

RETAIL LEASE

between

CITY OF CORAL GABLES

and

SUPERCUTS CORPORATE SHOPS, INC.



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## **RETAIL LEASE AGREEMENT**

THIS RETAIL LEASE AGREEMENT (the "Lease") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "Effective Date"), by and between the City of Coral Gables, a municipal corporation of the State of Florida, (the "Landlord"), whose address for purposes hereof is 405 Biltmore Way, Coral Gables, Florida 33134, and Supercuts Corporate Shops, Inc., a Delaware corporation, (the "Tenant"), whose address for purposes hereof is 7201 Metro Boulevard, Minneapolis, MN 55439, Attn: Legal Department.

### **WITNESSETH:**

In consideration of the payments of rents and other charges provided for in this Lease, the covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

**I. PREMISES:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and conditions hereinafter set forth, those certain premises (the "Premises") deemed to consist of 2,250 gross square feet of floor space (the "Rentable Area") located at 292 Miracle Mile, Coral Gables, Florida 33134, as shown on the attached site plan as Exhibit "A".

This Lease does not grant any right to light or air over or about the Premises.

**II. TERM:** Subject to Force Majeure, the Lease shall be for a term (the "Term" or "Lease Term") commencing on February 1, 2011, which shall also be the date rent commences (the "Rent Commencement Date"), and the Term shall expire five (5) years after the Rent Commencement Date, on January 31, 2016 (the "Termination Date") unless terminated or extended as provided in the Lease. Notwithstanding the foregoing or anything to the contrary in this Lease the Landlord shall have the option to terminate this Lease at any date designated in Landlord's notice, provided such date is after January 31, 2013 and provided Landlord has given least nine (9) months' prior written notice. In the event the Lease is terminated as provided herein, all Rent and other charges shall be apportioned as of the date of termination. Landlord's and Tenant's obligations to indemnify and hold harmless, and other terms intended to survive expiration or termination of this Lease shall survive. No further documentation shall be required to effect the termination of this Lease. Either party, however, shall execute, upon reasonable request by the other, additional documentation for the sole purpose of documenting the termination of this Lease.

There shall be no delay in the commencement of the Term of this Lease and there shall be no delay or abatement of the payment of "Rent(s)" (as hereinafter defined) where Tenant fails to occupy the Premises, nor shall same operate to extend the initial Term beyond the agreed expiration date hereof. All provisions of this Lease shall be in full force and effect upon the Effective Date.

**III. CONDITION OF PREMISES "AS IS":** Tenant acknowledges and agrees that it has been operating in the Premises pursuant to a prior lease arrangement, and therefore is accepting the Premises in "as is" condition. Landlord makes no representations as to the "Permitted Use" (as hereinafter defined) or suitability of the Premises for the Permitted Use. Tenant further acknowledges and agrees that the continued operation of the Premises by Tenant shall be conclusive evidence against Tenant that the Premises were in satisfactory condition as if the Rent Commencement Date.

**IV. RENT:**

**A. Base Rent:** Throughout the Term of the Lease, commencing on the Rent Commencement Date, Tenant agrees to pay Landlord a total "Base Rent" of Dollars, payable in monthly installments as follows:

LEASE YEAR	BASE RENT PER MONTH	BASE RENT PER SQUARE FOOT
2/1/11-1/31/13	\$6,875.63	\$36.67
2/1/14-1/31/16	\$7,081.89	\$37.77

each payment to be made without any offset or deduction whatsoever, in lawful money of the United States of America, at Landlord's address above specified, attn. Finance Department – Collection Division, or elsewhere as designated from time to time by Landlord's written notice to Tenant.

The Base Rent, as set forth above, plus sales tax and any and all applicable tax, is payable in advance on the first day of each month during the Term, the first such installment being due on the Rent Commencement Date (and subsequent installments on the first day of each month thereafter throughout the Term). Rent for any partial month of occupancy at the end of the Term will be prorated based on the actual number of days in such partial month. The term "Rent" as used in this Lease shall mean Base Rent plus sales tax, any and all applicable tax, and all other charges and costs due by Tenant to Landlord under this Lease. The term "Lease Year" as used in this Lease shall mean a twelve (12) consecutive month period. Each Lease Year shall commence on February 1 and end on January 31 of each year up until the Termination Date, unless sooner terminated as provided herein. Except as expressly set forth herein, Tenant shall not pay more than one month's rent in advance.

**B. Percentage Rent**  
Intentionally deleted.

**C. Payments**

Any payments due to Landlord other than Base Rent shall be paid within thirty (30) days of the date billed to Tenant.

Without waiving other available rights and remedies, Tenant shall be required to pay Landlord the lesser of eighteen percent (18%) interest per annum or the maximum percentage permitted by law on any Rent due that remains unpaid for ten (10) days after its due date, along with Rent equal to the greater of two hundred and fifty dollars (\$250) or ten percent (10%) of the Rent payment not paid when due to reimburse Landlord for its additional administrative costs. Said interest will be computed from the due date. Tenant shall pay as Rent an administrative fee of One Hundred Dollars (\$100) for any returned check, and Landlord may require Tenant to provide a certified or cashier's check if more than one (1) of Tenant's checks are returned for insufficient funds. Landlord shall have the right to apply any payments made by Tenant first to any deficiency in the payment of the interest and administrative charges hereunder. If Tenant pays Rent late four (4) times in any twelve (12) month period, in addition to Landlord's other remedies, Landlord may cancel this Lease.

**V. SECURITY DEPOSIT:**

None.

**VI. RENEWAL OPTION:**

None.

**VII. TENANT TRADE NAME:**

Tenant shall conduct business in the Premises only in the name of Supercuts (the "Tenant Trade Name"), provided, however, upon prior notice to Landlord, Tenant may change its trade name if substantially all of Tenant's and Tenant's affiliates' stores operating under the same Tenant Trade Name in the Southeast United States also change their trade name to such new trade name. Within thirty (30) days of a permitted change in Tenant Trade Name, Tenant agrees, at its sole cost and expense, to replace its storefront sign to reflect the new Tenant Trade Name.

**VIII. USE:**

The Tenant will use and occupy the Premises for the following use or purpose and for no other use or purpose: a hair salon. This use defines the use that is permitted on site and is hereinafter considered the "Permitted Use".

Tenant shall be required to operate and be open for business to the public year round, five (5) days a week (excluding Sundays, Mondays and federal holidays), and shall be open, at a minimum, between the hours of 10 A.M. and 6 P.M, and Tenant shall

keep storefront lights and signage illuminated until 11 .P.M. In the event that the Tenant uses the Premises for purposes not expressly permitted herein, the Landlord may, in addition to all other remedies available to it, terminate this Lease or restrain said improper use by injunction. Without the prior written consent of the Landlord, which may not be unreasonably withheld, the Premises shall never be closed for business more than two (2) weeks continuously and thirty (30) days (in the aggregate) in any Lease Year except for planned renovations or situations that would be considered "Force Majeure".

Tenant shall not commit any nuisance; nor permit the emission of any objectionable noise or odor, nor burn any trash or refuse within the Premises; nor bring on, deposit or allow to be brought on or deposited on the Premises any hazardous or noxious materials or substances, as the same may be defined by federal, state or local laws, codes, ordinances, rules, or regulations; nor make any use of the Premises or any part thereof or equipment therein which is improper, offensive, a nuisance or contrary to law.

Tenant agrees to strictly enforce all laws in the operation of the Premises.

#### **IX. QUIET ENJOYMENT:**

Upon payment by Tenant of the Rents herein provided, and upon the observance and performance of all terms and provisions, on Tenant's part to be observed and performed, Tenant shall, subject to all of the terms and provisions of this Lease, peaceably and quietly hold and enjoy the Premises for the Term hereby demised.

#### **X. INSURANCE:**

Without limiting the Tenant's indemnification of the Landlord, and during the Term of this Lease, Tenant shall provide and maintain at its own expense the below described programs of insurance.

