoxville, TN 37902 (hereinafter referred to as "Lessor" or "Landlord"), and Earth To Old City Inc., (hereinafter referred to as "Lessee" or "Tenant").

**WITNESSETH:**

**1. Description of Premises**

Lessor, in consideration of the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Lessee, and Lessee does hereby rent and lease from Lessor, that certain space (the "Demised Premises") known as 22 Market Square Market Square, Knoxville, TN., 37902 containing approximately 2,400 rentable square feet of street level space in a building situated in the Market Square located in downtown Knoxville, Knox County, TN 37902 (the "Building") on that tract of land more particularly described in "Exhibit A" and "Exhibit A-1" attached hereto and by this reference made a part hereof, with no easement for light or air included in the Demised Premises, or being granted hereunder.

**2. Term**

Lessee takes and accepts from Lessor the Demised Premises upon the terms and conditions herein contained and in their present condition and as suited for the use intended by Lessee (for a term of 10 years), to have and to hold the same for a term (the "Lease Term") beginning on September 1<sup>st</sup> 2005 (the "Commencement Date"). The Lease shall end at midnight upon the last day of the 120th consecutive calendar month thereafter (the "Termination Date") unless sooner terminated as herein provided. In the event the Termination Date shall occur on a Saturday, Sunday or national holiday the Lease Term shall be extended to midnight of the next business day.

**3. Possession**

Lessee shall take possession on the 1<sup>st</sup> day of September, 2005 or sooner if Lessor has completed its base building work at the Premises.

**4. Rental**

Lessee shall pay to Lessor as rent, in legal tender of the United States, in advance on the first day of every calendar month during the Lease Term, without offset or deduction of any kind to the amounts itemized below per month for each year. A prorated monthly installment, based on a thirty-day month, shall be paid in advance for any fraction of a month if the Lease Term shall begin on any day except the first day or shall be terminated on any day except the last day of any month. Lessee shall have an option to renew said premises for a second 10 year term at a base rent of \$3240/ month.

Year 1 Commencing September 1<sup>st</sup> 2005 - the "Rental Commencement Date". Rent Shall be \$2,700 for the next 120 months.

~~THIS BASE RENTAL INCLUDES does not include PROPERTY TAXES, BUILDING INSURANCE, utilities or any other common area maintenance charges, all of which shall be the responsibility of Lessee.~~

**Note: Lessee shall deposit the first months rent and a Security Deposit equal to the first months rent upon execution of the Lease Agreement.**

## **5. Payments**

All payments of rent, additional rent and other payments to be made to Lessor shall be made on a timely basis and shall be payable to Lessor or as Lessor may otherwise designate by written notice. All such payments shall be mailed or delivered to Lessor's agent, 18 Market Square, Knoxville TN 37902 (check payable to Preservation Public LLC) or at such other place as Lessor may designate from time to time in writing. If mailed, all payments shall be mailed in sufficient time and with adequate postage thereon to be received in Lessor's account by no later than the due date for such payment. Lessee agrees to pay to Lessor Fifty Dollars (\$50.00) for each check presented to Lessor in payment of any obligation of Lessee which is not paid by the bank on which it is drawn.

## **6. Late Charges**

If base rental payments are received later than the 5<sup>th</sup> of each month when due, Lessee shall pay Lessor a late fee equal to \$300 for each payment has not been received after the 5<sup>th</sup> of each month. Any rental or other amounts payable to Lessor under this Lease Agreement shall also incur a monthly service charge at the rate of 18% per annum from and after the due date for such payment, if not paid by the fifth day of the month for which such rent is due, or by the due date specified on any invoices from Lessor for any other amounts payable hereunder. In no event shall the rate of interest payable on any late payment exceed the legal limits for such interest enforceable under applicable law.

## **7. Use Rules**

The Demised Premises shall be used for retail and no other purposes and in accordance with the Rules and Regulations attached hereto and made a part hereof and all laws and ordinances (federal, state, county, or municipal, including, without limitation, environmental) as well as applicable orders and requirements. Lessee covenants and agrees to abide by said Rules and Regulations in all respects as now set forth and attached hereto or as hereafter promulgated by Lessor. Lessor shall have the right at all times during the Lease Term to publish and promulgate and thereafter enforce such rules and regulations or changes in the existing Rules and Regulations as it may reasonably deem necessary in its sole discretion to protect the tenantability, safety, operation and welfare of the Demised Premises and of the Building or buildings of which the Demised Premises are a part.

## **8. Repairs by Lessor**

(a) Lessor shall not be required to make any repairs or improvements to the Demised Premises except structural repairs necessary for safety and tenantability exclusive of all glass and all exterior doors. Lessee shall make no alterations in, or additions to, the Demised Premises without first obtaining, in writing, Lessor's consent for such alterations or additions. All such alterations or additions shall be at the sole cost and expense of Lessee and shall become a part of the Demised Premises and shall be the property of Lessor. Lessor shall deliver the demised Premises in the condition described under Exhibit "B" - Landlord's Work. "Landlord's Work" shall be attached and become a part of this Lease Agreement.

## **9. Repairs by Lessee**

(a) Lessee covenants and agrees that it will take good care of the Demised Premises, its fixtures and appurtenances, and suffer no waste or injury thereto and keep and maintain same in good and clean condition.

(b) Lessee shall be liable for and shall hold Lessor harmless in respect of: damage or injury to Lessor, Demised Premises, and property or persons of Lessor's other tenants, or anyone else, if due to



wrongful act or neglect of Lessee, or Lessee's agents, employees, licensees or invitees. Lessee shall use best efforts to at once report, in writing or by verbal notice to Lessor any defective or dangerous condition known to Lessee and not otherwise known to Lessor, and failure to so report any defective or dangerous condition known to Lessee which should have been reported to Lessor and could not have been known to Lessor except by report from Lessee shall make Lessee responsible and liable for damages resulting from such defective condition.

#### 10. Lessor's Right of Entry

Lessor shall retain duplicate keys to all doors of the Demised Premises and Lessor and its agents, employees and independent contractors shall have the right to enter the Demised Premises at reasonable hours to inspect and examine same, to make repairs, additions, alterations, and improvements, to exhibit and card Demised "For Rent" or "For Sale" to prospective purchasers or tenants (provided that Lessor shall not exhibit the Demised Premises to prospective tenants except during the last 180 days of the Lease Term) and to inspect the Demised Premises to ascertain that Lessee is complying with all of its covenants and obligations hereunder, all without being liable to Lessee in any manner whatsoever for any damages arising therefrom. During such time as such work is being carried on in or about the Demised Premises, the rent provided herein shall not abate, and Lessee waives any claim or cause of action against Lessor for damages by reason of interruption of Lessee's business or loss of profits therefrom because of the prosecution of any such work or any part thereof. Notwithstanding anything to the contrary contained in Article 10 of this lease, if Lessee's use and occupancy of the Demised Premises are substantially disrupted by any repairs, additions, alterations or improvements made by Lessor so that Lessee is unable to operate its Business therein for a period exceeding two consecutive business days, then Lessee shall thereafter be entitled to an abatement of Base Rent until such work by Lessor is completed.

#### 11. Default

(a) The following events shall be deemed to be events of default by Lessee under this Lease Agreement: (i) Lessee shall fail to pay any installment of Base Rent, additional rent or any other charge or assessment against Lessee pursuant to the terms hereof when due which failure continues for five business days after written notice thereof from Lessor to Lessee; (ii) Lessee shall fail to comply in every material respect with any term, provision, covenant or warranty made under this Lease Agreement by Lessee, other than the payment of the Base Rent or additional rent or any other charge or assessment payable by Lessee, and shall not cure such failure within fifteen (15) days after notice thereof to Lessee or if such failure is not capable of being cured within 15 days, commence efforts to cure within 15 days and pursue such efforts diligently to completion; (iii) Lessee or any guarantor of the Lease Agreement shall become insolvent, or shall make a transfer in fraud of creditors or shall make an assignment other than a collateral assignment in a financing transaction for the benefit of creditors; (iv) Lessee or any guarantor of this Lease Agreement shall file a petition under any Section or Chapter of the National Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Lessee or any guarantor of this Lease Agreement a petition in bankruptcy or insolvency or a similar proceeding which is not dismissed within 90 days after Lessee receives notice thereof, or Lessee or any guarantor shall be adjudged bankrupt or insolvent in proceedings filed against Lessee or any such guarantor; (v) a receiver or trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Lessee or of any guarantor of this Lease Agreement; (vi) Lessee shall abandon or vacate all or any portion of the Demised Premises or fail to take possession thereof as provided in this Lease Agreement; or (vii) Lessee shall do, or permit to be done anything which creates a lien upon the Demised Premises which lien is not removed by payment or bond within 30 days after Lessee receives notice thereof.

