

BOARD OF REGENTS
BRIEFING PAPER

1. Agenda Item Title: Lease with Family Yogurt II to operate retail space
in the Joe Crowley Student Union

Meeting Date: March 6-7, 2014

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

- In June 2013, the University engaged in a competitive process to fill retail vacancies in the Joe Crowley Student Union. This included a Request for Proposals and the efforts of an approved retail broker. A review of interested vendors was conducted by the Student Union retail committee using the same process as with prior vendors.
- The committee selected Family Yogurt II to open a U-Swirl Frozen Yogurt operation in the Joe Crowley Student Union. As a result of these efforts, the University received a Letter of Intent (LOI) from the franchisee. Terms were negotiated and lease documents were drafted.
- As with all prior leases, Board of Regents' approval is required.
- Under Title 4, Ch. 10, Sec. 1.9.f, the retention of a real estate broker must be reported to the Board of Regents at the time of the approval of the real estate transaction. In December 2011, the NSHE Chancellor approved the use of a real estate broker to market Student Union space. The University's Purchasing Department issued a Request for Proposals (RFP) for a broker. In March, 2012, at the conclusion of the selection process, the University hired Avison Young to be its broker.
- The University of Nevada, Reno Purchasing Department released an open Request for Proposal (RFP # 8098) in June 2013 to provide an opportunity for prospective retailers to submit proposals as retail spaces within the Joe Crowley Student Union became available. The RFP was accessible through the Purchasing Office website. Information regarding retail space is also available on the Joe Crowley Student Union website with links to the Purchasing Office.
- The broker presented a LOI from the proposed tenant. The Retail Committee for the Joe Crowley Student Union reviewed the LOI under the oversight of the Purchasing Office. The members of this committee included the UNR's Director of Real Estate, the Associate Vice President of Business and Finance, the Associate Vice President of Student Life Services, the Director of the Student Union, the ASUN President, undergraduate students, a representative from the Center for Student Cultural Diversity, the GSA President, graduate students and a representative from the UNR Small Business Development Center.
- The members of the Retail Committee identified frozen yogurt as being a successful franchise that appeals to a majority of students and community members.
- The Retail Committee members unanimously agreed to recommend Family Yogurt II to the Board of Regents for approval.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

President Marc Johnson requests approval of the Lease with Family Yogurt II to operate retail space in the Joe Crowley Student Union (**See Lease: Attachment A and Lease Schedule: Attachment B**).

4. IMPETUS (WHY NOW?):

Approval of the lease will allow the tenant to begin the build out of the space as soon as possible. Since the location is vacant, we will continue to lose revenue until it is filled.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The lease follows the standard lease template used for all Joe Crowley Student Union retail that was developed by Henry Stone and reviewed by Nicholas Vaskov, Esq., System Counsel/Director of Real Estate Planning for NSHE. The supporting lease schedule drafted by Mr. Vaskov contains the key business terms as well as any negotiated changes to the standard lease. (See **Lease, Attachment A and Lease Schedule, Attachment B**).
- The mutually agreed upon terms include the following:
 - Base Rent: The initial base rent shall be \$2.00 per square foot monthly (\$1,654.00 per month). (**See Schedule of Payments: Attachment C**)
 - The base rent shall increase by 3% annually over the prior year’s base rent.
 - Lease Term: Sixty-five months from the Lease Commencement Date.
 - Option to Renew: One renewal option of sixty months.
 - Security Deposit: One month’s rent.
- This financial proposal was acceptable for the location which is off the main pathway on the first floor of the Student Union.
- All documents were reviewed by Mr. Thomas Judy, Associate Vice President of Business and Finance. Mr. Judy also conducted a financial review of the franchisee.
- The lease was developed after receipt of a Letter of Intent (LOI) from the potential Franchisee.
- The Premises consist of approximately 827 rental square feet (**see Floor Plan: Attachment D**).
- Key elements were identified for consideration with the U-Swirl frozen yogurt brand including its appeal to University students; its prime location on campus (there is not another frozen yogurt shop within the immediate University vicinity); its perceived “healthy” dessert option; price points for other U-Swirls are reasonable for students; frozen yogurt remains appealing all-year around.
- Tenant agrees to cover the costs of the build-out. As with previous new tenants, the University will pay to bring plumbing lines and other utilities to the premises. The total cost to the University is limited to \$10,000.00. All construction will be done under the supervision of, and subject to approval by, the University’s Facilities Services Department.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None have been brought forward.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