Such programs and evidence of insurance shall be satisfactory to the Landlord and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the Landlord. All certificates of insurance or other forms evidencing coverage to the Landlord must be acceptable to the Landlord. The certificate holder should read and all coverage shall be evidenced to:

City of Coral Gables, Risk Management Division  
2801 Salzedo Street, 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

Such certificates or other document evidencing all insurance coverage shall be delivered prior to taking possession of the leased space under this Lease, and at a minimum evidence of Commercial General Liability Insurance shall be provided prior to



the Landlord executing this Lease. All insurance coverage evidenced to the Landlord shall specifically identify this Lease, and shall contain the express condition that the Landlord is to be given written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy.

**A.** The Tenant shall maintain during the Term of this agreement, except as noted, the following insurance:

**A Commercial** General Liability insurance with broad form endorsement or equivalent, products liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate. Said policy or policies shall name the Landlord as an additional insured on a primary and non-contributory basis and shall reflect the hold harmless provisions contained herein.

Tenant may satisfy the minimum liability limits required for Commercial General Liability or Auto Liability through the use of an Umbrella or Excess Liability policy, provided the required limits are met. Tenant agrees to endorse Landlord as an "Additional Insured" on the Umbrella or Excess Liability if used to meet the minimum requirements hereunder.

1. Worker's Compensation Insurance for all employees of Tenant including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.
2. Automobile Liability insurance covering all owned, non-owned and hired vehicles of Tenant with a Combined Single Limit of no less than one million dollars per occurrence. If vehicles are not owned or leased (long term) by the Tenant, then only hired and non-owned coverage applies.
3. Property insurance covering all of Tenant's betterments, improvements, inventory, fixtures, equipment, including any and all business personal property, on a replacement cost basis using as a minimum standard the equivalent terms and conditions included in the most recent edition of an unendorsed ISO (Insurance Services Office, Inc.) "Cause of Loss-Special Form." In addition, business interruption coverage in an amount sufficient to reimburse Tenant for a minimum of twelve (12) months' income for direct or indirect loss on an actual loss sustained basis shall be provided. In any event, Tenant waives any claim it may have against the Landlord and any insurer of the Landlord for any type of property insurance loss, whether owned by Tenant or owned by others in the care, custody or control of Tenant, and for any claim for business interruption. Failure to maintain adequate insurance coverage shall not relieve Tenant of its obligations as set forth in this Lease, including, but not limited to, Tenant's obligation to rebuild and reopen as set

forth in this Lease. Every attempt shall be made by Tenant to secure an insurance policy that does not contain a co-insurance provision, with the preferred coverage being provided on an "Agreed Value" basis. Should the Landlord be required to secure property insurance on behalf of Tenant, Tenant shall be responsible for the cost therefore plus all deductibles associated with this location and shall be billed said amounts as additional Rent.

Notwithstanding anything to the contrary herein, Tenant shall have the right to self-insure against "casualty" effecting the Premises provided Tenant maintains a net worth of Twenty-five Million Dollars (\$25,000,000). Tenant's right to self insure shall not apply to any subtenant or franchisee of Tenant.

4. Comprehensive Boiler and Machinery and/or Equipment Breakdown Insurance, including electrical apparatus. The limit of insurance shall be the same limit of insurance evidenced to Landlord on the property insurance policy and shall include coverage for business interruption in an amount sufficient to reimburse Tenant for a minimum of twelve month's income on an actual loss sustained basis for direct or indirect loss, including overhead power lines.
5. Commercial Glass Policy covering breakage and/or sudden chemical damage to commercial glass on a first dollar basis, including supplemental coverage and allowances for glass frame damage, board-up costs, security and obstruction removal. Tenant may self-insure for plate glass.
6. Other (or increased amounts of) insurance which Landlord shall from time to time deem commercially advisable or appropriate based on quantifiable exposure. Limits of liability required shall be assessed through a benchmarking study based on similar sized entity and exposure; provided, however, Landlord shall not require changes to the self insurance provisions above so long as Tenant's net worth does not decrease by more than Ten Million Dollars (\$10,000,000) from the date this Lease is executed. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

All applicable policies shall name the Landlord as an additional insured on a primary and non-contributory basis, and all applicable policies shall name the Landlord as a loss payee.

All insurance policies evidenced to the Landlord shall contain a waiver of subrogation endorsement in favor of the Landlord, with the exception of Landlord's gross negligence that causes injury to persons.

All insurance policies evidenced to the Landlord shall contain provisions and/or be endorsed so that the Landlord will receive written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material

change of any insurance policy that has evidenced to the Landlord. The Landlord will accept the State of Florida statutory notice provisions (including 10 day notice for cancellation due to non-payment of premium) provided such notice is provided to the Landlord in the same manner it is provided to the first named insured, the Tenant. **The standard cancellation language on a certificate of insurance does not meet this requirement.**

All of the above insurance policies evidenced to the Landlord shall be placed insurance companies with an A.M. Best or equivalent rating of "A-", "VI" or better, qualified to do business under laws of the State of Florida.

Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the Landlord. The Landlord reserves the right to request a copy of the required policies directly from their insurance representative for review at any time.

Tenant shall provide evidence of all insurance required under this Article X to Landlord, along with applicable copies of all applicable endorsements prior to occupying the Premises, and at a minimum, evidence of Commercial General Liability Insurance coverage shall be provided prior to execution of this Lease by Landlord, provided that Tenant's failure to provide such evidence to Landlord shall not extend the Rent Commencement Date.

Failure on the part of the Tenant to obtain and maintain all required insurance coverage is a material breach upon which the Landlord may obtain such insurance on behalf of Tenant and charge the cost therefor to Tenant, along with a twenty percent (20%) administration fee as additional Rent. Tenant agrees to pay as Rent any increase in Landlord's insurance premiums, resulting from Tenant's activities, whether or not Landlord has consented to such activity..

If Landlord's insurance premiums for any separate insurance carried by Landlord exceed the standard premium rates for similar property because the nature of Tenant's operation results in extra hazardous exposure, then Tenant shall reimburse Landlord, immediately upon receipt of appropriate invoices from Landlord, for such increase in premiums. It is understood and agreed between the parties hereto that any such increase in premiums shall be considered as rent due and shall be included in any lien for Rent.

**B.** Tenant's contractors and subcontractors shall provide evidence of insurance, and Tenant shall include or cause to be included in each contract for work to be performed at the Premises on behalf of Tenant the following insurance requirements:

- (a) Installation, floater or builder risk-completed value fire and extended coverage form covering damage to the construction and improvements to be made by Tenant in amounts at least equal to the estimated complete cost of the construction and

improvements with one hundred percent (100%) coinsurance protection. Landlord and Tenant shall be named as an additional insured and loss payee.

(b) Commercial General Liability insurance with broad form endorsement or equivalent, product liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate, and with a deductible not to exceed Five Thousand Dollars (\$5,000.00). Said policy or policies shall name the Tenant and Landlord as an additional insured on a primary and non-contributory basis and shall reflect the hold harmless provisions contained herein.

(c) Worker's Compensation Insurance for all employees of Contractor including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.

(d) Automobile Liability insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit of no less than one million per occurrence. If vehicles are not owned or leased (long term) by the Contractor, then only hired and non-owned coverage applies.

Evidence of insurance of all contractors and subcontractors working under this Lease shall be maintained and kept for a period of time no less than the applicable statute of limitations and/or statute of repose for any claim that could be brought against Tenant and/or Landlord and/or for any claim that could be made against the contractor as a result of the work performed. These records must be made available to the Landlord upon request. Evidence of insurance shall include a Certificate of Insurance and copies of all applicable endorsements evidencing the required coverage. The Certificate of Insurance alone does not evidence insurance adequately. This includes, but is not limited to, endorsements evidencing additional insured status on a primary and non-contributory basis, waivers of subrogation, and endorsements amending the standard cancellation clause. The obligations set forth in this paragraph shall survive expiration or earlier termination of this Lease.

Tenant and its contractors and/or subcontractors shall comply with Florida Statutes Section 255.05, as applicable.