(b) Upon the occurrence of any of the aforesaid events of default, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever: (i) terminate this Lease Agreement, in which event Lessee shall immediately surrender the Demised Premises to Lessor and if Lessee fails to do so, lessor may without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Demised Premises and expel or remove Lessee and any other person who may be occupying said Demised Premises or any part thereof, by force, if necessary, as permitted by Tennessee law without being liable for prosecution or any claim of damages therefor; Lessee hereby agreeing to pay to Lessor on demand the amount of all Base Rent and

other charges accrued through the date of termination; (ii) enter upon and take possession of the Demised Premises and expel or remove Lessee and any other person who may be occupying said Demised Premises or any part thereof, by force, if necessary, as permitted by Tennessee law, without being liable for prosecution or any claim of damages thereof and, if Lessor so elects, re-let the Demised Premises on such terms as Lessor may reasonably deem advisable, without advertisement, and by private negotiations provided that in such event Lessor shall use reasonable efforts to re-let the Demised Premises at then-prevailing rental rates for comparable space in the Building, and receive the rent therefor, Lessee hereby agreeing to pay to Lessor the deficiency, if any, between all rent reserved hereunder and the total rental applicable to the Lease Term hereof obtained by Lessor re-letting, and Lessee shall be liable for Lessor's expenses in restoring the Demised Premises and all costs incident to such re-letting; (iii) enter upon the Demised Premises by force if necessary as permitted by Tennessee law, without being liable for prosecution or any claim of damages therefor, and do whatever Lessee is obligated to do under the terms of this Lease Agreement; and Lessee agrees to reimburse Lessor on demand for any expenses including, without limitation, reasonable attorney's fees which Lessor may incur in thus effecting compliance with Lessee's obligations under this Lease Agreement and Lessee further agrees that Lessor shall not be liable for any damages resulting to Lessee from such action, unless caused by negligence of Lessor.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Base Rent, additional rent or other charges and assessments payable by Lessee and due to Lessor hereunder or of any damages accruing to Lessor by reason of violation of any of the terms, covenants, warranties and provisions herein contained. No action taken by or on behalf of Lessor shall be construed to be an acceptance of a surrender of this Lease Agreement. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss or damage which Lessor may suffer by reason of termination of this Lease Agreement or the deficiency arising by reason of any re-letting of the Demised Premises by Lessor as above provided, allowance shall be made for expense of repossession.

If Lessee shall vacate, abandon or fail to use the leased premises for a period in excess of 45 days for the use for which it was leased, Lessor may, at its option, exercise any and all of the remedies listed herein. No such remedy herein otherwise conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this lease to Lessor may be exercised from time to time and as often as the occasion may arise or as may be deemed expedient and/or proper.

## **12. Waiver of Breach**

No waiver of any breach of the covenants, warranties, agreements, provisions or conditions contained in this Lease Agreement shall be construed as a waiver of said covenant, warranty, provision, agreement or condition or of any subsequent breach thereof, and if any breach shall occur and afterwards be comprised, settled or adjusted, this Lease Agreement shall continue in full force and effect as if no breach had occurred.

## **13. Assignment and Subletting**

Lessee shall not, sublease or assign this lease agreement without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed (Lessor's consent will take into account the identity, business reputation, use, and net worth of the proposed assignee). Lessee shall have the right to make a collateral assignment of its interest hereunder to a reputable financial institution, provided such institution shall agree in a form satisfactory to Lessor to assume all duties and obligations of Lessee in the event that such institution shall exercise its right under said collateral assignment. Consent to one or more such transfers or subleases shall not destroy or waive this provision and all subsequent transfers and subleases shall likewise be made only upon obtaining the prior written consent of Lessor. Notwithstanding anything to the contrary contained in Article 13 of this Lease, Lessee shall be permitted, without the necessity of obtaining Lessor's prior written consent, to assign Lessee's interest hereunder to a parent, subsidiary or affiliated corporation of Lessee, provided Lessee shall remain liable hereunder, or to assign Lessee's interest hereunder to the surviving corporation of any merger provided said surviving corporation shall assume all of Lessee's obligations hereunder and shall have a net worth not less than the net worth

of Lessee immediately prior to the merger. If Lessor accepts an assignment of this Lease, Lessee shall be relieved of any further liability under the Lease.

#### **14. Destruction**

(a) If the Demised Premises are partially or totally destroyed by fire or other casualty insurable under standard fire insurance policies with extended coverage endorsement so as to become partially or totally un-tenantable, the same shall be repaired or rebuilt as speedily as practical under the circumstances at the expense of the Lessor, unless Lessor elects not to repair or rebuild as provided in Subparagraph (b) of this Article 14.

(b) If the Demised Premises are (i) rendered totally untenable by reason of an occurrence described in Subparagraph (a) or (ii) damaged or destroyed as a result of a risk which is not insured under standard fire insurance policies with extended coverage endorsement, or (iii) damaged or destroyed during the last eighteen (18) months of the Lease Term or (iv) damaged to such an extent that the Demised Premises cannot be repaired or rebuilt within 90 days from the date of such occurrence, or if the Building is damaged in whole or in part (whether or not the Demised Premises are damaged), to such an extent that the Building cannot, in Lessor's judgement, be operated economically as an integral unit, then and in any such events either party may at its option terminate this Lease Agreement by notice in writing to the other party within sixty (60) days after the date of such occurrence. Unless either party gives such notice, this Lease Agreement will remain in full force and effect and Lessor shall repair such damage at its expense as expeditiously as possible under the circumstances.

(c) If Lessor should elect or be obligated pursuant to Subparagraph (a) above to repair or rebuild because of any damage or destruction, Lessor's obligation shall be limited to the original Building and any other work or improvements which may have been originally performed or installed at Lessor's expense. If the cost of performing Lessor's obligation exceeds the actual proceeds of insurance paid or payable to Lessor on account of such casualty, either party may terminate this Lease Agreement unless Lessee, within fifteen (15) days after demand therefor, deposits with Lessor a sum of money sufficient to pay the difference between the cost of repair and the proceeds of the insurance available for such purpose. Lessee shall replace all work and improvements not originally installed or performed by Lessor at its expense.

(d) In no event shall either party be liable for any loss or damage sustained by the other party by reason of casualties mentioned hereinabove or any other accidental casualty.

#### **15. Removal of Fixtures, Equipment & Effects**

Lessee may upon the expiration or termination of the Lease Term or any renewal thereof, remove all personalty and equipment not attached to the Demised Premises which it has placed upon the Demised Premises, provided Lessee restores the Demised Premises to the condition immediately preceding the time of installation thereof reasonable wear and tear excepted. If Lessee does not remove all such personalty and equipment, then Lessor within ten (10) days after the expiration of the Lease Term, shall have the right to notify Lessee to remove any or all such personalty and equipment and thereupon restore the Demised Premises to the condition immediately preceding the time of installation thereof reasonable wear and tear excepted. If Lessee shall fail or refuse to remove all effects, personalty and equipment from the Demised Premises upon the expiration or termination of this Lease Agreement for any cause whatsoever, Lessor may, at its option, remove the same in any manner that Lessor shall choose and store said effects, equipment and personalty without liability for any loss or damage thereto. Lessee shall pay Lessor on demand any and all expenses incurred by Lessor in such removal and storage, including, without limitation, court costs, attorney's fees, and storage charges. Lessor, at its option, may without notice, sell said effects, equipment and personalty or any part thereof at public or private sale and without legal process for such price as Lessor may obtain and apply the proceeds of such sale to any amounts due under this Lease Agreement from Lessee to Lessor after first paying the expense incident to the removal, storage and sale of said effects, equipment and personalty. Any proceeds remaining after payment of all amounts due under this Lease Agreement and all expenses, including reasonable attorneys fees, incident to the removal, storage and sale of such items shall be paid to Lessee. The covenants and conditions of this Article 15 shall survive any expiration or termination of this Lease Agreement.

#### **16. Lessor's Lien**

Lessor shall at all times have a valid lien upon all of the personal property of Lessee situated in the Demised Premises to secure payment of Base Rent, additional rent and other sums and charges due

hereunder from Lessee to Lessor and to secure the performance by Lessee of each and all of the covenants, warranties, agreements and conditions hereof. The lien herein granted may be foreclosed in the manner and form provided by law for the foreclosure of security instruments or chattel mortgages, or in any other manner provided by law.

#### **17. Utility Bills**

Lessee shall pay all utility bills or prorations of said bills including but not limited to water, sewer, gas, electricity, fuel, garbage, light, and heat bills for the Demised Premises. If Lessee fails to pay any of said utility bills, Landlord may pay the same and such payment may be added to the rental of the premises next due as additional rental.

#### **18. Taxes/Tax Escalation/Insurance/Common Area Maintenance**

Lessee shall have separately metered water, electric and gas and Lessee shall be responsible for paying all of the utilities associated with the Premises. Lessee shall pay for its pro-rata share of the property taxes and building insurance costs associated with the Premises. Lessee shall pay for its own liability insurance in an amount not less than \$1,000,000 and shall name Lessor as additional insured. Lessee shall pay for its own insurance covering the contents of its Premises and shall name Lessor as additional insured.

#### **19. Attorney's Fees and Arbitration**

In the event of litigation commenced by either Lessor or Lessee to enforce any obligation of the other party hereunder, all reasonable attorney's fees and expenses of the prevailing party in such litigation shall be paid by the party against whom an adverse final, non-appealable judgement is entered.

Any controversy or claim arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

#### **20. Time**

Time is of the essence of this Lease Agreement and whenever a certain day is stated for payment or performance of any obligation of Lessee, or Lessor, the same enters into and becomes a part of the consideration hereof.

#### **21. Subordination & Attornment**

(a) Lessee agrees that this Lease Agreement shall be subordinate to any mortgage now or hereafter encumbering the Demised Premises or the Building or buildings of which the Demised Premises may be a part or any component thereof, and to all advances made or hereafter to be made upon the security thereof. The terms of this provision shall be self-operative and no further instrument of subordination shall be required by any mortgagee. Lessee, however, upon request of any party in interest, shall execute promptly such instrument or certificates as may be reasonably required to carry out the intent hereof, whether said requirement is that of Lessor or any other party in interest, including, without limitation, mortgages.

(b) If any mortgagee elects to have this Lease Agreement superior to its mortgage and signifies its election in the instrument creating its lien or by separate recorded instrument, then this Lease Agreement shall be superior to such mortgage. The term "mortgage" as used herein, includes any deed to secure debt, deed or trust or security deed and any other instrument creating a lien in connection with any other method of financing or refinancing. The term "mortgagee" refers to the holder of the indebtedness secured by a mortgage.