- Reduce operating expenses by reducing staff, marketing, and building hours.
- Increase operating fee to students.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_____ Chapter #_____ Section #_____
- Amends Current Board Policy: Title #_____ Chapter #_____ Section #_____
- Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____
- Other: Procedures and Guidelines Manual, Chapter 5, Section 3
- Fiscal Impact: Yes_____ No
- Explain:_____

NSHE Briefing Paper Attachment A

LEASE AGREEMENT

This Lease Agreement (“Lease”) is made as of the ___ day of _____, 2014 (the “Effective Date”), by and between the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the University of Nevada, Reno (“Landlord”), and FAMILY YOGURT II LTD., a Nevada limited liability company, d/b/a U-Swirl Frozen Yogurt & Rocky Mountain Candy Factory (“Tenant”).

IN CONSIDERATION of the agreements and covenants hereinafter set forth and as set forth in the Lease Schedule attached hereto and the Exhibits referred to herein and attached to this Lease, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises (as defined in Section 1.2), upon the following terms and conditions:

1. BASIC LEASE PROVISIONS.

1.1 “Building:” The Joe Crowley Student Union on the University of Nevada, Reno campus, containing approximately 167,000 square feet in gross, of which, approximately 15,000 square feet are Common Areas (as defined in Section 7.1), and approximately 45,000 square feet are rentable square feet.

1.2 “Premises:” Retail Space described in the Lease Schedule at the Building, consisting of approximate rentable area described in the Lease Schedule and, as more particularly depicted on Exhibit 1 to the Lease Schedule. Tenant agrees to accept the Premises as herein described recognizing that the square feet description is an approximation. The parties hereto recognize that the Premises for all purposes herein shall be deemed to be as set forth in this Section 1.2.

1.3 Term: As set forth in the Lease Schedule.

“Commencement Date:” The later of (i) the date set forth in the Lease Schedule, or execution of this Lease by both Landlord and Tenant, which ever is later, or (ii) upon Substantial Completion (as defined in Section 2.1) of Landlord’s Work (as defined in Section 1.8). Prior to occupancy Tenant must have evidence that insurance required herein has taken effect with Landlord listed as additionally insured.

“Rent Commencement Date” As set forth in the Lease Schedule.

“Termination Date:” The date which is the number of months after the Rent Commencement Date as set forth as the Lease Term in the Lease Schedule; provided, however, that if the Rent Commencement Date is a date other than the first day of a month, the Termination Date shall be the last day of the month which is the number of months in the term (as set forth in the Lease Schedule) after the month in which the Rent Commencement falls, unless extended or earlier terminated pursuant to this Lease.

“Lease Year” means (a) the period commencing on the Rent Commencement Date (except that if the Rent Commencement Date is a day other than the first day of a calendar month, then the first day of the calendar month next succeeding the Rent Commencement Date) and terminating at 11:59 p.m. on the day before the anniversary

thereof, and (b) each successive period of twelve (12) calendar months thereafter during the Lease Term; provided, however that the first Lease Year shall include the period from the Effective Date through the Rent Commencement Date.

“Option to Extend” Tenant shall have the number of options to extend the Lease Term as set forth on the Lease Schedule, each such option to be for the number of months per option as set forth in the Lease Schedule (the **“Option”**) such Option to extend shall be subject to the provisions contained in **Exhibit G** attached hereto.

The **“Lease Term”** shall commence on the Effective Date and end on the Termination Date unless the same shall be sooner terminated as hereinafter provided. Even though Tenant shall have no right to possession of the Premises until the Commencement Date, the Lease shall be in full force and effect as a binding obligation of the parties from and after the Effective Date.