In the event that Tenant is not the sole occupant of the building in which the Premises are located, Tenant shall pay its proportionate share of Landlord's cost to insure (i) the building structure (but not Tenant's improvements, furniture, fixtures, inventory or personal property, which remain Tenant's obligation to insure) for all risk coverage including windstorm, (ii) Commercial General Liability Insurance covering the common areas and shared facilities of the property, and (iii) any commercially reasonable deductible required to be paid with regard to Landlord's policies. Tenant's proportionate share shall be determined by multiplying a fraction, the numerator of which is Tenant's leasable floor area and the denominator of which is the total leasable area of the building, by the allocated cost of insurance for the property of which the

Premises is a part. Tenant shall pay its proportionate share of insurance annually within thirty (30) days of receipt of an invoice therefor.

#### **XI. GOVERNMENTAL AND OTHER REQUIREMENTS:**

Tenant shall faithfully observe in the use of the Premises all municipal and county ordinances, resolutions and codes and all state and federal statutes, rules and regulations now in force or which may hereafter be in force.

#### **XII. RELATIONSHIP OF PARTIES:**

Nothing herein contained to the contrary shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant, it being expressly understood and agreed that neither the computation of Rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relations between Landlord and Tenant other than the relationship of landlord and tenant. Notwithstanding the fact that the City of Coral Gables (the "City") is the landlord under this Lease and that there exists a landlord/tenant relationship between Landlord and Tenant, Tenant acknowledges that this Lease does not grant Tenant any rights or create any exceptions to its obligation to comply with and meet the requirements of all the City's ordinances, resolutions and codes, and that the landlord/tenant relationship shall have no effect upon the jurisdiction and governing rights of the City over the Premises and Tenant shall be required to fulfill and comply with all applicable laws, rules and regulations, ordinances and resolutions of the City as though no such landlord/tenant relationship existed, including, without limitation, all requirements of the City's Building and Zoning Department or other pertinent City agencies.

#### **XIII. OPERATION, UTILITIES, MAINTENANCE AND REPAIR EXPENSES:**

Tenant shall be solely responsible for the installation, operation and maintenance expenses of the Premises, including, without limitation, the cost of all HVAC, heating, electricity, water, sewer, garbage, gas and waste removal, other utility expenses, janitorial service, pest control and insurance. Tenant, at its sole cost and expense, during the entire Lease Term, shall be responsible for the repair, maintenance and replacement of the interior of the Premises, including, without limitation, all interior, non-structural walls, plumbing, electricity, fixtures and all other appliances and equipment of every kind and nature and any mechanical systems servicing the Premises. The Tenant warrants any improvements or alterations made to the Premises shall be free from defects in materials and workmanship for a period of one (1) year from the date the applicable improvements or alterations are completed. Upon demand by the Landlord, the Tenant shall cause to be corrected all such defects which are discovered within the warranty period or periods as set forth above, failing which the Landlord shall make

such repairs and/or replacements of defective work and/or materials and the Tenant shall be liable to the Landlord for all costs arising therefrom. The Tenant also warrants that it shall be solely responsible for the repair of any damages to said improvements and/or alterations caused by Tenant, its employees, representatives and/or agents.

Notwithstanding the foregoing, to the extent not necessitated by the acts or omissions of Tenant, its agents, employees or contractors, Landlord agrees to make any and all repairs reasonably required to the exterior walls, roof, the foundation and structural portions of the Premises (excluding, however, all doors, door frames, storefronts, windows and glass). Landlord's obligations shall not include the obligation to clean the exterior, doors, sidewalks immediately adjacent to the Premises or windows, and all such cleaning shall be the responsibility of Tenant. Subject to Force Majeure, Landlord shall have thirty (30) days after receipt of written notice from Tenant to perform such repairs of the items described in the foregoing sentence, or such additional time as may be reasonably required for the nature of the repair.

Tenant shall pay its share of common area operating costs for Landlord's operation of the common areas in monthly installments in such amounts as are reasonably estimated from time to time during the Term by Landlord, each such installment being due on the first day of each calendar month. "Operating costs for the common areas" shall mean all Landlord's costs to operate the Building for the common benefit of the tenants, including trash removal, maintenance and repair, cleaning, landscaping, insurance on the entire building, running and maintaining the cooling tower, utilities, alarm and fire sprinkler systems, plumbing, security (if any), roof repair and ceiling tile replacement, and other similar services. The "Building" includes those properties owned by Landlord that are adjacent to the Premises and that are leased or used by third parties, which as of the date of this Lease include Stanleigh's and Dulce, as shown on the attached Exhibit "A". At any time during a Lease Year, Landlord may re-estimate Tenant's share of common area operating costs and thereafter adjust Tenant's monthly installments payable during the Lease Year to reflect more accurately Tenant's share of common area operating costs. Within one hundred and twenty (120) days after Landlord's receipt of tax bills for each tax year, or such reasonable (in Landlord's determination) time thereafter, Landlord will notify Tenant of the amount of operating costs for the Lease Year in question and the amount of Tenant's share thereof. Any overpayment or deficiency in Tenant's payment of common area operating costs for each year shall be paid promptly. Tenant's share shall be determined by multiplying the cost of common area maintenance costs for the Building by a fraction, the numerator of which shall be the square footage of the Premises, and the denominator of which shall be the total square footage of the Building. Notwithstanding the above, capital expenditures, roof membrane replacement, foundation and structural repairs of the Building are not includable in operating costs for the common areas, and are at Landlord's sole cost and expense.

Tenant, at Tenant's own expense, will keep and maintain the Premises continuously in a neat and attractive manner, in good repair and in tenantable condition during the Term.

Tenant shall either install and maintain hurricane glass and framing or storm and security shutters for all exterior windows and glass doors of the Premises. If Tenant has storm shutters, Tenant shall install them on all exterior windows and glass doors of the Premises within twenty-four (24) hours of the estimated arrival of any named storm or following Tenant's receipt of Landlord's request. Tenant shall indemnify and hold Landlord harmless with respect to all loss or damage that may occur to the Premises or personal property contained therein, arising out of or resulting from Tenant's failure to comply with the provisions of this paragraph. Tenant's indemnification obligation in this Section shall survive termination or earlier expiration of this Lease.

Except only furniture and trade fixtures which shall be readily removable without injury to the Premises, all additions, fixtures, carpets, and improvements shall be and remain a part of the Premises at the expiration of this Lease.

Tenant will not make any alterations, renovations, improvements or other installations in, on or to any part of the Premises (including, without limitation, any alterations of the storefront, signs, structural alterations, or any cutting or drilling into any part of the Premises or any securing of any fixture, apparatus, or equipment of any kind to any part of the Premises) unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by an architect or other duly qualified person and shall have obtained Landlord's approval (not to be unreasonably withheld or delayed) thereof. If such approval is granted, Tenant shall cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified and licensed persons or entities, using first grade materials, without disruption to the operations of neighboring occupants. All such work shall comply with all applicable codes, rules, regulations and ordinances. Notwithstanding the foregoing, Tenant shall have the right without Landlord's prior approval to make interior repairs or replacements which do not require any structural alteration or impose any greater load on any structural portion of the Premises, and are in accordance with Tenant's originally approved plans (and in accordance with applicable federal, state or local laws, codes, ordinances, rules, or regulations).

Landlord reserves the right at any time and from time to time to make or permit changes to the building in which the Premises is located provided any changes or additions by Landlord to Landlord's Property shall be performed in such a manner so as not to unreasonably interfere with Tenant's use of the Premises and shall not change in a material, adverse way the access to the Premises.

#### **XIV. TAXES AND ASSESSMENTS.**

**A. Taxes and Assessments:** Tenant shall be responsible for and shall pay before delinquency all other municipal, county or state taxes and assessments, without limitation, assessed during the Term of this Lease against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Premises by

the Tenant. Tenant shall be solely responsible for its portion of the real property taxes that are subject to ad valorem taxation. Tenant shall be responsible to pay all amounts due hereunder to Landlord within thirty (30) days after receipt of an invoice therefor. The Tenant shall have the right to contest, at its sole expense, from time to time, any taxes or tax assessments levied against the Premises by legal proceedings; provided, however, that such protest is made in accordance with applicable law and that all such taxes or assessments are paid as and when due pursuant to such legal proceedings and further provided that the Landlord is held harmless by the Tenant in connection with such tax contest. Tenant shall coordinate with any other occupants or tenants that may be part of the same tax folio. In the event that Tenant fails to make the appropriate payment for real estate taxes when due, Tenant shall be responsible for any penalties imposed on the Landlord as a result of Tenant's delinquency in the payment of said taxes. In the event that Landlord, Tenant or the other tenants subject to the same folio number receive a refund, then Tenant shall receive its proportionate share of such refund less the reasonable costs and fees in obtaining the same. In the event that Tenant obtains the refund, it shall remit the applicable proportionate share of the refund to the other tenants sharing the folio number after deducting the cost of obtaining such refund.