(c) Within ten (10) days after request therefor by Lessor, Lessee agrees to execute and deliver to Lessor in recordable form an estoppel certificate addressed to any mortgagee or assignee of Lessor's interest in or purchase of the Demised Premises or the Building or buildings of which the Demised Premises may be a part or any part thereof, certifying (if such be the case) that this Lease Agreement is unmodified and is in full force and effect (and if there have been modifications, that the same is in full force and effect as modified and stating said modifications); that there are no defenses or offsets against the enforcement thereof or stating those claimed by Lessee; and stating the date to which Base Rent,

additional rent and other charges have been paid. Such certificate shall also include such other information as may reasonably be required by such mortgagee, proposed mortgagee, assignee, purchaser or Lessor.

(d) In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage made by Lessor covering the Demised Premises or the Building or buildings of which the Demised Premises are a part, or in the event of termination of any lease under which Lessor may hold title, Lessee shall attorn to the purchaser at foreclosure or under power of sale, or to the assignee or transferee of Lessor's interest or to the lessor of the Lessor upon such lease termination, as the case may be, and shall recognize such person as the Lessor under this Lease Agreement provided such purchaser, assignee, transferee or other party in interest shall agree in a form reasonably acceptable to Lessee not to disturb Lessee's tenancy hereunder. Lessee agrees that the institution of any suit, action or other proceeding by any mortgagee to realize on Lessor's interest in the Demised Premises or the Building or buildings of which the Demised Premises may be a part pursuant to the powers granted to a mortgagee under its mortgage, shall not by operation of law or otherwise, result in the cancellation or termination of the obligations of the Lessee hereunder. Lessor and Lessee agree that notwithstanding that this Lease Agreement is expressly subject and subordinate to any mortgages, any mortgagee, its successors and assigns, or other holder of a mortgage or of a note secured thereby, may sell the Demised Premises or the Building or buildings of which the Demised Premises or the Building or buildings of which the Demised Premises are a part, in the manner provided in the mortgage and may, at the option of such mortgagee, its successors and assigns, or other holder of the mortgage or note secured thereby, make such sale of Demised Premises or Building or buildings of which the Demised Premises are a part subject to this Lease Agreement. In addition, Lessor and Lessee covenant and agree that Lessor's right to transfer or assign Lessor's interest in and to the Demised Premises, or any part or parts thereof, shall be unrestricted, and that in the event of any such transfer or assignment by Lessor which includes the Demised Premises, Lessor's obligation to Lessee hereunder shall cease, Lessee looking only and solely to Lessor's assignee or transferee for performance thereof, provided, that such assignee or transferee assumes Lessor's obligations hereunder and agrees to be bound by the terms of this Lease.

#### **22. No Estate**

This Lease Agreement shall create the relationship of landlord and tenant only between Lessor and Lessee and no estate shall pass out of Lessor. Lessee shall have only a usufruct, not subject to lien, levy and sale and not assignable in whole or in part by Lessee except as provided herein. Lessor acknowledges that Lessee's interest hereunder is not lienable and agrees that any asserted lien claim thereon shall not constitute an event of default hereunder.

#### **23. Cumulative Rights**

All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative to, but not restrictive of, or in lieu of those conferred by law.

#### **24. Holding Over**

If Lessee remains in possession after expiration or termination of the Lease Term with or without Lessor's written consent, Lessee shall become a tenant-at-sufferance, and there shall be no renewal of this Lease Agreement by operation of law. During the period of any such holding over, all provisions of this Lease Agreement shall be and remain in effect except that the monthly rental shall be multiplied by 1.5x (or 150%) the amount of rent (including any adjustments as provided herein) payable for the last full calendar month of the Lease Term including renewals or extensions. The inclusion of the preceding sentence in this Lease Agreement shall not be construed as Lessor's consent for Lessee to hold over.

#### **25. Surrender of Premises**

Upon the expiration or other termination of this Lease Agreement Lessee shall quit and surrender to Lessor the Demised Premises, broom clean in the same condition as at the commencement of the original Lease Term, reasonable wear and tear only excepted, and Lessee shall remove all of its personalty from the Demised Premises. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease Agreement.

#### **26. Notices**

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given, whether actually received or not, on the third business day after such notice is deposited, postage prepaid, in the United States Mail, certified, return receipt requested, and addressed to Lessor or Lessee at their respective address set forth hereinabove or at such other address as either party shall have theretofore given to the other by notice as herein provided. If notice is given by hand delivery, notice shall be deemed given on the day received. Landlord's notice is outlined in the first paragraph of page 1. Tenant's address shall be 18-20 Market Square, Knoxville, TN 37902.

#### **27. Damage or Theft of Personal Property**

All personal property brought into the Demised Premises by Lessee, or Lessee's employees or business visitors, shall be at the risk of Lessee only, and Lessor shall not be liable for the theft thereof or any damage thereto occasioned by any act of co-tenants, occupants, invitees or other users of the Building or buildings of which the Demised Premises may be a part or any other person. Lessor shall not at any time be liable for damage to any property in or upon the Demised Premises, which results from gas, smoke, water, rain, ice or snow which issues or leaks from or forms upon any part of the Building or buildings or which the Demised Premises may be a part, or from the pipes or plumbing work of the same, or from any other place whatsoever, unless such damage results from defects or conditions or which Lessee has given Lessor written notice and Lessor has failed to perform Lessor's obligation to correct same in a prompt and timely manner.

#### **28. Eminent Domain**

(a) If title to any part of the Demised Premises is taken for any public or quasi-public use by virtue of the exercise of the power of eminent domain or private purchase in lieu thereof, or if title to so much of the Building or buildings of which the Building may be a part is taken that a reasonable amount of reconstruction thereof will not in Lessor's sole discretion result in the Demised Premises, or the Building or such other buildings being a practical improvement and reasonably suitable for use for the purpose for which they are designed, then, in either event, this Lease Agreement shall terminate, at the option of Lessor, on the date that the condemning authority actually takes possession to the part so condemned or purchased. If title to the whole of the Demised Premises or such Building or buildings is taken by eminent domain or private purchase in lieu thereof, then this Lease Agreement shall terminate as of the date possession is so taken by the condemning authority.

(b) If this Lease Agreement is terminated under the provisions of this Article 28, rent shall be apportioned and adjusted as of the date of termination. Lessee shall have no claim against Lessor (but Lessor shall not prevent Lessee from having any claims against the condemning authority so long as Lessee looks solely to the condemning authority for the resolution of such claim) for the value of any leasehold estate or for the value of the unexpired Lease Term. However, Lessee may claim any unamortized costs of leasehold improvements made by Lessee (excluding those costs paid by the construction allowance hereunder) and any relocation expenses recoverable under applicable law.

(c) If there is a partial taking of the Demised Premises, the Building or such other buildings and this Lease Agreement is not thereupon terminated under the provisions of this Article 28, then this Lease Agreement shall remain in full force and effect, and Lessor shall, within a reasonable time thereafter, repair and restore the remaining portion of the Demised Premises, should they be affected, to the extent necessary to render the same tenantable, and shall repair or reconstruct the remaining portion of the Building to the extent necessary to make the same a complete architectural unit; provided that such work shall not exceed the scope of the work required to be done by Lessor in originally constructing such Building or the Demised Premises. Lessor shall also provide to Lessee an allowance not exceeding \$25,000 toward Lessee's costs of improvements for repair or reconstruction of the remaining portion of the Demised Premises; provided, however, Lessor shall not be required to expend more than the net proceeds of the condemnation award which are paid to Lessor in complying with its obligations hereunder.

(d) All compensation awarded or paid upon a total or partial taking of the Demised Premises or the Building or such other buildings shall belong to and be the property of Lessor without any participation by Lessee (except as otherwise provided in subparagraph (b) hereinabove or as hereafter provided). Nothing herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority from loss of business, damage to, and cost of removal of, trade fixtures, furniture and other personal property belonging to Lessee; provided, however, that no such claim shall diminish or adversely affect Lessor's award.

(e) After any partial taking of the Demised Premises which does not result in a termination of this Lease Agreement the Base Rent (as escalated) for the remainder of the Lease Term shall be reduced by the same percentage as the floor area of the space taken bears to the total floor area originally in the Demised Premises, and any other charges provided for hereunder shall be equitably adjusted.

### **29. Parties**

The term "Lessor", as used in this Lease Agreement, shall include Lessor and its assigns and successors in title to the Demised Premises. The term "Lessee" shall include Lessee and its heirs, legal representatives and successors, and shall also include Lessee's assignees and sublessee, if this Lease Agreement shall be validly assigned or the Demised Premises sublet for the balance of the Lease Term or any renewals or extensions thereof.

### **30. Liability of Lessee**

Lessee hereby indemnifies Lessor from and agrees to hold Lessor harmless against, any and all liability, loss, cost, damage or expense arising from injury to Lessee or Lessee's servants or employees or any other invitee or business visitor or person while in or upon the Demised Premises unless same results from the negligence or willful misconduct of Lessor. Lessee hereby indemnifies Lessor and agrees to hold Lessor harmless from and against all claims for damages to persons or property arising by reason of the negligence or willful misconduct of Lessee in the use or occupancy of the Demised Premises, including all attorney's fees and other expenses incurred by Lessor as a result thereof. Lessee hereby further indemnifies Lessor and agrees to hold Lessor harmless in connection with damage or injury to Lessor, the Demised Premises, or property or persons of Lessor's other tenants or any other party or parties, person or persons, if due to wrongful act or neglect of Lessee, or any of its employees, servants, agents, representatives or invitees, or otherwise occurring in connection with any default of Lessee hereunder. The provisions of this Article 30 shall survive any termination of this Lease Agreement.