1.4 **“Base Rent:”** Beginning on the Rent Commencement Date and on the first day of each month thereafter during the Term as the same may be extended, Tenant shall pay Landlord Base Rent. The Base Rent shall be, initially the monthly amount set forth on the Lease Schedule and an amount equal to such Base Rent shall be paid by Tenant upon Lease execution which amount shall be credited to rent accruing hereunder. Upon computation of the Gross Rentable Area by the Landlord pursuant to **Section 4.2**, the Base Rent shall be adjusted to equal the per square foot rental as reflected in the Lease Schedule multiplied times the Gross Rentable Area. If the Rent Commencement Date shall fall on a day other than the first day of a calendar month, or if upon early termination of the Lease or otherwise, less than a full month’s Base Rent shall be due and payable, the Base Rent for any such month shall be prorated based on a thirty (30) day month.

Except as otherwise provided in the Lease Schedule, commencing on each anniversary date of the Rent Commencement Date, or if the Rent Commencement Date shall be any day other than the first day of a calendar month, on each anniversary date of the first day of the calendar month next following the Rent Commencement Date (a **“Rent Adjustment Date”**), during the Term, including any renewal or extension of the Term, Base Rent shall increase by the percentage increase in the CPI (as defined herein) from the immediately preceding Lease Year. For purposes of this Lease, **“CPI”** shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor (San Francisco – Oakland – San Jose, CA) (1982-84=100), or any successor index thereto, appropriately adjusted, provided that if there is no successor index a substitute index shall be reasonably selected by Landlord. The new Base Rent payable as of any Rent Adjustment date shall be computed by determining the product arrived at by multiplying (A) the Base Rent due for the month immediately preceding such Rent Adjustment Date times (B) a fraction the numerator of which is the CPI for the month which is 3 months prior to the Rent Adjustment Date and the denominator of which is the lesser of (i) CPI for the month which is 3 months prior to the previous Rent Adjustment Date, or (ii) the numerator (i.e. this formula shall not be applied to result in a decrease in the Base Rent as of any Rent Adjustment Date. The product so determined shall be the Base Rent for the 12 months commencing on such Rent Commencement Date.

1.5 **Security Deposit:** Concurrent with the Base Rent to be paid upon execution hereof, Tenant shall pay to Landlord as a security deposit the sum set forth in the Lease Schedule (the "Security Deposit") and the Security Deposit shall be held by Landlord as described in **Section 5**.

1.6 **Landlord's Address:**

For Notices:

Board of Regents of the Nevada System of Higher Education
University of Nevada, Reno
BCN Purchasing (0242)
Reno, NV 89557-0242
Attn: Director of Purchasing
Fax: 775.784.6017

With a copy to:

Board of Regents of the Nevada System of Higher Education
University of Nevada, Reno
General Counsel (0550)
Reno, NV 89557-0550
Fax: 775.327.2202

For Payments:

Board of Regents of the Nevada System of Higher Education
University of Nevada, Reno
Crowley Student Union (0056)
Reno, NV 89557-0056
Attn: Director
Fax: 775.784.1859

1.7 **Tenant's Address:**

For Notices:

To the Premises, and at any additional address as set forth in the Lease Schedule

1.8 **Tenant Improvements:** Landlord, at its sole cost and expense, will use commercially reasonable efforts to perform Landlord's Work in accordance with the mutually agreed upon **Exhibit C**.

Tenant at its sole cost and expense, shall use commercially reasonable efforts to perform Tenant's Work in accordance with the mutually agreed upon **Exhibit B**.

1.9 **Permitted Use:** Tenant shall use the Premises only as set forth on the Lease Schedule and for the retail sale of products and services reasonably ancillary thereto (see also **Section 6.1**).

Permitted Name: As set forth on the Lease Schedule, or such other reputable name suitable for the Building and the Premises as may be approved by Landlord.

2. The foregoing Basic Lease Provision and definitions are an integral part of this Lease and each reference in the body of this Lease to any of the Basic Lease Provisions shall be construed to incorporate all of the terms set forth above with respect to such references. **DEFINITIONS.**

2.1 As used herein, the following terms shall have the following meanings:

“**Building**” shall have the meaning given it in **Section 1.1.**

“**Building Service Equipment**” means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on the Premises and owned by Landlord.