**B. Business Improvement District and Other Assessments:** Tenant and Landlord both acknowledge that the Premises may be subject to certain assessments, including without limitation, Business Improvement District (BID) assessments. Tenant agrees to be solely responsible for its proportionate share of BID assessments based on the square footage of the Premises. Tenant shall be responsible to pay all amounts due hereunder to Landlord within thirty (30) days after receipt of an invoice therefor. In the event that Tenant fails to make the appropriate payment for assessments when due, Tenant shall be responsible for any penalties imposed on the Landlord as a result of Tenant's delinquency in the payment of said assessments.

## **XV. MECHANIC'S LIENS:**

Tenant shall keep the Premises and all parts thereof at all times free of mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for Tenant. Tenant further agrees that Tenant will promptly pay and satisfy all liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character, and will indemnify Landlord against all expenses, costs and charges, including bond premiums for release of liens and attorneys' fees and costs reasonably incurred in and about the defense of any suit in discharging the Premises or any part thereof from any liens, judgments, or encumbrances caused or suffered by Tenant. In the event any such lien shall be made or filed, Tenant shall bond against or discharge the same within thirty (30) days after the same has been made or filed. It is understood and agreed between the parties hereto that the expenses, costs and charges above referred to shall be considered as Rent due and shall be included in any lien for Rent.



The Tenant herein shall not have any authority to create any liens for labor or material on the Landlord's interest in the Premises and all persons contracting with the Tenant for the construction or removal of any facilities or other improvements on or about the Leased Premises, and all materialmen, contractors, mechanics, and laborers are hereby charged with notice that they must look only to the Tenant and to the Tenant's interests in the Premises to secure the payment of any bill for work done or material furnished at the request or instruction of Tenant. The provisions of this Article XV shall survive expiration or earlier termination of this Lease.

**XVI. LOSS; DAMAGE:**

Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness, humidity or by any other cause or nature whatsoever, unless due to the gross negligence of Landlord, its agents, or employees; nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons or caused by construction of any private, public or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises. Tenant shall give immediate notice to Landlord in case of fire or accidents in the Premises or of defects therein or in any fixtures or equipment. Landlord shall not be responsible or liable for the theft, loss or damage to person or property in, on or about the Premises.

**XVII. ESTOPPEL STATEMENT:**

Tenant agrees that from time to time, upon not less than ten (10) days' prior request by Landlord, Tenant will deliver to Landlord a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the rent and other charges have been paid; (c) that Landlord is not in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) other matters reasonably requested by Landlord. Failure to provide such estoppel statement as required shall be a material default of this Lease.

**XVIII. SUBORDINATION OF LEASE; ATTORNMENT; NON-DISTURBANCE:**

This Lease is subject and subordinate to any and all mortgages now or hereafter encumbering the Premises, and to any renewals, extensions and/or modifications thereof, and in the event Landlord's interest in the Premises is transferred by reason of foreclosure or other proceeding for enforcement of any such mortgage, Tenant agrees to attorn to and recognize the rights of the transferee of Landlord's interest in the Premises as if such transferee were the Landlord under this Lease. This provision shall be self-operative without the execution of any further instruments. Notwithstanding the foregoing, however, Tenant hereby agrees to execute any instrument(s) which Landlord

may deem desirable to further evidence such attornment the subordination of this Lease to any and all such mortgages. At the option of the holder of any such mortgage, upon written notice to Tenant, Tenant will simultaneously give to such holder a copy of any and all notices to Landlord and such holder shall have the right (but not the obligation) to cure or remedy any default of Landlord during the period that is permitted to Landlord hereunder plus an additional thirty (30) days, and Tenant will accept such curative or remedial action (if any) taken by Landlord's mortgagee with the same effect as if such action had been taken by Landlord.

Landlord covenants that there is no current loan for which the Premises is collateral.

So long as Tenant is not in default hereunder, Tenant and Landlord agree that Tenant's covenant to subordinate this Lease to any future lender shall be conditioned on such lender's agreement to recognize Tenant's rights and obligations under this Lease upon an attornment to such lender by Tenant.

#### **XIX. ASSIGNMENT:**

Without the prior written consent of Landlord, in Landlord's sole discretion, Tenant shall not, directly or indirectly, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. This prohibition includes, without limitation, any transfer which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate, partnership or proprietary structure or ownership. In approving an assignment, the Landlord may at its sole option apply a new rent schedule that reflects then market rates for the street wherein the Premises is located. Landlord may require any assignment or sublet be on the terms and conditions of Landlord's current lease form. In the case of a subletting, Landlord's consent may be predicated, among other things, upon Landlord becoming entitled to collect and retain all rentals payable under the sublease. If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anybody other than Tenant, the Landlord may collect or accept Rent from the assignee, subtenant, or occupant and apply the net amount collected or accepted to the Rent herein reserved, but no such collection or acceptance shall be deemed a waiver of this covenant or the acceptance of the assignee, subtenant, or occupant as Tenant, nor shall it be construed as or implied to be, a release of the Tenant from the further observance and performance by the Tenant of the terms, provisions, covenants and conditions herein contained. Consent by Landlord to any transfer shall not constitute a waiver of the requirement for such consent to any subsequent transfer. Notwithstanding the foregoing, sale of stock over a nationally recognized security exchange shall not be deemed an impermissible transfer for the purposes of this Lease.

Change in the ownership (legal or equitable) of and/or power to vote or control 50% or more of the stock, membership or other capital or ownership interest of Tenant, whether such change in ownership is by sale, assignment, or operation of law shall be

deemed an assignment of the Lease. Notwithstanding the foregoing, the Tenant shall be permitted to assign its interest in the Lease in the following limited instances: (i) by gift to a family member or (ii) inheritance.

Notwithstanding the general prohibition against transfer contained herein, provided Tenant is not in default under any of the terms and conditions of this Lease, and further provided that Tenant has fully and faithfully performed all of the terms and conditions of this Lease, (i) Tenant shall have the right, without Landlord's consent but with written notice to Landlord at least thirty (30) days prior to such assignment, to assign this Lease to any parent, subsidiary or affiliate entity of Tenant, or to the surviving entity in connection with a merger, consolidation or acquisition between Tenant and its parent or any of its subsidiaries for any of the then remaining portion of the unexpired Term, and (ii) Landlord will not unreasonably withhold consent to any other transfer;

provided, in each instance of (i) or (ii):

- (A) the net worth of the assignee, licensee, sublessee or other transferee (each a "Transferee") immediately prior to the transfer shall not be less than \$3 million dollars, as evidenced by audited financial statements;
- (B) such Transferee shall continue to operate the business conducted in the Premises under the same Tenant Trade Name allowed for in this Lease, in the same manner as Tenant and pursuant to all of the provisions of this Lease;
- (C) such Transferee shall assume in writing, in a form reasonably acceptable to Landlord, all of Tenant's obligations hereunder and Tenant shall provide Landlord with a copy of such assumption/transfer document; and
- (D) Tenant to which the Premises were initially leased shall continue to remain liable under this Lease for the performance of all terms, including, but not limited to, payment of Rent due under this Lease.

If the proposed transfer is a Transfer under (i) above, if at any time following the transfer the parent, subsidiary or affiliate of Tenant to which this Lease was assigned ceases to be a parent, subsidiary or affiliate of Tenant, such event shall constitute a transfer requiring Landlord's consent hereunder.