### **31. Relocation of the Premises**

There shall be no relocation of the Demised Premises unless otherwise agreed to by Lessor and Lessee in writing.

### **32. Force Majeure**

In the event of strike, lockout, labor trouble, civil commotion, Act of God, or any other cause beyond either party's control (collectively "force majeure") resulting in such party's inability or delay to supply the services or perform the other obligations required hereunder, this Lease Agreement shall not terminate and such performance shall be excused for a reasonable time given the nature of the cause. Nothing contained herein shall be construed to provide for an abatement of Base Rent, additional rent or any other charge or sum due and payable by Lessee hereunder.

### **33. Lessor's Liability**

Lessor shall have no personal liability with respect to any of the provisions of this Lease Agreement. If Lessor is in default with respect to its obligations under this Lease Agreement, Lessee shall look solely to the equity of Lessor in and to the Building for satisfaction of Lessee's remedies, if any. It is expressly understood and agreed that Lessor's liability under the terms of this Lease Agreement shall in no event exceed the amount of its interest in and to the Building. Notwithstanding that Lessor may own or have some other interest in any parking facility in the vicinity of the Building, the use of any such facility by Lessee, provided under this Lease Agreement, shall not be deemed to be an appurtenance to the Demised Premises and Lessor makes no representations or warranties with respect to said facilities or their availability.

### **34. Security Deposit/Prepaid Rent**

As security for the faithful performance by Lessee throughout the Lease Term of all the terms and conditions of the Lease Agreement on the part of Lessee to be performed, Lessee has deposited with Lessor the sum equal to the first month's rent as of the beginning of this lease. Such amount shall be returned to Lessee, without interest, on the day set forth for the expiration of the Lease Term, provided

Lessee has fully and faithfully observed and performed all of the terms, covenants, agreements, warranties, and conditions hereof. Lessor shall have the right to apply all or any part of said deposit toward cure of any default of Lessee.

### **35. Submission of Lease**

The submission of this Lease Agreement for examination does not constitute an offer to lease and this Lease Agreement shall be effective only upon execution hereof by Lessor and Lessee.

### **36. Severability**

If any clause or provision of the Lease Agreement is illegal, invalid or unenforceable under present or future laws, the remainder of the Lease Agreement shall not be affected thereby, and in lieu of each clause or provision of this Lease Agreement which is illegal, invalid or unenforceable, there shall be added as a part of this Lease Agreement a clause or provision as nearly identical to the said clause or provision as may be legal, valid and enforceable.

### **37. Guaranty**

The undersigned guarantors hereby jointly, severally and irrevocably guarantee the payment of the rent and all other sums to be paid by Tenant under and pursuant to the Lease (for a term of 5 years), as well as the proper performance by Tenant thereunder, and the undersigned jointly and severally promise to pay all of Landlord's expenses, including, but not limited to, reasonable attorneys' fees, incurred in enforcing any obligations of Tenant under the Lease or incurred in enforcing the Lease or this guaranty. The undersigned hereby agree that Landlord (without in any way limiting or relieving the liability of the undersigned hereunder) may at any time to time, and in reliance on this guaranty, without notice to or further consent from the undersigned, retain, obtain or release any collateral securing any of Tenant's obligations under the Lease, retain, obtain or release any party primarily or secondarily liable with respect to any of Tenant's obligations under the Lease and extend, renew or modify any of Tenant's obligations under the Lease, regardless of whether or not said extension, renewal or modification might be deemed to increase the risk of the undersigned hereunder. If Lessor accepts an assignment of this Lease, Guarantor shall be relieved of any further liability under the Lease. The undersigned expressly waive the right to require Landlord to take action against Tenant as provided for in any existing Tennessee or Knox County code, as amended, and further waive and renounce any and all homestead or exemption rights they or their families may have under or by virtue of the constitution or laws of Tennessee, any other State or United States, as against the liability hereby created.

### **38. Entire Agreement**

This Lease Agreement contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise between the parties not embodied herein shall be of any force or effect. No failure of either party to exercise any power given such party hereunder, or to insist upon strict compliance with any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

### **39. Obligation to Insure**

On or before the Commencement Date and thereafter during the Lease Term, or any renewals or extensions thereof, on or before the first day of the first month of each Lease Year, Lessee shall deliver to Lessor a certificate of a policy or renewal policy of public liability insurance insuring Lessor and Lessee, and their officers, employees, agents and representatives against loss or damage arising from injury to persons or property occurring within the Demised Premises, which policy, or renewal policy, shall (a) provide that it is noncancellable without thirty (30) days prior written notice to Lessor, (b) have such limits as may be consistent with required insurance coverages in other similar retail leases in downtown Knoxville, (c) name Lessor as an additional insured; and (d) be accompanied by proof of payment of the premium therefor. Lessor shall maintain casualty and public liability insurance with such coverages and limits as Lessor deems reasonable and appropriate. Lessee shall maintain satisfactory property damage insurance on it's own property.



**40. Headings**

The use of headings herein is solely for the convenience of indexing the various paragraphs hereof and shall in no event be considered in construing or interpreting any provision of this Lease Agreement.

**AGENCY DISCLOSURE**

41. Lessor and Lessee hereby acknowledge that there are no agents involved in this lease agreement and that no real estate commissions shall be due to any real estate agents for this lease agreement.

42. Intentionally Omitted.

43. **Delivery Date/Commencement Date/Delays:** Notwithstanding anything to the contrary contained in this Lease, if Landlord is unable to deliver the Premises with the tenant improvements (as outlined in Exhibit "B" attached hereto) "substantially complete" by the Commencement Date, for any reason other than delay caused by Lessee, the Commencement Date shall be delayed by a period equal to the number of days of delay not caused by Tenant and the Expiration Date, Extension Period dates, dates for exercise of extension Options, and other dates specified in this Lease that are based upon the original date specified as the commencement Date shall be delayed by like period.

44. **Signage:** All of Tenant's Signage (except for signage located within the inside of Tenant's Premises) shall conform to Knox County, City of Knoxville or other applicable codes and must be approved by Landlord. If Tenant places any signage within the exterior of the Premises or facade of the building in which the Premises are located, without Landlord's approval, Landlord reserves the right to remove such signage at Tenant's expense.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

**"LESSOR" - Preservation Public, LLC,**

By: [Signature]

Its: owner

Witness:

\_\_\_\_\_

**"LESSEE" - Paula West McNally**

By: Paula West McNally

Its: President

Witness:

\_\_\_\_\_

[Signature]

SS #

\_\_\_\_\_

### **Exhibit "B" - "Lessor's Work"**

Prior to the Commencement Date (outlined in Paragraph 43 herein), Lessor shall, at Lessor's expense, have performed the following "Tenant Improvements" at the Premises. Lessor agrees to construct the Tenant Improvements for the Premises in a good and workmanlike manner. Notwithstanding the foregoing, all changes, modification, substitutions or additions to the Tenant Improvements shall be at the sole cost and expense of Lessee, which cost and expense shall be due and payable to Lessor in full at the time each change order is approved by Lessee. If Lessee's, changes, modifications, substitutions or additions to the Tenant Improvements cause Lessor to deliver the Premises later than the Commencement Date, rent shall not abate for such period (as outlined in paragraph 43 herein).

Tenant Improvements, to be paid for by Lessor, will include the following:

- (1) Inside surface drywall (or brick when practical) for outer building walls and installed building standard window storefronts. A concrete, wood or VCT (or combination thereof) sub floor which is ready for finish flooring (by Tenant). If Premises has a demising wall, demising wall shall be dry-walled, taped and ready to paint. Walls will be exposed brick or plaster (where the brick can be practically restored) or drywall at each side that can be left exposed or can be covered by Tenant.
- (2) Complete sprinkler system.
- (3) Completed building standard HVAC system installed; including ductwork or diffusers. The building standard HVAC system shall be capable of delivering 1 ton (HVAC) per 300 square feet leased, and will be independently mounted. Tenant shall be responsible for the ongoing maintenance, repair and replacement of HVAC.
- (4) Installed, separate electric meter, 200 amp distribution panel, with minimal outlets located along the perimeter of the Premises and lighting. All additional wiring and lighting will be Lessee's responsibility.
- (5) Two restrooms areas stubbed with hot/cold water and waste which shall accommodate a lavatory and, sink, per bathroom (fixtures to be installed by Lessee, and adequate lighting in each restroom.
- (6) Refurbished storefront and entrance will be provided, by Lessor.
- (7) Lessee shall be responsible for all other plumbing and/or venting related to Lessee's need to vent for cooking.
- (8) Lessor shall have a plumbing water line stubbed in or below Lessee's Premises.

Except as expressly set forth above, Lessor is not required to perform any further work in regard to making the Demised Premises available for Lessee, and any and all additional work in excess of that described above shall be performed by Lessee at its sole cost and expense.

Oodles

**Preservation Public  
LEASE AGREEMENT**

THIS LEASE AGREEMENT ("LEASE AGREEMENT"), made and entered into this 1st day of August, 2005 by and between **Preservation Public LLC**, whose address for purposes hereof is 18 Market Square, Knoxville, TN 37902 (hereinafter referred to as "Lessor" or "Landlord"), and Oodles/ Uncorked, (hereinafter referred to as "Lessee" or "Tenant").

**WITNESSETH:**

**1. Description of Premises**

Lessor, in consideration of the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Lessee, and Lessee does hereby rent and lease from Lessor, that certain space (the "Demised Premises") known as **18-20 Market Square** Market Square, Knoxville, TN., 37902 containing approximately 1,400 rentable square feet of street level space in a building situated in the Market Square located in downtown Knoxville, Knox County, TN 37902 (the "Building") on that tract of land more particularly described in "Exhibit A" and "Exhibit A-1" attached hereto and by this reference made a part hereof, with no easement for light or air included in the Demised Premises, or being granted hereunder.