“**Commencement Date**” shall have the meaning given it in **Section 1.3.**

“**Food Court**” shall have the meaning given it in **Section 4.6**

“**Food Court Maintenance Fee**” shall have the meaning given it in **Section 4.6.3**

“**Lease Term**” shall have the meaning given it in **Section 1.3.**

“**Lease Year**” shall have the meaning given it in **Section 1.3.**

“**Person**” means a natural person, a trustee, a corporation, a limited liability company, a partnership and/or any other form of legal entity.

“**Premises**” shall have the meaning given it in **Section 1.2.**

“**Substantial Completion**” or similar capitalized terms shall mean the stage in the progress of each portion (A) of Tenant’s Work when the last of the following have occurred with respect to the applicable portion of the Premises: (i) Work is sufficiently complete in accordance with the applicable plans so that Tenant may occupy the respective portion of the Premises and utilize the same for its permitted business, subject to the completion of any minor punch-list items that do not unreasonably interfere with Tenant’s occupancy and use of the respective portion of the Premises; and (ii) a certificate of occupancy or its equivalent (unless the same cannot be issued due to the incompleteness of Work) permitting the use and occupation of the respective portion of the Premises shall have been issued by the appropriate approving authority; or (B) of Landlord’s Work when the work is sufficiently complete in accordance with the applicable plans so that Tenant may enter into or take possession of the premises for the purpose of commencing Tenant’s Work.

“**Termination Date**” shall have the meaning given it in **Section 1.3.**

“**University**” has the same meaning as the “**Landlord**”.

2.2 **Other Terms.** Any other term to which meaning is expressly given in this Lease shall have such meaning.

3. **TERM.**

3.1 **Confirmation of Commencement and Termination.** Landlord and Tenant at Landlord's option and request after (a) the Commencement Date, (b) the Rent Commencement Date or (c) the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner, shall confirm in writing by instrument in recordable form that, such commencement, rent commencement or such termination has occurred, or in the case of Termination Date that it will occur on the date computed as specified herein, setting forth therein, the Commencement Date, the Rent Commencement Date and/or the Termination Date.

3.2 **Surrender.** Tenant, at its expense at the expiration of the Term or any earlier termination of this Lease, shall (a) promptly surrender to Landlord possession of the Premises (including any fixtures or other improvements which are owned by Landlord) in good order and repair (ordinary wear and tear excepted) and broom clean, (b) remove therefrom all signs, goods, effects, machinery, fixtures and equipment used in conducting Tenant's trade or business which are neither part of the Building Service Equipment nor owned by Landlord, and (c) repair any damage caused by such removal.

3.3 **Holding Over.** If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease after obtaining Landlord's express, written consent thereto, then:

(a) such occupancy (unless the parties hereto otherwise agree in writing) shall be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, at least one month before the end of any calendar month, that the notifying party elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) anything in this section to the contrary notwithstanding, the Base Rent payable for each monthly period after the expiration of the Term or earlier termination of the Lease shall equal the sum of (a) monthly Base Rent for the month immediately preceding the month in which the expiration of the Term or earlier termination of this Lease occurs, multiplied by 150%, plus (b) the Rent payable under **Section 4.1**; and

(c) except as provided in this Section 3.3, such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease; provided, however, that if Landlord gives Tenant, at least one month before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be upon the said terms and subject to the said conditions, as so modified.

Notwithstanding the foregoing, if Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without obtaining Landlord's express, written

consent thereto, then the Base Rent computed pursuant to Section 3.3(b) above using 200% in lieu of 150%.

4. RENT.

4.1 **Rent.** “Rent” shall mean all Base Rent, Taxes, Food Court Maintenance Fees, and any other amounts that Tenant is or becomes obligated to pay Landlord under this Lease. Tenant shall pay Landlord Rent without any deduction, recoupment, set-off or counter-claim except as otherwise set forth herein and with respect to any final judgments Tenant obtains against Landlord. Tenant shall pay Landlord an annual rent (the “**Base Rent**”) pursuant to Section 1.4 as set forth in the Lease Schedule and adjusted as provided in Section 1.4.