If the proposed transfer is a transfer under (ii) above, the following additional conditions shall apply:

- (F) intentionally omitted;

- (G) such transfer shall not adversely affect the quality and type of business operation which Tenant has conducted theretofore;
- (H) such Transferee shall possess qualifications to conduct the Tenant business substantially equivalent to those of Tenant and shall have demonstrated recognized experience in successfully operating such a business, including, without limitation, experience in successfully operating a similar quality business in first-class shopping centers;
- (I) Tenant shall pay to Landlord Rent of One Thousand Dollars (\$1,000.00) prior to the effective date of the transfer in order to reimburse Landlord for all of its internal costs and expenses incurred with respect to the transfer; and
- (J) Landlord shall receive upon execution of its consent the repayment of any construction or other allowances given to the original Tenant as provided elsewhere in this Lease, any due but unpaid Rent, and an amount equal to ten percent (10%) of any and all consideration paid or agreed to be paid, directly or indirectly, to Tenant for such transfer or for the sale of Tenant's business in connection with which any such transfer is made.

To the extent Landlord's consent to any assignment or other transfer is required, the acceptance by Landlord of the payment of Rent following any transfer prohibited by this Article shall not be deemed to be a consent by Landlord to any such transfer nor shall the same be deemed to be a waiver of any right or remedy of Landlord hereunder.

## **XX. INDEMNITY; HOLD HARMLESS OF LANDLORD:**

In consideration of the Premises being leased to Tenant for the above Rent, Tenant agrees that Tenant, at all times, will indemnify and hold harmless Landlord from all claims, demands, fines, suits, actions, proceedings, order, decrees and judgments of any kind or nature by, or in favor of, anyone whomsoever, and against and from any and all costs, damages and expenses, losses, liabilities, including, without limitations, attorney's fees and court costs (and at trial and all other levels) resulting from, or in connection with, loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of, or from, or on account of, any accident or other occurrence in, upon, at or from the Premises, or occasioned in whole or in part through the use and occupancy of the Premises or any improvements therein or appurtenances thereto, or by any act or omission of Tenant, or its employees, agents, contractors, invitees, guests or patrons, in, upon, at or from the Premises or its appurtenances. Notwithstanding the foregoing, Tenant shall indemnify for invitees, guests or patrons only while they are in

the Premises, or entering or exiting the Premises. Landlord shall not be liable to Tenant for any damages, losses or injuries to the employees, agents, contractors, invitees, guests or patrons of Tenant or property of Tenant which may be caused by the acts, neglect, omissions or faults of any persons or entities, except when such injury, loss or damage results from the gross negligence of Landlord, its agents or employees. All personal property placed or moved into the Premises shall be at the risk of Tenant or the owner thereof, and Landlord shall not be liable to Tenant for any damage to said personal property. Tenant agrees to waive any rights of subrogation against Landlord for any injury or damage to persons or property, with the exception of Landlord's gross negligence that causes injury to persons.

In case Landlord shall be made a party to any litigation commenced against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation and any appeal thereof.

The indemnification and hold harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Attorney's fees and costs incurred in defending such claims. The City of Coral Gables may use the attorney or law firm of its choice in which event Tenant will pay such firm the fees it charges the City, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that Landlord pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, Tenant will reimburse the City at the prevailing market rate for similar legal services.
- c. Attorney's fees and cost of any party that a court orders the City of Coral Gables to pay.
- d. Lost time that results from the City of Coral Gables or its officials or employees responding to discovery or testifying by deposition or in court. In this regard, for any time the City of Coral Gables spends in responding to document requests or public records requests relating to such claims whether from Tenant or any other party, Tenant will reimburse Landlord \$50.00 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, Tenant will reimburse Landlord on a per hour basis as follows:
  - For the Mayor or City Commissioner: \$300.00 per hour
  - For the City Manager: \$250.00 per hour

- For an Asst City Manager or Department Director: \$250.00 per hour
- For an Asst Department Director: \$100.00 per hour
- For City Attorney: Prevailing market rates
- For other employees: \$ 50.00 per hour

In addition, Tenant recognizes that Landlord will expect that its City Attorney's Office will monitor such claims; review pleadings, orders, memorandums and motions; oversee such discovery; and independently or jointly prepare such witnesses and attend such depositions for which Tenant will reimburse Landlord at prevailing market rates. For any documents so produced Tenant shall reimburse Landlord \$.15 per single sided page and \$.20 per double sided page.

- e. The expenses incurred by Landlord in complying with any administrative or court order that may arise from such claims.
- f. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- g. Any other direct or indirect expense that Landlord would not have occurred but for a claim that arises out of this use agreement.

## **XXI. CASUALTY:**

If any improvements on the Premises shall be destroyed or damaged in whole or in part during the Lease Term as a result of fire or other casualty not covered under the hazard insurance maintained by Landlord, or as a result of the gross negligence or willful misconduct of Tenant or any person occupying the Premises under Tenant, then Landlord shall have the option of not rebuilding the Premises and canceling the terms of this Lease. In the event that Landlord does not elect to terminate the Lease, then Landlord shall repair, rebuild, restore, or reconstruct the structure of the Premises, but only to the extent of the insurance proceeds available therefor. In the event Landlord does not elect to exercise its right to terminate this Lease, Landlord shall give Tenant notice within ninety (90) days after the date of such casualty as to the length of time Landlord reasonably expects it shall take to restore the Premises. If the Premises cannot be repaired or restored within nine (9) months after the date of such casualty, Tenant shall have the right to terminate this Lease within thirty (30) days after receipt of such notice from Landlord by giving Landlord notice of its intention to so terminate. Tenant shall at its own expense promptly repair, restore, or reconstruct the Premises, including, without limitation all interior walls, ceilings, and flooring. Tenant shall have the right to use for such purposes the proceeds of any hazard insurance policy(ies) maintained by Tenant for the Premises, however, Tenant shall be responsible for any amounts not covered by Tenant's insurance coverage. If Tenant fails, within thirty (30) days following written notice from Landlord, to commence such repair, restoration or reconstruction or fails thereafter diligently to prosecute the same to completion, then

upon written notice to Tenant, Landlord shall have the right (but not the obligation) to assume full and exclusive control of Tenant's insurance proceeds and cause such repair, restoration or reconstruction to be done; provided, however that Tenant shall have such additional reasonable time as is necessary in order to coordinate its reconstruction efforts with any reconstruction being or to be done by Landlord. Tenant hereby expressly authorizes Landlord to enter the Premises for such purposes and Tenant agrees that such entry by Landlord shall have no other legal consequences. If the damage or destruction resulted from the gross negligence or willful misconduct of Tenant or any person occupying the Premises under Tenant, then all costs and expenses incurred in accomplishing repairs, restoration or reconstruction in excess of the insurance proceeds available therefor (if any) shall be paid by Tenant, and if Landlord shall advance any sums for such excess costs and expenses, then Tenant shall repay and reimburse Landlord therefor promptly upon demand and said sums shall be considered as additional Rent due and shall be included in any lien for Rent. Rent shall not abate as a result of any casualty, it being understood and agreed that the Tenant, at its discretion, cost and expense, shall procure sufficient business interruption insurance. Nevertheless, to the extent that any of the above-described property damage is covered by valid, collectible insurance, the Landlord hereby waives any subrogation rights against the Tenant, and the Tenant likewise agrees to waive any subrogation rights against the Landlord. In no event shall Landlord be liable for interruption to Tenant's business or for damage to or replacement or repair of Tenant's personal property, trade fixtures, and inventory.

## **XXII. CONDEMNATION:**

In the event that the Premises or any material part thereof is taken for any public or quasi-public use by condemnation or by right of eminent domain, or purchase in avoidance or settlement of a condemnation or eminent domain proceeding, Landlord and Tenant agree that this Lease shall be cancelled, and Rent shall abate as of the date of taking. Any and all condemnation awards shall be the property of the Landlord; provided, however, that Tenant shall be entitled to pursue a specific award to the extent of the value of its business, its fixtures and improvements.