**2. Term**

Lessee takes and accepts from Lessor the Demised Premises upon the terms and conditions herein contained and in their present condition and as suited for the use intended by Lessee (for a term of 10 years), to have and to hold the same for a term (the "Lease Term") beginning on October 1<sup>st</sup>, 2005 (the "Commencement Date"). The Lease shall end at midnight upon the last day of the 61<sup>st</sup> consecutive calendar month thereafter (the "Termination Date") unless sooner terminated as herein provided. In the event the Termination Date shall occur on a Saturday, Sunday or national holiday the Lease Term shall be extended to midnight of the next business day.

**3. Possession**

Lessee shall take possession on the 1<sup>st</sup> day of August 2005 or sooner if Lessor has completed its base building work at the Premises.

**4. Rental**

Lessee shall pay to Lessor as rent, in legal tender of the United States, in advance on the first day of every calendar month during the Lease Term, without offset or deduction of any kind to the amounts itemized below per month for each year: A prorated monthly installment, based on a thirty-day month, shall be paid in advance for any fraction of a month if the Lease Term shall begin on any day except the first day or shall be terminated on any day except the last day of any month. Lessee shall have an option to renew said premises for a second 10 year term.

Year 1 Commencing October 1<sup>st</sup> 2005 - the "Rental Commencement Date". Rent Shall be **\$4,500** for the next 120 months.

THIS BASE RENTAL INCLUDES does not include PROPERTY TAXES, BUILDING INSURANCE, utilities or any other common area maintenance charges, all of which shall be the responsibility of Lessee.

**Note: Lessee shall deposit the first months rent and a Security Deposit equal to the first months rent upon execution of the Lease Agreement.**

#### **5. Payments**

All payments of rent, additional rent and other payments to be made to Lessor shall be made on a timely basis and shall be payable to Lessor or as Lessor may otherwise designate by written notice. All such payments shall be mailed or delivered to Lessor's agent, 18 Market Square, Knoxville TN 37902 (check payable to Preservation Public LLC) or at such other place as Lessor may designate from time to time in writing. If mailed, all payments shall be mailed in sufficient time and with adequate postage thereon to be received in Lessor's account by no later than the due date for such payment. Lessee agrees to pay to Lessor Fifty Dollars (\$50.00) for each check presented to Lessor in payment of any obligation of Lessee which is not paid by the bank on which it is drawn.

#### **6. Late Charges**

If base rental payments are received later than the 5th of each month when due, Lessee shall pay Lessor a late fee equal to \$300 for each payment has not been received after the 5<sup>th</sup> of each month. Any rental or other amounts payable to Lessor under this Lease Agreement shall also incur a monthly service charge at the rate of 18% per annum from and after the due date for such payment, if not paid by the fifth day of the month for which such rent is due, or by the due date specified on any invoices from Lessor for any other amounts payable hereunder. In no event shall the rate of interest payable on any late payment exceed the legal limits for such interest enforceable under applicable law.

#### **7. Use Rules**

The Demised Premises shall be used for restaurant/wine bar and no other purposes and in accordance with the Rules and Regulations attached hereto and made a part hereof and all laws and ordinances (federal, state, county, or municipal, including, without limitation, environmental) as well as applicable orders and requirements. Lessee covenants and agrees to abide by said Rules and Regulations in all respects as now set forth and attached hereto or as hereafter promulgated by Lessor. Lessor shall have the right at all times during the Lease Term to publish and promulgate and thereafter enforce such rules and regulations or changes in the existing Rules and Regulations as it may reasonably deem necessary in its sole discretion to protect the tenantability, safety, operation and welfare of the Demised Premises and of the Building or buildings of which the Demised Premises are a part.

#### **8. Repairs by Lessor**

(a) Lessor shall not be required to make any repairs or improvements to the Demised Premises except structural repairs necessary for safety and tenantability exclusive of all glass and all exterior doors. Lessee shall make no alterations in, or additions to, the Demised Premises without first obtaining, in writing, Lessor's consent for such alterations or additions. All such alterations or additions shall be at the sole cost and expense of Lessee and shall become a part of the Demised Premises and shall be the property of Lessor. Lessor shall deliver the demised Premises in the condition described under Exhibit "B" - Landlord's Work. "Landlord's Work" shall be attached and become a part of this Lease Agreement.

#### **9. Repairs by Lessee**

(a) Lessee covenants and agrees that it will take good care of the Demised Premises, its fixtures and appurtenances, and suffer no waste or injury thereto and keep and maintain same in good and clean condition.

(b) Lessee shall be liable for and shall hold Lessor harmless in respect of: damage or injury to Lessor, Demised Premises, and property or persons of Lessor's other tenants, or anyone else, if due to wrongful act or neglect of Lessee, or Lessee's agents, employees, licensees or invitees. Lessee shall use best efforts to at once report, in writing or by verbal notice to Lessor any defective or dangerous condition known to Lessee and not otherwise known to Lessor, and failure to so report any defective or dangerous condition known to Lessee which should have been reported to Lessor and could not have been known to Lessor except by report from Lessee shall make Lessee responsible and liable for damages resulting from such defective condition.

#### **10. Lessor's Right of Entry**

Lessor shall retain duplicate keys to all doors of the Demised Premises and Lessor and its agents, employees and independent contractors shall have the right to enter the Demised Premises at reasonable hours to inspect and examine same, to make repairs, additions, alterations, and improvements, to exhibit and card Demised "For Rent" or "For Sale" to prospective purchasers or tenants (provided that Lessor shall not exhibit the Demised Premises to prospective tenants except during the last 180 days of the Lease Term) and to inspect the Demised Premises to ascertain that Lessee is complying with all of its covenants and obligations hereunder, all without being liable to Lessee in any manner whatsoever for any damages arising therefrom. During such time as such work is being carried on in or about the Demised Premises, the rent provided herein shall not abate, and Lessee waives any claim or cause of action against Lessor for damages by reason of interruption of Lessee's business or loss of profits therefrom because of the prosecution of any such work or any part thereof. Notwithstanding anything to the contrary contained in Article 10 of this lease, if Lessee's use and occupancy of the Demised Premises are substantially disrupted by any repairs, additions, alterations or improvements made by Lessor so that Lessee is unable to operate its Business therein for a period exceeding two consecutive business days, then Lessee shall thereafter be entitled to an abatement of Base Rent until such work by Lessor is completed.

#### **11. Default**

(a) The following events shall be deemed to be events of default by Lessee under this Lease Agreement: (i) Lessee shall fail to pay any installment of Base Rent, additional rent or any other charge or assessment against Lessee pursuant to the terms hereof when due which failure continues for five business days after written notice thereof from Lessor to Lessee; (ii) Lessee shall fail to comply in every material respect with any term, provision, covenant or warranty made under this Lease Agreement by Lessee, other than the payment of the Base Rent or additional rent or any other charge or assessment payable by Lessee, and shall not cure such failure within fifteen (15) days after notice thereof to Lessee or if such failure is not capable of being cured within 15 days, commence efforts to cure within 15 days and pursue such efforts diligently to completion; (iii) Lessee or any guarantor of the Lease Agreement shall become insolvent, or shall make a transfer in fraud of creditors or shall make an assignment other than a collateral assignment in a financing transaction for the benefit of creditors; (iv) Lessee or any guarantor of this Lease Agreement shall file a petition under any Section or Chapter of the National Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Lessee or any guarantor of this Lease Agreement a petition in bankruptcy or insolvency or a similar proceeding which is not dismissed within 90 days after Lessee receives notice thereof, or Lessee or any guarantor shall be adjudged bankrupt or insolvent in proceedings filed against Lessee or any such guarantor; (v) a receiver or trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Lessee or of any guarantor of this Lease Agreement; (vi) Lessee shall abandon or vacate all or any portion of the Demised Premises or fail to take possession thereof as provided in this Lease Agreement; or (vii) Lessee shall do, or

permit to be done anything which creates a lien upon the Demised Premises which lien is not removed by payment or bond within 30 days after Lessee receives notice thereof.

(b) Upon the occurrence of any of the aforesaid events of default, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever: (i) terminate this Lease Agreement, in which event Lessee shall immediately surrender the Demised Premises to Lessor and if Lessee fails to do so, lessor may without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Demised Premises and expel or remove Lessee and any other person who may be occupying said Demised Premises or any part thereof, by force, if necessary, as permitted by Tennessee law without being liable for prosecution or any claim of damages therefor; Lessee hereby agreeing to pay to Lessor on demand the amount of all Base Rent and other charges accrued through the date of termination; (ii) enter upon and take possession of the Demised Premises and expel or remove Lessee and any other person who may be occupying said Demised Premises or any part thereof, by force, if necessary, as permitted by Tennessee law, without being liable for prosecution or any claim of damages thereof and, if Lessor so elects, re-let the Demised Premises on such terms as Lessor may reasonably deem advisable, without advertisement, and by private negotiations provided that in such event Lessor shall use reasonable efforts to re-let the Demised Premises at then-prevailing rental rates for comparable space in the Building, and receive the rent therefor, Lessee hereby agreeing to pay to Lessor the deficiency, if any, between all rent reserved hereunder and the total rental applicable to the Lease Term hereof obtained by Lessor re-letting, and Lessee shall be liable for Lessor's expenses in restoring the Demised Premises and all costs incident to such re-letting; (iii) enter upon the Demised Premises by force if necessary as permitted by Tennessee law, without being liable for prosecution or any claim of damages therefor, and do whatever Lessee is obligated to do under the terms of this Lease Agreement; and Lessee agrees to reimburse Lessor on demand for any expenses including, without limitation, reasonable attorney's fees which Lessor may incur in thus effecting compliance with Lessee's obligations under this Lease Agreement and Lessee further agrees that Lessor shall not be liable for any damages resulting to Lessee from such action, unless caused by negligence of Lessor.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Base Rent, additional rent or other charges and assessments payable by Lessee and due to Lessor hereunder or of any damages accruing to Lessor by reason of violation of any of the terms, covenants, warranties and provisions herein contained. No action taken by or on behalf of Lessor shall be construed to be an acceptance of a surrender of this Lease Agreement. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss or damage which Lessor may suffer by reason of termination of this Lease Agreement or the deficiency arising by reason of any re-letting of the Demised Premises by Lessor as above provided, allowance shall be made for expense of repossession.