4.2 **Rentable Area.** The measurement of the number of square feet of the Premises shall be conducted by Landlord pursuant to this **Section 4.2**. As soon as reasonably practicable after Substantial Completion of Landlord’s Work, Landlord shall actually measure the rentable area of the Premises and the Building and shall deliver to Tenant an architect’s certificate confirming the rentable square footage of the Premises and the useable square footage of the Building. All measurements will be made in accordance with the most recent standards established by the Building Owners and Managers Association (commonly known as “**BOMA**”) for the measurement of retail and/or civic space as appropriate. If the Premises rentable area is different than as set forth in the Premises definition above or in the Lease Schedule and/or the Common Areas are different than as set forth in the Building definition above, then Base Rent and Tenant’s Pro Rata Share will be appropriately adjusted based on such actual usable area. The area as so computed is referred to herein as the Net Usable Area. The Net Usable Area shall be multiplied by a factor, as set forth in the Lease Schedule (load factor) to determine the Gross Rentable Area. The parties hereto recognize that the Premises for all purposes herein shall be deemed to be as set forth herein; provided, that if at any time hereafter any portion of the Premises becomes no longer subject to this Lease, “Premises” shall thereafter mean so much thereof as remains subject to this Lease.

4.3 Payment of Rent.

4.3.1 **Payment of Base Rent.** The Base Rent for any Lease Year shall be due and payable to Landlord in twelve (12) consecutive, equal monthly installments, in advance, without deduction, offset, prior notice or demand, on the first (1st) day of each calendar month during such Lease Year commencing on the Rent Commencement Date, at the address set forth in **Section 1.6**, or at such other place or to such other person as Landlord may from time to time designate by notice hereunder. In addition, the Base Rent for the first full calendar month of the Term shall be due and payable upon execution of the Lease. If the Lease Term commences or terminates on other than the first day of a calendar month, then the Base Rental for said partial month shall be prorated on a per diem basis (based on a 30-day month), and shall be paid in full on the first day of such partial month in which the term commences. All payments shall be made in lawful money of the United States of America.

4.3.2 **Payment of all other Rent.** Except for Base Rent which shall be paid in accordance with **Section 4.3.1**, and except as is otherwise set forth herein, Rent accruing to Landlord under this Lease, shall be due and payable when the installment of Base Rent next

falling due after such Rent accrues and becomes due and payable, unless Landlord makes written demand upon Tenant for payment thereof at any earlier time under the terms of this Lease, in which event such Rent shall be due and payable at such time

4.3.3 No Set-Off; Late Payment. Each such Rent payment shall be made promptly when due, without any deduction or setoff whatsoever, and without demand, failing which Tenant shall pay to Landlord as additional Rent for such late payment, after the fifth (5th) day after such Rent payment remains due but unpaid, a late charge equal to five percent (5%) of such payment which remains due but unpaid which Tenant agrees is a reasonable estimate of the costs which Landlord will incur as a result of and in order to process such late payment. Such late charge is due on the day it is incurred and shall bear interest thereafter as hereinbelow provided. In addition, any payment that is not paid by the fifth (5th) day after such payment is due shall bear interest at the rate of twelve percent (12%) per annum. Any payment made by Tenant to Landlord on account of Rent may be credited by Landlord to the payment of any Rent then past due, late charge incurred and unpaid, or accrued and unpaid interest before being credited to Rent currently falling due, regardless of any attempt by Tenant to cause such partial payment to be credited otherwise. Any such payment which is less than the amount of Rent then due shall constitute a payment made on account thereof, the parties hereto hereby agreeing that Landlord's acceptance of such payment (whether or not with or accompanied by an endorsement or statement that such lesser amount or Landlord's acceptance thereof constitutes payment in full of the amount of Rent then due) shall not alter or impair Landlord's rights hereunder to be paid all of such amount then due, or in any other respect.