## **XXIII. DEFAULT:**

Tenant shall be in default if any one or more of the following events (herein sometimes called "Events of Default") shall happen:

- A. if Tenant fails to pay Rent under the Lease at the time and in the manner required by the Lease within ten (10) days after receipt of written notice from Landlord;
- B. if default shall be made by Tenant in the performance of, or compliance with, any of the covenants, agreements, or terms or conditions contained

in this Lease or default be made by Tenant in compliance or non-compliance with any and all municipal or county ordinances, resolutions or codes and all state and federal statutes, rules and regulations now in force or which may hereafter be in force, and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if Tenant is unable to cure such default within such thirty (30) day period and such default results solely from the failure to obtain a building permit after diligent effort and such need for a building permit is not the result of any actions of Tenant, then, and in that event, Tenant shall have such additional reasonable time as is necessary; and provided that in the event that Tenant is hindered in performance due to Force Majeure, Tenant performance of such act shall be extended for a period equivalent to such period of delay not to extend longer than ninety (90) days, and provided that Tenant notifies Landlord of such Force Majeure event during the standard 30 day cure period;

- C. if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant's properties or of the Premises; or
- D. if within ninety (90) days after commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, such proceeding shall not have been dismissed, or stayed on appeal, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant's properties or of the Premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay such appointment shall not have been vacated; or
- E. if the Premises shall be seized under any levy, execution, attachment or other process of court and the same shall not be promptly vacated or stayed on appeal or otherwise, or if the Tenant's interest in the Premises is sold by judicial sale and the sale is not promptly vacated or stayed on appeal or otherwise; or
- F. if Tenant:



1. fails to open for business by the Required Opening Date, or
2. should vacate, abandon, or desert the Premises, or
3. ceases the continual operation of Tenant's business therein for fifteen (15) continuous days and forty-five (45) days (in the aggregate) in any one year during the Lease Term, unless prevented from operating said business as a result of the occurrence of Force Majeure, or
4. violate any terms or conditions of this Lease Agreement more than three (3) times during any consecutive three (3) year period of the Term stated herein.

In the Event of a Default, Landlord may, at its option:

1. terminate this Lease and retake possession;
2. terminate this Lease and immediately recover from Tenant (i) all amounts past due and owing hereunder as of the Event of Default date, (ii) the costs of repossession of the Premises and reletting the same (including reasonable attorney's fees and costs related thereto), and, in addition thereto, (iii) as liquidated damages the amounts set forth below in lieu of all damages following the Event of Default date (it being agreed that it would be impractical or extremely difficult to fix actual damages, that the following amounts constitute a good faith reasonable estimate of the damages which might be suffered by the Landlord upon the occurrence of Tenant's Event of Default, and that such amounts are intended not as a penalty, but as a full and final agreed upon liquidated damages). The liquidated damages amounts shall equal the sum of:

x. an amount equivalent to two (2) years or the remainder of the Term, whichever is less, of Base Rent and any operational, real estate taxes, or insurance costs payable by Tenant to Landlord; plus

y. an amount equivalent to two (2) years or the remainder of the Term, whichever is less, of Percentage Rent, computing such amount based on the average annual Percentage Rent payable with respect to each Lease Year preceding such Event of Default (and adjusted for any partial Lease Year).

3. take possession of the space without terminating the Lease to relet the Premises for the balance of the Term, or part thereof, for the account of Tenant, provided Tenant shall not be entitled to any surplus of rent obtained thereby;
4. for an Event of Default of any non-monetary term of the Lease, Landlord may cure the default and charge Tenant as Rent the cost to cure such default along with a twenty percent (20%) administrative fee;
5. remove all of Tenant's personal property, including, but not limited to Tenant's furniture, fixture and equipment, goods and chattels from the Premises if not removed within two (2) days of a termination by reason of Tenant's default, such items thereby being deemed abandoned, and dispose of the same in any manner, or store the same in a public warehouse or elsewhere for the account of and at the expense and risk of Tenant, or sell such items at public or private sale, in such manner and at such times and places as Landlord in its sole discretion may deem proper without notice or demand upon Tenant, and otherwise enforce Landlord's lien on such items by distress, foreclosure or otherwise; and/or
6. pursue any other right or remedy available at law or equity;

In addition to the foregoing, in the event Tenant defaults three or more times during any three year period during the Term of this Lease, Landlord, at its option, may terminate this Lease.

All rights and remedies granted in this Lease to Landlord or available at law or equity shall be cumulative and not mutually exclusive. In no event shall Landlord be liable for indirect, consequential, or punitive damages or for damages based on lost profits. Upon an Event of Default, Landlord shall be permitted to place a leasing sign on the Premises.

Tenant agrees that, in exchange for the promises made in this Lease and other good and valuable consideration received from Landlord, in the event Tenant files a voluntary petition in bankruptcy or is the subject of an involuntary bankruptcy at any time during the Term or any extensions hereof, Landlord shall not be subject to the provisions of 11 U.S.C. §362, and shall automatically and immediately be entitled to relief from the stay imposed thereby without necessity of further action or court approval. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain, in proceedings for the termination of this Lease by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the

damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above. The failure or refusal of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages.

#### **XXIV. LESSOR'S CONTROL OF LAWSUITS:**

The parties agree that in any lawsuit brought in its name or defended in its name, Landlord must retain all final control and authority of its position in the lawsuit. Therefore, in any lawsuit envisioned in this agreement in which Landlord is a party, Landlord retains full control of its position in the lawsuit, including full authority to determine what legal actions or positions may be asserted to the courts in the name of Landlord and the full authority to settle or compromise any claim on behalf of Landlord. Tenant agrees that its responsibilities under this Agreement continue in full force and effect regardless of any decision of Landlord in this regard. It is expressly acknowledged that this section is not intended to allow Landlord to control Tenant's position in a lawsuit.

#### **XXV. LIEN FOR PAYMENT OF RENT:**

Tenant hereby pledges and assigns to Landlord, in addition to Landlord's statutory lien for Rent pursuant to Florida Statutes Chapter 83, as security for the payment of any and all Rent to other sums or amounts provided for herein, all of the permanent improvements, furniture, fixtures, personal property, equipment, goods and chattels of Tenant which shall or may be brought, put on, or regularly kept at the Premises, and Tenant agrees that said lien may be enforced by distress, foreclosure or otherwise, at the election of the Landlord. Tenant agrees hereby to execute and deliver upon request a standard Uniform Commercial Code Financing Statement, which Tenant acknowledges is in a form sufficient to perfect the lien in favor of Landlord created by this paragraph. Tenant agrees for itself and its assignees or sub-lessees that it shall execute such further documentation as may be required by Landlord in connection with the perfection or continuation of this lien. During the Term, Tenant shall not remove any property from the Premises, other than in Tenant's ordinary course of business, without Landlord's written consent. Removal of Tenant's property without Landlord's consent shall be an Event of Default under this Lease, and Landlord shall be entitled to enforce its rights by injunction in addition to any other remedy available under this Lease and applicable law.

So long as Supercuts Corporate Shops, Inc. (or its parent, subsidiary or affiliate) is the Tenant operating the Premises, Landlord agrees to subordinate any lien which it may have on Tenant's equipment, trade fixtures and all other personal property belonging to Tenant, excluding leasehold improvements, on one occasion only, on a form reasonably acceptable to Landlord, to the rights of a recognized institutional lender which is a secured creditor of Tenant. The specific items for which Landlord's lien is to be subordinated to the loan shall be set forth in detail in the subordination document;

there shall not be a blanket subordination as to all items in the Premises. Tenant shall pay to Landlord as additional Rent, the sum of Five Hundred Dollars (\$500.00) to cover Landlord's administrative costs, overhead and counsel fees, in connection with such subordination of lien. Nothing in this provision shall be deemed to waive Tenant's obligation to remove all personal property from the Premises at the termination of the Term in accordance with Lease requirements.

#### **XXVI. NO WAIVER:**

Failure of Landlord to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity.

No waiver of any term, provision, condition or covenant of this Lease by Landlord nor the failure of Landlord to insist upon strict performance of one or more covenants or conditions of this Lease shall be deemed to imply or constitute a further waiver by Landlord of any other term, provision, condition or covenant of this Lease, and no acceptance of Rent or other payment shall be deemed a waiver of any default hereunder, nor shall such acceptance operate as a waiver of any provisions of the Lease or any of Landlord's rights, remedies, privileges or options.