If Lessee shall vacate, abandon or fail to use the leased premises for a period in excess of 45 days for the use for which it was leased, Lessor may, at its option, exercise any and all of the remedies listed herein. No such remedy herein otherwise conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this lease to Lessor may be exercised from time to time and as often as the occasion may arise or as may be deemed expedient and/or proper.

## **12. Waiver of Breach**

No waiver of any breach of the covenants, warranties, agreements, provisions or conditions contained in this Lease Agreement shall be construed as a waiver of said covenant, warranty, provision, agreement or condition or of any subsequent breach thereof, and if any breach shall

occur and afterwards be comprised, settled or adjusted, this Lease Agreement shall continue in full force and effect as if no breach had occurred.

### **13. Assignment and Subletting**

Lessee shall not, sublease or assign this lease agreement without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed (Lessor's consent will take into account the identity, business reputation, use, and net worth of the proposed assignee). Lessee shall have the right to make a collateral assignment of its interest hereunder to a reputable financial institution, provided such institution shall agree in a form satisfactory to Lessor to assume all duties and obligations of Lessee in the event that such institution shall exercise its right under said collateral assignment. Consent to one or more such transfers or subleases shall not destroy or waive this provision and all subsequent transfers and subleases shall likewise be made only upon obtaining the prior written consent of Lessor. Notwithstanding anything to the contrary contained in Article 13 of this Lease, Lessee shall be permitted, without the necessity of obtaining Lessor's prior written consent, to assign Lessee's interest hereunder to a parent, subsidiary or affiliated corporation of Lessee, provided Lessee shall remain liable hereunder, or to assign Lessee's interest hereunder to the surviving corporation of any merger provided said surviving corporation shall assume all of Lessee's obligations hereunder and shall have a net worth not less than the net worth of Lessee immediately prior to the merger. If Lessor accepts an assignment of this Lease, Lessee shall be relieved of any further liability under the Lease.

### **14. Destruction**

(a) If the Demised Premises are partially or totally destroyed by fire or other casualty insurable under standard fire insurance policies with extended coverage endorsement so as to become partially or totally untenantable, the same shall be repaired or rebuilt as speedily as practical under the circumstances at the expense of the Lessor, unless Lessor elects not to repair or rebuild as provided in Subparagraph (b) of this Article 14.

(b) If the Demised Premises are (i) rendered totally untenable by reason of an occurrence described in Subparagraph (a) or (ii) damaged or destroyed as a result of a risk which is not insured under standard fire insurance policies with extended coverage endorsement, or (iii) damaged or destroyed during the last eighteen (18) months of the Lease Term or (iv) damaged to such an extent that the Demised Premises cannot be repaired or rebuilt within 90 days from the date of such occurrence, or if the Building is damaged in whole or in part (whether or not the Demised Premises are damaged), to such an extent that the Building cannot, in Lessor's judgement, be operated economically as an integral unit, then and in any such events either party may at its option terminate this Lease Agreement by notice in writing to the other party within sixty (60) days after the date of such occurrence. Unless either party gives such notice, this Lease Agreement will remain in full force and effect and Lessor shall repair such damage at its expense as expeditiously as possible under the circumstances.

(c) If Lessor should elect or be obligated pursuant to Subparagraph (a) above to repair or rebuild because of any damage or destruction, Lessor's obligation shall be limited to the original Building and any other work or improvements which may have been originally performed or installed at Lessor's expense. If the cost of performing Lessor's obligation exceeds the actual proceeds of insurance paid or payable to Lessor on account of such casualty, either party may terminate this Lease Agreement unless Lessee, within fifteen (15) days after demand therefor, deposits with Lessor a sum of money sufficient to pay the difference between the cost of repair and the proceeds of the insurance available for such purpose. Lessee shall replace all work and improvements not originally installed or performed by Lessor at its expense.

(d) In no event shall either party be liable for any loss or damage sustained by the other party by reason of casualties mentioned hereinabove or any other accidental casualty.

### **15. Removal of Fixtures, Equipment & Effects**

Lessee may upon the expiration or termination of the Lease Term or any renewal thereof, remove all personalty and equipment not attached to the Demised Premises which it has placed upon the Demised Premises, provided Lessee restores the Demised Premises to the condition immediately preceding the time of installation thereof reasonable wear and tear excepted. If Lessee does not remove all such personalty and equipment, then Lessor within ten (10) days after the expiration of the Lease Term, shall have the right to notify Lessee to remove any or all such personalty and equipment and thereupon restore the Demised Premises to the condition immediately preceding the time of installation thereof reasonable wear and tear excepted. If Lessee shall fail or refuse to remove all effects, personalty and equipment from the Demised Premises upon the expiration or termination of this Lease Agreement for any cause whatsoever, Lessor may, at its option, remove the same in any manner that Lessor shall choose and store said effects, equipment and personalty without liability for any loss or damage thereto. Lessee shall pay Lessor on demand any and all expenses incurred by Lessor in such removal and storage, including, without limitation, court costs, attorney's fees, and storage charges. Lessor, at its option, may without notice, sell said effects, equipment and personalty or any part thereof at public or private sale and without legal process for such price as Lessor may obtain and apply the proceeds of such sale to any amounts due under this Lease Agreement from Lessee to Lessor after first paying the expense incident to the removal, storage and sale of said effects, equipment and personalty. Any proceeds remaining after payment of all amounts due under this Lease Agreement and all expenses, including reasonable attorneys fees, incident to the removal, storage and sale of such items shall be paid to Lessee. The covenants and conditions of this Article 15 shall survive any expiration or termination of this Lease Agreement.

#### **16. Lessor's Lien**

Lessor shall at all times have a valid lien upon all of the personal property of Lessee situated in the Demised Premises to secure payment of Base Rent, additional rent and other sums and charges due hereunder from Lessee to Lessor and to secure the performance by Lessee of each and all of the covenants, warranties, agreements and conditions hereof. The lien herein granted may be foreclosed in the manner and form provided by law for the foreclosure of security instruments or chattel mortgages, or in any other manner provided by law.

#### **17. Utility Bills**

Lessee shall pay all utility bills or prorations of said bills including but not limited to water, sewer, gas, electricity, fuel, garbage, light, and heat bills for the Demised Premises. If Lessee fails to pay any of said utility bills, Landlord may pay the same and such payment may be added to the rental of the premises next due as additional rental.

#### **18. Taxes/Tax Escalation/Insurance/Common Area Maintenance**

Lessee shall have separately metered water, electric and gas and Lessee shall be responsible for paying all of the utilities associated with the Premises. Lessee shall pay for its pro-rata share of the property taxes and building insurance costs associated with the Premises. Lessee shall pay its pro-rata share of dumpster, common area cleaning and any other common area cost (the "Common Area Maintenance Costs") for the Premises. "Pro-Rata Share" shall be: the 'square footage rented by Lessee'/'the square footage of the building which has been assessed' multiplied by the Common Area Maintenance. Lessee's Pro Rata share (of Common Area Maintenance) is estimated to be \$.80 per square foot, or \$156 per month. Lessee's pro-rata share of Common Area Maintenance shall be paid monthly with Lessee's Base Rental Payment. Beginning on the Rental Commencement Date, Lessee's overpayment (or underpayment) of Common Area Maintenance shall be reimbursed (or paid) within fifteen days after receipt of notice from Lessor as to the amount of Common Area Maintenance due (or owed), such costs shall be audited on an annual basis and Lessor shall provide Lessee with a copy of such audit. Lessee shall pay for its own liability insurance in an amount not less than \$1,000,000 and shall name Lessor as additional



insured. Lessee shall pay for its own insurance covering the contents of its Premises and shall name Lessor as additional insured.

#### **19. Attorney's Fees and Arbitration**

In the event of litigation commenced by either Lessor or Lessee to enforce any obligation of the other party hereunder, all reasonable attorney's fees and expenses of the prevailing party in such litigation shall be paid by the party against whom an adverse final, non-appealable judgment is entered.

Any controversy or claim arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

#### **20. Time**

Time is of the essence of this Lease Agreement and whenever a certain day is stated for payment or performance of any obligation of Lessee, or Lessor, the same enters into and becomes a part of the consideration hereof.

#### **21. Subordination & Attornment**

(a) Lessee agrees that this Lease Agreement shall be subordinate to any mortgage now or hereafter encumbering the Demised Premises or the Building or buildings of which the Demised Premises may be a part or any component thereof, and to all advances made or hereafter to be made upon the security thereof. The terms of this provision shall be self-operative and no further instrument of subordination shall be required by any mortgagee. Lessee, however, upon request of any party in interest, shall execute promptly such instrument or certificates as may be reasonably required to carry out the intent hereof, whether said requirement is that of Lessor or any other party in interest, including, without limitation, mortgages.