4.4 Rent Taxes. Tenant shall pay any rent tax, sales tax, gross receipts tax, excise tax, service tax, transfer tax, value added tax, personal property tax, real property tax or any other applicable tax (whether or not such tax is exists on the Effective Date or is hereinafter inacted) directly or indirectly on the Rent, Premises, utilities or services contemplated herein or otherwise respecting this Lease or any other document entered in connection herewith. Tenant shall also pay, prior to the time the same shall become delinquent or payable with penalty, all taxes imposed on its inventory, furniture, trade fixtures, apparatus, equipment, leasehold improvements installed in or around the Premises by Tenant or by Landlord on behalf of Tenant. Tenant shall pay such amounts thereof as Rent to Landlord upon demand, unless Tenant is prohibited by law from doing so, in which event Landlord at its election may terminate this Lease by giving written notice thereof to Tenant.

4.5 Prorations. If the Effective Date, Commencement Date and/or Termination Date is on a day other than the first date of a calendar month, the Base Rent, and monthly payments of any other amounts payable on a monthly basis shall be prorated on a per diem basis for each such partial calendar month.

4.6 ADDITIONAL FOOD COURT EXPENSES.

4.6.1 Food Court Defined. "Food Court" shall mean that portion of the Building shown on **Exhibit H**. Premises is a part of the Food Court and Tenant shall be obligated to pay to Landlord as Rent the Food Court specific costs and expenses described in this **Section 4.6**.

4.6.2 **Food Court Contribution.** No later than the Lease Commencement Date, Tenant shall pay to Landlord Twenty Five Thousand (\$25,000) Dollars as a contribution to the cost of the furniture, fixtures, equipment, and other improvements for the Food Court.

4.6.3 **Food Court Maintenance Fee.** Additionally, throughout the Term, on a monthly basis, Tenant shall pay to Landlord Tenant's Share of the Cost of the Food Court Maintenance Fee. The Food Court Maintenance Fee shall include those costs and expenses incurred by Landlord in the day-to-day and ongoing maintenance and repair of the Food Court. Tenant shall pay to Landlord annually Seven Dollars and 50/100 (\$7.50) per rentable square foot of the Premises as Tenant's Food Court Maintenance Fee.

4.7 **Percentage Rent.** As additional rent, payable in addition to all other amounts set forth in this Lease, Tenant shall pay to Landlord as **Percentage Rent** an amount computed by multiplying the Percentage Rent Rate, as set forth in the Lease Schedule, times the **Adjusted Gross Sales** (as hereinafter defined). The Percentage Rent shall be payable monthly concurrent with the Base Rent, subject to adjustment as provided below. No Percentage Rent shall be payable for the period ending on the day prior to the Rent Commencement Date.

4.7.1 Gross Sales shall be computed annually by taking the total gross receipts of the Tenant received for sales of goods and services at the Premises, whether in cash, by check, credit card, debit card or otherwise, including accounts receivable less a reasonable allowance for bad debts, and reducing such amount by the portion thereof attributable to refunds, rebates and sales taxes actually paid over to a taxing authority. Gross Sales shall be reduced by the amount set forth on the Lease Schedule as the Gross Sales Credit to determine Adjusted Gross Sales. For the calendar year in which the Rent Commencement Date shall fall, and in the final calendar year of the Lease (as extended), the Gross Sales Credit shall be prorated for the portion of such year after the Rent Commencement Date or the expiration of the Lease, whichever shall apply.

4.7.2 Within 30 days after the end of each calendar quarter, Tenant shall provide to Landlord a written report reflecting the Tenant's Gross Sales for each month during such quarter, which report shall reflect the total gross receipts and the amount of all refunds rebates and taxes which Tenant has used in computing Gross Sales for such quarter, on a month by month basis. Within 60 days after the end of each calendar year, Tenant shall provide to Landlord a written report reflecting the Tenant's Gross Sales for each month during such calendar year, which report shall reflect the total gross receipts and the amount of all refunds rebates and taxes which Tenant has used in computing Gross Sales for such year, on a month by month basis.