#### **XXVII. RIGHT OF ENTRY:**

Landlord, or any of its agents, shall have the right to enter the Premises during all reasonable hours and after forty-eight (48) hours notice to Tenant (except in the event of an emergency, to be determined in Landlord's sole discretion, in which event no notice shall be required) to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof or to otherwise exhibit the Premises to third parties, including, without limitation, mortgagees, insurance examiners and building inspectors. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Lease. Landlord and Tenant agree that to the extent there is any restriction on Landlord's right of entry to the Premises apply solely to Landlord in its capacity as a landlord and do not apply to Landlord in its capacity as a municipality with jurisdiction over the Premises and the property where it is located.

#### **XXVIII. HAZARDOUS MATERIALS:**

With the exception of minor amounts of Hazardous Materials customarily and lawfully used in conjunction with the Permitted Use, Tenant, its employees, contractors, agents, and any party acting on behalf of Tenant, shall not store, use, treat, generate, or dispose of Hazardous Materials at the Premises or other adjacent property owned by Landlord. "Hazardous Material(s)" means any substance that, by itself or in combination

with other materials, is either (i) generally regarded injurious to public health, safety, or the environment; or (ii) now or in the future regulated by any federal, state, or local governmental authority as potentially injurious to public health, safety, or the environment. Tenant, its employees, contractors, agents, and any party acting on behalf of Tenant shall comply, and shall keep the Premises in compliance, with all laws and regulations relating to Hazardous Materials ("Environmental Laws"); and in addition Tenant shall:

- (i) Promptly provide Landlord with copies of any document, correspondence, report or communication, written or oral, relating to Hazardous Materials at or affecting the Premises (x) to or from any regulatory body, or (y) stating a basis for any potential liability or responsibility of Tenant, Landlord, or the Premises; including all such documents, correspondence, reports or communications prepared by or on behalf of Tenant. In addition to the above, at Landlord's request, Tenant shall provide copies of any and all records and communications whatsoever relating to Hazardous Materials at or affecting the Premises.
- (ii) Immediately notify Landlord in the event of a suspected or confirmed release of a Hazardous Material or violation of Environmental Laws at or affecting the Premises or other property owned by Landlord and caused by or related to the operations of Tenant, its employees, contractors, agents, or any party acting on behalf of Tenant and, at Landlord's sole option, either promptly remediate or correct such release or violation to Landlord's satisfaction or reimburse Landlord's cost of remediation (including reasonable attorneys' and consultants' fees); and compensate Landlord and/or third parties for all resultant damage.
- (iii) Permit Landlord reasonable access to the Premises for the purpose of conducting an environmental audit or testing, the cost of which shall be borne by Landlord unless the results indicate activity prohibited by Environmental Laws or hereunder.
- (iv) Upon expiration or other termination of this Lease, remove all Hazardous Materials from the Premises caused by the acts or omissions of Tenant, its officers, agents, contractors, employees or invitees, and at Landlord's option Landlord may cause to be performed an environmental audit of the Premises at Tenant's expense, using a consultant reasonably acceptable to Landlord, and correct, at Tenant's expense, any deficiencies noted by the audit.

The provisions regarding Hazardous Materials shall survive the expiration or other termination of this Lease.

**XXIX. NOTICE:**

Any notice to be given Landlord as provided for in this Lease shall be in writing and shall be sent to Landlord by United States certified mail, postage prepaid, return receipt requested, addressed to Landlord at Landlord's office at the address set forth on page 1 hereof, or hand delivered or sent by a nationally recognized overnight courier to Landlord at such office. Any notice to be given Tenant under the terms of this Lease shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, or hand delivered or sent by a nationally recognized overnight courier to the Tenant at address set forth on page 1 hereof. Either party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given on delivery or refusal.

**XXX. SURRENDER; CONDITION OF PREMISES ON TERMINATION OF LEASE AND HOLDING OVER:**

Tenant agrees to surrender to Landlord, at the end of the Term of this Lease and/or upon any cancellation or early termination of this Lease, the Premises in as good condition as the Premises were at the beginning of the Term of this Lease, ordinary wear and tear, and damage by fire, or other casualty not caused by Tenant's negligence excepted. Tenant agrees that if Tenant does not surrender the Premises to Landlord at the end of the Term of this Lease, then Tenant will pay to Landlord, to the extent permitted by law, one hundred and fifty percent (150%) of the amount of the Rent paid by Tenant for the last full month of the Lease Term for each month or portion thereof that Tenant holds over, plus all damages that Landlord may suffer on account of Tenant's failure to so surrender to Landlord possession of the Premises, and will indemnify and save Landlord harmless from and against all claims made by any succeeding tenant of the Premises against Landlord on account of delay of Landlord in delivering possession of the Premises to the succeeding tenant so far as such delay is occasioned by failure of Tenant to so surrender the Premises in accordance herewith or otherwise. Subject to Landlord's lien, Tenant shall remove all personal property, inventory, signage, moveable equipment, and trade fixtures (including stations), mirrors (if removable), front desk, retail fixtures (including wall units), shampoo bowls, and cabinets, service island, washer/dryer, and all styling, reception and shampoo chairs, and Tenant shall repair any damages caused by such removal, and shall properly cap off any plumbing or electrical lines exposed by such removal.

No receipt of money by Landlord from Tenant after termination of this Lease or the service of any notice of commencement of any suit or final judgment for possession shall reinstate, continue or extend the Term of this Lease, affect any such notice, demand, suit or judgment, or waive any of Landlord's rights and remedies set forth in this Lease.

No act or thing done by Landlord or its agents during the Term hereby granted shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it be made in writing and signed by a duly authorized officer or agent of Landlord. Any personal property, furniture, fixtures, goods or chattels remaining in the Premises after the Termination Date shall be deemed abandoned. No surrender of the Premises prior to the end of the Term shall terminate this Lease unless Landlord agrees to such termination in writing.

**XXXI. SIGNS:**

Tenant shall have the right to install signs on the exterior of the Premises, subject to the Landlord's prior written consent; provided, however, that such signs comply with all requirements of municipal and county governmental requirements.

**XXXII. TRIAL BY JURY:**

It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, and Tenant's use or occupancy of the Premises. Tenant further agrees that the provisions for payment of Rent herein are independent covenants of Tenant and Tenant shall not interpose any noncompulsory counterclaim(s) in a summary proceeding or in any action based upon non-payment of Rent or any other payment required of Tenant hereunder. Tenant expressly waives any and all rights of redemption granted by or under any present or future laws.

**XXXIII. INVALIDITY OF PROVISION:**

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. This Lease shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami-Dade County.

**XXXIV. TIME OF ESSENCE:**

It is understood and agreed between the parties hereto that time is of the essence of all the terms and provisions of this Lease.

**XXXV. SUCCESSORS AND ASSIGNS:**

All terms and provisions of this Lease to be observed and performed by Tenant shall be applicable to and binding upon Tenant's respective heirs, personal

representatives, successors and assigns, subject, however, to the restrictions as to assignment and subletting by Tenant as provided herein.

**XXXVI. ATTORNEYS' FEES:**

If either party defaults in the performance of any of the terms or provisions of this Lease and by reason thereof the other party employs the services of an attorney to enforce performance of the covenants, or to perform any service based upon defaults, or in the event a party successfully defends an action against them for breach under this Lease, then in any of said events the prevailing party shall be entitled to receive from the other party reasonable attorneys fees and expenses and costs incurred by the prevailing party pertaining thereto (including costs and fees relating to any appeal) and in enforcement of any remedy.

**XXXVII. MISCELLANEOUS:**

The terms Landlord and Tenant as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, heirs, successors, personal representatives and/or assigns wherever the context so requires or admits. The terms and provisions of this Lease are expressed in the total language of this Lease and the Article or article headings are solely for the convenience of the reader and are not intended to be all-inclusive and shall not be deemed to limit or expand any of the provisions of this Lease. Anything herein to the contrary notwithstanding, Landlord shall not be or be deemed to be in default hereunder unless it has failed to cure its default within a reasonable time following its receipt of notice thereof, provided cure must be commenced within thirty (30) days. All exhibits attached to this Lease, if any, are hereby incorporated in and made a part hereof. Neither this Lease nor any memorandum or short form thereof shall be recorded in the Public Records of Miami-Dade County, Florida. Landlord and Tenant certifies to each other that the certifying party is not acting directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and that it is not engaged in this transaction, directly or indirectly on behalf of any such person, group, entity or nation.