(b) If any mortgagee elects to have this Lease Agreement superior to its mortgage and signifies its election in the instrument creating its lien or by separate recorded instrument, then this Lease Agreement shall be superior to such mortgage. The term "mortgage" as used herein, includes any deed to secure debt, deed or trust or security deed and any other instrument creating a lien in connection with any other method of financing or refinancing. The term "mortgagee" refers to the holder of the indebtedness secured by a mortgage.

(c) Within ten (10) days after request therefor by Lessor, Lessee agrees to execute and deliver to Lessor in recordable form an estoppel certificate addressed to any mortgagee or assignee of Lessor's interest in or purchase of the Demised Premises or the Building or buildings of which the Demised Premises may be a part or any part thereof, certifying (if such be the case) that this Lease Agreement is unmodified and is in full force and effect (and if there have been modifications, that the same is in full force and effect as modified and stating said modifications); that there are no defenses or offsets against the enforcement thereof or stating those claimed by Lessee; and stating the date to which Base Rent, additional rent and other charges have been paid. Such certificate shall also include such other information as may reasonably be required by such mortgagee, proposed mortgagee, assignee, purchaser or Lessor.

(d) In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage made by Lessor covering the Demised Premises or the Building or buildings of which the Demised Premises are a part, or in the event of termination of any lease under which Lessor may hold title, Lessee shall attorn to the purchaser at foreclosure or under power of sale, or to the assignee or transferee of Lessor's interest or to the lessor of the Lessor upon such lease termination, as the case may be, and shall recognize such person as the Lessor under this Lease Agreement provided such purchaser, assignee, transferee or other party in interest shall agree in a form reasonably acceptable to Lessee not to disturb Lessee's tenancy hereunder. Lessee agrees that the institution of any suit, action or other

proceeding by any mortgagee to realize on Lessor's interest in the Demised Premises or the Building or buildings of which the Demised Premises may be a part pursuant to the powers granted to a mortgagee under its mortgage, shall not by operation of law or otherwise, result in the cancellation or termination of the obligations of the Lessee hereunder. Lessor and Lessee agree that notwithstanding that this Lease Agreement is expressly subject and subordinate to any mortgages, any mortgagee, its successors and assigns, or other holder of a mortgage or of a note secured thereby, may sell the Demised Premises or the Building or buildings of which the Demised Premises or the Building or buildings of which the Demised Premises are a part, in the manner provided in the mortgage and may, at the option of such mortgagee, its successors and assigns, or other holder of the mortgage or note secured thereby, make such sale of Demised Premises or Building or buildings of which the Demised Premises are a part subject to this Lease Agreement. In addition, Lessor and Lessee covenant and agree that Lessor's right to transfer or assign Lessor's interest in and to the Demised Premises, or any part or parts thereof, shall be unrestricted, and that in the event of any such transfer or assignment by Lessor which includes the Demised Premises, Lessor's obligation to Lessee hereunder shall cease, Lessee looking only and solely to Lessor's assignee or transferee for performance thereof, provided, that such assignee or transferee assumes Lessor's obligations hereunder and agrees to be bound by the terms of this Lease.

#### **22. No Estate**

This Lease Agreement shall create the relationship of landlord and tenant only between Lessor and Lessee and no estate shall pass out of Lessor. Lessee shall have only a usufruct, not subject to lien, levy and sale and not assignable in whole or in part by Lessee except as provided herein. Lessor acknowledges that Lessee's interest hereunder is not lienable and agrees that any asserted lien claim thereon shall not constitute an event of default hereunder.

#### **23. Cumulative Rights**

All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative to, but not restrictive of, or in lieu of those conferred by law.

#### **24. Holding Over**

If Lessee remains in possession after expiration or termination of the Lease Term with or without Lessor's written consent, Lessee shall become a tenant-at-sufferance, and there shall be no renewal of this Lease Agreement by operation of law. During the period of any such holding over, all provisions of this Lease Agreement shall be and remain in effect except that the monthly rental shall be multiplied by 1.5x (or 150%) the amount of rent (including any adjustments as provided herein) payable for the last full calendar month of the Lease Term including renewals or extensions. The inclusion of the preceding sentence in this Lease Agreement shall not be construed as Lessor's consent for Lessee to hold over.

#### **25. Surrender of Premises**

Upon the expiration or other termination of this Lease Agreement Lessee shall quit and surrender to Lessor the Demised Premises, broom clean in the same condition as at the commencement of the original Lease Term, reasonable wear and tear only excepted, and Lessee shall remove all of its personalty from the Demised Premises. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease Agreement.

#### **26. Notices**

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given, whether actually received or not, on the third business day after such notice is deposited, postage prepaid, in the United States Mail, certified, return receipt requested, and addressed to Lessor or Lessee at their respective address set forth hereinabove or at such other

address as either party shall have theretofore given to the other by notice as herein provided. If notice is given by hand delivery, notice shall be deemed given on the day received. Landlord's notice is outlined in the first paragraph of page 1, Tenant's address shall be 18-20 Market Square, Knoxville, TN 37902.

## **27. Damage or Theft of Personal Property**

All personal property brought into the Demised Premises by Lessee, or Lessee's employees or business visitors, shall be at the risk of Lessee only, and Lessor shall not be liable for the theft thereof or any damage thereto occasioned by any act of co-tenants, occupants, invitees or other users of the Building or buildings of which the Demised Premises may be a part or any other person. Lessor shall not at any time be liable for damage to any property in or upon the Demised Premises, which results from gas, smoke, water, rain, ice or snow which issues or leaks from or forms upon any part of the Building or buildings or which the Demised Premises may be a part, or from the pipes or plumbing work of the same, or from any other place whatsoever, unless such damage results from defects or conditions or which Lessee has given Lessor written notice and Lessor has failed to perform Lessor's obligation to correct same in a prompt and timely manner.

## **28. Eminent Domain**

(a) If title to any part of the Demised Premises is taken for any public or quasi-public use by virtue of the exercise of the power of eminent domain or private purchase in lieu thereof, or if title to so much of the Building or buildings of which the Building may be a part is taken that a reasonable amount of reconstruction thereof will not in Lessor's sole discretion result in the Demised Premises, or the Building or such other buildings being a practical improvement and reasonably suitable for use for the purpose for which they are designed, then, in either event, this Lease Agreement shall terminate, at the option of Lessor, on the date that the condemning authority actually takes possession to the part so condemned or purchased. If title to the whole of the Demised Premises or such Building or buildings is taken by eminent domain or private purchase in lieu thereof, then this Lease Agreement shall terminate as of the date possession is so taken by the condemning authority.

(b) If this Lease Agreement is terminated under the provisions of this Article 28, rent shall be apportioned and adjusted as of the date of termination. Lessee shall have no claim against Lessor (but Lessor shall not prevent Lessee from having any claims against the condemning authority so long as Lessee looks solely to the condemning authority for the resolution of such claim) for the value of any leasehold estate or for the value of the unexpired Lease Term. However, Lessee may claim any unamortized costs of leasehold improvements made by Lessee (excluding those costs paid by the construction allowance hereunder) and any relocation expenses recoverable under applicable law.

(c) If there is a partial taking of the Demised Premises, the Building or such other buildings and this Lease Agreement is not thereupon terminated under the provisions of this Article 28, then this Lease Agreement shall remain in full force and effect, and Lessor shall, within a reasonable time thereafter, repair and restore the remaining portion of the Demised Premises, should they be affected, to the extent necessary to render the same tenantable, and shall repair or reconstruct the remaining portion of the Building to the extent necessary to make the same a complete architectural unit; provided that such work shall not exceed the scope of the work required to be done by Lessor in originally constructing such Building or the Demised Premises. Lessor shall also provide to Lessee an allowance not exceeding \$25,000 toward Lessee's costs of improvements for repair or reconstruction of the remaining portion of the Demised Premises; provided, however, Lessor shall not be required to expend more than the net proceeds of the condemnation award which are paid to Lessor in complying with its obligations hereunder.

(d) All compensation awarded or paid upon a total or partial taking of the Demised Premises or the Building or such other buildings shall belong to and be the property of Lessor without any participation by Lessee (except as otherwise provided in subparagraph (b) hereinabove or as hereafter provided). Nothing herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority from loss of business, damage to,

Lessor shall have no personal liability with respect to any of the provisions of this Lease Agreement. If Lessor is in default with respect to its obligations under this Lease Agreement, Lessee shall look solely to the equity of Lessor in and to the Building for satisfaction of Lessee's remedies, if any. It is expressly understood and agreed that Lessor's liability under the terms of this Lease Agreement shall in no event exceed the amount of its interest in and to the Building. Notwithstanding that Lessor may own or have some other interest in any parking facility in the vicinity of the Building, the use of any such facility by Lessee, provided under this Lease

**33. Lessor's Liability**

in the event of strike, lockout, labor trouble, civil commotion, Act of God, or any other cause beyond either party's control (collectively "force majeure") resulting in such party's inability or delay to supply the services or perform the other obligations required hereunder, this Lease Agreement shall not terminate and such performance shall be excused for a reasonable time given the nature of the cause. Nothing contained herein shall be construed to provide for an abatement of Base Rent, additional rent or any other charge or sum due and payable by Lessee hereunder.

**32. Force Majeure**

There shall be no relocation of the Demised Premises unless otherwise agreed to by Lessor and Lessee in writing.

**31. Relocation of the Premises**

provisions of this Article 30 shall survive any termination of this Lease Agreement. Lessee hereby indemnifies Lessor from and agrees to hold Lessor harmless in connection with damage or injury to Lessor, the Demised Premises, or property or persons of Lessor's other tenants or any other party or parties, person or persons, if due to wrongful act or neglect of Lessee, or any of its employees, servants, agents, representatives or invitees, or otherwise occurring in connection with any default of Lessee hereunder. The provisions of this Article 30 shall survive any termination of this Lease Agreement.