**XXXVIII. EFFECTIVE DATE:**

Submission of this instrument for examination does not constitute an offer, right of first refusal, reservation of or option for the Premises. This instrument becomes effective as a Lease only upon execution and delivery by both Landlord and Tenant.



**XXXIL. BROKERAGE:**

Tenant represents and warrants that it has dealt with no broker, salesman, agent or other person in connection with this transaction and that no broker, salesman agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, salesman, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. The provisions of this Article shall survive the termination of this Lease.

**XXXL. FORCE MAJEURE:**

The term "Force Majeure" as used in this Lease shall mean "Acts of God", labor disputes (whether lawful or not), material or labor shortages, restrictions by any governmental or utility authority, civil riots or floods, but shall not mean financial inability.

**XLI. AUTHORITY TO EXECUTE LEASE:**

Tenant, if Tenant is a corporation, hereby represents and warrants to Landlord that the Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes a legal, valid and binding agreement of Tenant enforceable in accordance with its terms. Tenant and Landlord shall provide reasonable proof that the person signing this Lease is authorized to bind Tenant and Landlord, as applicable.

Tenant, if Tenant is a partnership, hereby represents and warrants to Landlord that the Lease has been duly authorized by all of the general or managing partners of such partnership, and further represents and warrants to Landlord that the Lease has been duly executed and delivered and constitutes a legal, valid and binding agreement of Tenant enforceable in accordance with its terms. Tenant agrees that each and every present and future partner in Tenant shall be and remain at all times jointly and severally liable hereunder and that neither the death, resignation or withdrawal of any partner, and whether subsequent modification or waiver of any of the terms and provisions of the Lease, shall release any partner from liability hereunder until and unless Landlord shall have consented in writing to such release.

Landlord hereby represents and warrants to Tenant that it has full authority to execute this Lease.

**XLII. RADON GAS:**

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND

IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

**XLIII. ENTIRE AGREEMENT:**

This Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by Landlord and Tenant. Tenant acknowledges and agrees that Tenant has not relied upon any statement, representation, prior written or prior or contemporaneous oral promises, agreements or warranties except such as are expressed herein.

**XLIV. DRAFTING OF LEASE:**

The drafting and negotiation of this Lease have been participated in by each of the parties, and for all purposes, therefore, this Lease shall be deemed to have been drafted jointly by each of the parties.

**XLV. COUNTERPARTS:**

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

**XLVI. SURVIVAL:**

All provisions of this Lease intended by their terms to survive expiration or earlier termination shall survive including, but not limited to all indemnification obligations contained herein.

**XLVII. RIGHT TO AUDIT:**

The Tenant shall maintain accurate and complete records of its activities and operations relating to this Lease in accordance with generally accepted accounting principles.

[Signatures follow]

**IN WITNESS WHEREOF**, the parties hereto have signed, sealed and delivered this Lease at Miami-Dade County, Florida, as of the day and year first above written.

**LANDLORD:**

**CITY OF CORAL GABLES, a  
municipal corporation of the State of  
Florida**

ATTEST:

By: \_\_\_\_\_  
Patrick Salerno  
City Manager

By: \_\_\_\_\_  
Walter Foeman  
  
City Clerk

Approved as to form and legal  
sufficiency:

By: \_\_\_\_\_  
Elizabeth M. Hernandez  
City Attorney

**TENANT:**  
**SUPERCUTS, INC.**

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

ATTEST/WITNESS:

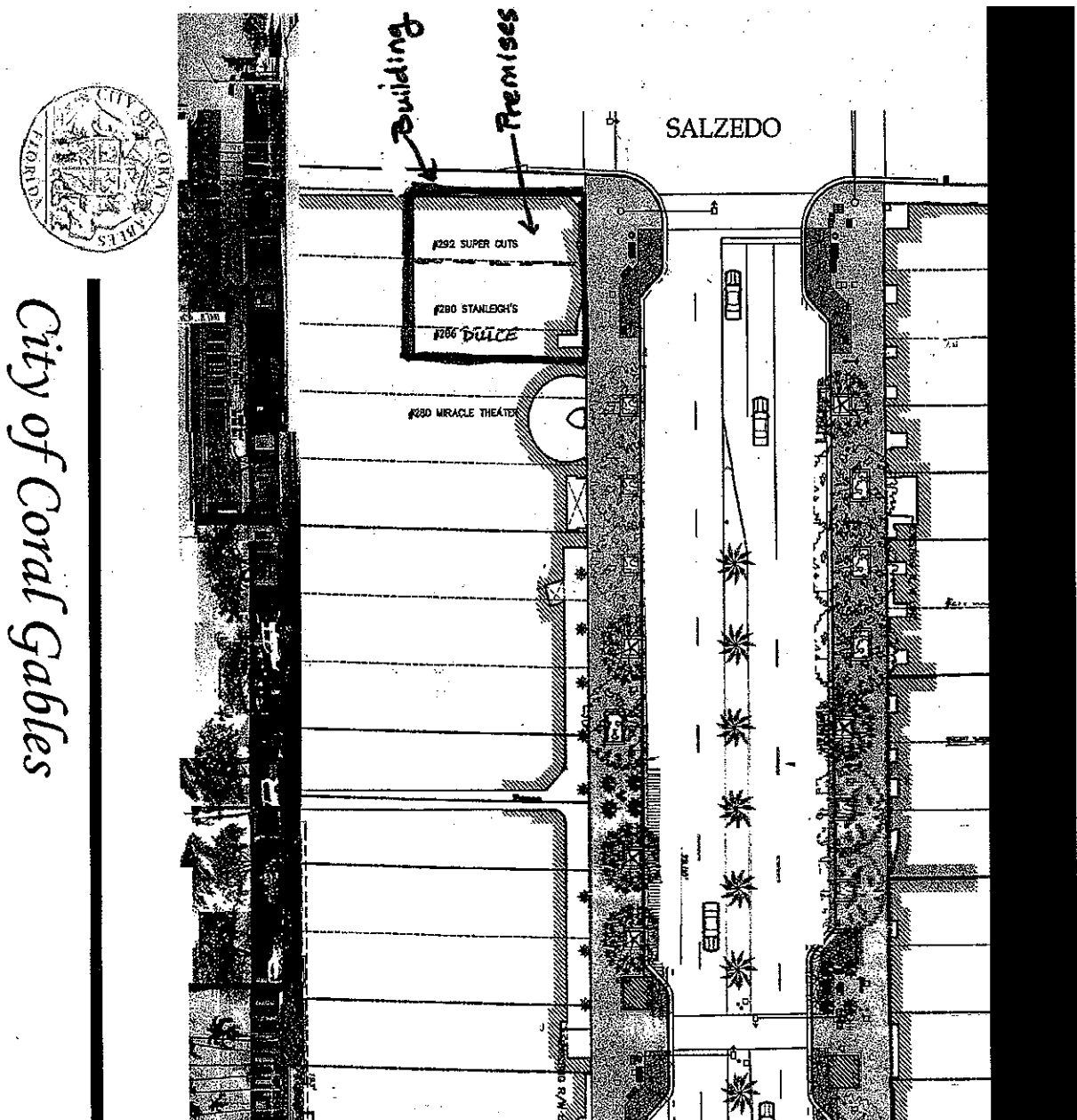
By: \_\_\_\_\_  
Name: \_\_\_\_\_

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

**APPROVED BY:**

<b>Economic Sustainability</b>	<b>Risk Management</b>	<b>Procurement</b>

EXHIBIT A  
LOCATION OF PREMISES AND BUILDING



This site plan is intended solely to depict the location of the Premises within the Building. Nothing herein should be construed as a representation as to the quality surrounding areas and nothing herein should be construed as a representation as to the tenants in the Building.