**30. Liability of Lessee**

Lessee hereby indemnifies Lessor from and agrees to hold Lessor harmless against, any and all liability, loss, cost, damage or expense arising from injury to Lessee or Lessee's servants or employees or any other invitee or business visitor or person while in or upon the Demised Premises unless same results from the negligence or willful misconduct of Lessor. Lessee hereby indemnifies Lessor and agrees to hold Lessor harmless from and against all claims for damages to or occupancy of the Demised Premises, including all attorney's fees and other expenses incurred by Lessor as a result thereof. Lessee hereby further indemnifies Lessor and agrees to hold Lessor harmless in connection with damage or injury to Lessor, the Demised Premises, or property or persons of Lessor's other tenants or any other party or parties, person or persons, if due to wrongful act or neglect of Lessee, or any of its employees, servants, agents, representatives or invitees, or otherwise occurring in connection with any default of Lessee hereunder. The provisions of this Article 30 shall survive any termination of this Lease Agreement.

**29. Parties**

The term "Lessor", as used in this Lease Agreement, shall include Lessor and its assigns and successors in title to the Demised Premises. The term "Lessee" shall include Lessee and its heirs, legal representatives and successors, and shall also include Lessee's assigns and assigns, if this Lease Agreement shall be validly assigned or the Demised Premises sublet for the balance of the Lease Term or any renewals or extensions thereof.

and cost of removal of, trade fixtures, furniture and other personal property belonging to Lessee; provided, however, that no such claim shall diminish or adversely affect Lessor's award.

(e) After any partial taking of the Demised Premises which does not result in a termination of this Lease Agreement the Base Rent (as escalated) for the remainder of the Lease Term shall be reduced by the same percentage as the floor area of the space taken bears to the total floor area originally in the Demised Premises, and any other charges provided for hereunder shall be equitably adjusted.

Agreement, shall not be deemed to be an appurtenance to the Demised Premises and Lessor makes no representations or warranties with respect to said facilities or their availability.

#### **34. Security Deposit/Prepaid Rent**

As security for the faithful performance by Lessee throughout the Lease Term of all the terms and conditions of the Lease Agreement on the part of Lessee to be performed, Lessee has deposited with Lessor the sum equal to the first month's rent as of the beginning of this lease. Such amount shall be returned to Lessee, without interest, on the day set forth for the expiration of the Lease Term, provided Lessee has fully and faithfully observed and performed all of the terms, covenants, agreements, warranties, and conditions hereof. Lessor shall have the right to apply all or any part of said deposit toward cure of any default of Lessee.

#### **35. Submission of Lease**

The submission of this Lease Agreement for examination does not constitute an offer to lease and this Lease Agreement shall be effective only upon execution hereof by Lessor and Lessee.

#### **36. Severability**

If any clause or provision of the Lease Agreement is illegal, invalid or unenforceable under present or future laws, the remainder of the Lease Agreement shall not be affected thereby, and in lieu of each clause or provision of this Lease Agreement which is illegal, invalid or unenforceable, there shall be added as a part of this Lease Agreement a clause or provision as nearly identical to the said clause or provision as may be legal, valid and enforceable.

#### **37. Guaranty**

The undersigned guarantors hereby jointly, severally and irrevocably guarantee the payment of the rent and all other sums to be paid by Tenant under and pursuant to the Lease (for a term of 5 years), as well as the proper performance by Tenant thereunder, and the undersigned jointly and severally promise to pay all of Landlord's expenses, including, but not limited to, reasonable attorneys' fees, incurred in enforcing any obligations of Tenant under the Lease or incurred in enforcing the Lease or this guaranty. The undersigned hereby agree that Landlord (without in any way limiting or relieving the liability of the undersigned hereunder) may at any time to time, and in reliance on this guaranty, without notice to or further consent from the undersigned, retain, obtain or release any collateral securing any of Tenant's obligations under the Lease; retain, obtain or release any party primarily or secondarily liable with respect to any of Tenant's obligations under the Lease and extend, renew or modify any of Tenant's obligations under the Lease, regardless of whether or not said extension, renewal or modification might be deemed to increase the risk of the undersigned hereunder. If Lessor accepts an assignment of this Lease, Guarantor shall be relieved of any further liability under the Lease. The undersigned expressly waive the right to require Landlord to take action against Tenant as provided for in any existing Tennessee or Knox County code, as amended, and further waive and renounce any and all homestead or exemption rights they or their families may have under or by virtue of the constitution or laws of Tennessee, any other State or United States, as against the liability hereby created.

#### **38. Entire Agreement**

This Lease Agreement contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise between the parties not embodied herein shall be of any force or effect. No failure of either party to exercise any power given such party hereunder, or to insist upon strict compliance with any obligation hereunder, and no custom or

practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**39. Obligation to Insure**

On or before the Commencement Date and thereafter during the Lease Term, or any renewals or extensions thereof, on or before the first day of the first month of each Lease Year, Lessee shall deliver to Lessor a certificate of a policy or renewal policy of public liability insurance insuring Lessor and Lessee, and their officers, employees, agents and representatives against loss or damage arising from injury to persons or property occurring within the Demised Premises, which policy, or renewal policy, shall (a) provide that it is noncancellable without thirty (30) days prior written notice to Lessor; (b) have such limits as may be consistent with required insurance coverages in other similar retail leases in downtown Knoxville; (c) name Lessor as an additional insured; and (d) be accompanied by proof of payment of the premium therefor. Lessor shall maintain casualty and public liability insurance with such coverages and limits as Lessor deems reasonable and appropriate. Lessee shall maintain satisfactory property damage insurance on it's own property.

**40. Headings**

The use of headings herein is solely for the convenience of indexing the various paragraphs hereof and shall in no event be considered in construing or interpreting any provision of this Lease Agreement.

**AGENCY DISCLOSURE**

**41.** Lessor and Lessee hereby acknowledge that there are no agents involved in this lease agreement and that no real estate commissions shall be due to any real estate agents for this lease agreement.

**42.** Intentionally Omitted.

**43. Delivery Date/Commencement Date/Delays:** Notwithstanding anything to the contrary contained in this Lease, if Landlord is unable to deliver the Premises with the tenant improvements (as outlined in Exhibit "B" attached hereto) "substantially complete" by the Commencement Date, for any reason other than delay caused by Lessee, the Commencement Date shall be delayed by a period equal to the number of days of delay not caused by Tenant and the Expiration Date, Extension Period dates, dates for exercise of extension Options, and other dates specified in this Lease that are based upon the original date specified as the commencement Date shall be delayed by like period.

**44. Signage:** All of Tenant's Signage (except for signage located within the inside of Tenant's Premises) shall conform to Knox County, City of Knoxville or other applicable codes and must be approved by Landlord. If Tenant places any signage within the exterior of the Premises or facade of the building in which the Premises are located, without Landlord's approval, Landlord reserves the right to remove such signage at Tenant's expense.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

**"LESSOR" - Preservation Public, LLC,**

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

Its: \_\_\_\_\_

Witness:

James West

"LESSEE".

By:

Its: \_\_\_\_\_

Witness:

\_\_\_\_\_  
\_\_\_\_\_

SS# \_\_\_\_\_

Witness: Thada West

**Exhibit "B" - "Lessor's Work"**

Prior to the Commencement Date (outlined in Paragraph 43 herein), Lessor shall, at Lessor's expense, have performed the following "Tenant Improvements" at the Premises. Lessor agrees to construct the Tenant Improvements for the Premises in a good and workmanlike manner. Notwithstanding the foregoing, all changes, modification, substitutions or additions to the Tenant Improvements shall be at the sole cost and expense of Lessee, which cost and expense shall be due and payable to Lessor in full at the time each change order is approved by Lessee. If Lessee's, changes, modifications, substitutions or additions to the Tenant Improvements cause Lessor to deliver the Premises later than the Commencement Date, rent shall not abate for such period (as outlined in paragraph 43 herein).

Tenant Improvements, to be paid for by Lessor, will include the following:

- (1) Inside surface drywall (or brick when practical) for outer building walls and installed building standard window storefronts. A concrete, wood or VCT (or combination thereof)

**MODIFICATION TO LEASE**

This Modification to Lease made the 4<sup>th</sup> day of April, 2002 by and between EG&G TECHNICAL SERVICES, INC. ("Landlord") and Oodles/Uncorked, ("Lessee/Tenant").

WHEREAS, on August 1, 2005, Landlord entered into a Lease with Lessee to lease certain space containing approximately 1,400 square feet located at 18-20 Market Square, Knoxville, Tennessee 37902.

WHEREAS, Landlord and Lessee desire to modify the Lease as hereinafter set forth:

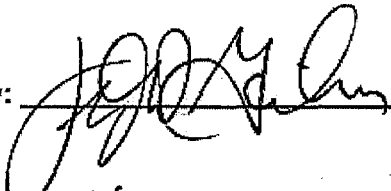
For and in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration, the mutual promises and agreements contained in the Lease and herein, the receipt and sufficiency of which are hereby acknowledged, Landlord and Lessee hereby agree as follows:

1. The rent as stated in the Lease shall be Three Thousand Five Hundred (\$3,500.00) Dollars per month, payable in advance on the first day of month throughout the term of the Lease.


2. The Lease, except as expressly modified in this Modification to Lease, shall remain in full force and effect and contains the entire agreement between the parties.

IN WITNESS WHEREOF, Landlord and Lessee have executed this Modification to Lease on the dates set forth below.

**EG&G TECHNICAL SERVICES, INC.**

By:  \_\_\_\_\_  
Date: 4/30/02 \_\_\_\_\_

**OODLES/UNCORKED, L.L.C.**

By:  \_\_\_\_\_  
Date: 4-30-07 \_\_\_\_\_