4.7.3.1 Upon receipt of each quarterly report from Tenant, Landlord shall make a reasonable estimate of the Percentage Rent which will accrue for the applicable calendar year. Landlord shall give written notice to Tenant of such estimate (a "Quarterly Estimate Notice"). The Quarterly Estimate Notice shall also contain a computation of the estimated monthly Percentage Rent which shall be payable for each month during the balance of the applicable calendar year, computed by subtracting from such estimate of Percentage Rent for the calendar year the Percentage Rent payments received to the date of such notice which are

applicable to such calendar year and by dividing such difference by the number of calendar months remaining in such calendar year. Commencing on the first day of the calendar month next succeeding the date of such Quarterly Estimate Notice, Tenant shall make monthly payments of Percentage Rent equal to such estimated monthly Percentage Rents as set forth in such notice until such monthly payment amounts are further adjusted by a subsequent Quarterly or Annual Estimate Notice.

4.7.3.2 Upon receipt of the annual report for a calendar year, Landlord shall determine the actual Percentage Rent for such calendar year and the amount of any excess or shortfall of Percentage Rent paid by Tenant for such calendar year and Landlord shall reasonably estimate the Percentage which will be due for the calendar year following such calendar year. Landlord shall give written notice to Tenant of such estimate, and such excess or shortfall (a "Annual Estimate Notice"). The Annual Estimate Notice shall also contain a computation of the estimated monthly Percentage Rent which shall be payable for the balance of such succeeding calendar year, computed by subtracting from such estimate of Percent Rent for such year the Percentage Rent payments received by Landlord to the date of such notice which are applicable to such succeeding calendar year and by dividing such difference by the number of calendar months remaining in such calendar year. Commencing on the first day of the calendar month next succeeding the date of such notice, Tenant shall make monthly payments of Percentage Rent equal to such estimated monthly Percentage Rents as set forth in such notice until such monthly payment amounts are further adjusted by a subsequent notice of estimated Percentage Rent.

4.7.3.3 If, based on the annual report for a calendar year, it is determined that Tenant has overpaid the Percentage Rent for such year, Tenant shall be entitled to a credit for such overpaid amount against amounts due as Rent. If such credit shall be in an amount which exceeds 50% of the monthly Base Rent then payable, Landlord may elect, by so stating in the Annual Estimate Notice, to apply such credit over up to 12 months. If, based on the annual report for a calendar year, it is determined that Tenant has under paid the Percentage Rent for such year, Tenant shall pay such amount shortfall together with the next monthly payment of Base Rent. If such shortfall shall be more than 50% of the monthly Base rent then payable, Tenant may elect, by written notice to Landlord within 30 days receipt of the Annual Estimate Notice, to pay the shortfall in not more than 12 monthly payments. Any such credit or additional payment attributable to such prior calendar year shall not be included in determining Percentage Rent payments made for any succeeding calendar year.

4.7.4 **Accounting.** Landlord may conduct an audit of Tenants books and records to determine the accuracy of any annual report by giving Tenant 45 days' written notice of its intent to conduct such audit, such written notice to be given not more than 180 days after receipt of such annual report. Upon receipt of such notice, Tenant shall make available to Landlord for audit all of its books and records reasonably necessary to

determine the accuracy of the annual report, such audit to occur at the Premises or at Landlords offices in the Building. Included in the books and records which Tenant shall make available shall be all ledgers, journals, tax returns and other records which bear on determining Tenants gross receipts. If such audit shall determine that the annual report resulted in an understatement of Percentage Rents by more than 5% of the corrected Percentage Rent, Tenant shall pay the reasonable cost of such audit. If Tenant shall fail to timely provide any quarterly or annual report, Landlord may reasonably estimate gross receipts for the relevant period and provide a Quarterly or Annual Estimate Notice based on such estimate and gross receipts so estimated shall be binding on Tenant.

5. **SECURITY DEPOSIT.** Landlord shall not be required to hold Tenant's Security Deposit in a separate, segregated fund. At the expiration or termination of this Lease, the amount of the security deposit then held by Landlord shall be returned to Tenant, less the amount of any damages, including unpaid Rent, incurred by Landlord arising under this Lease or otherwise due and owing Landlord from Tenant.

6. **PERMITTED USE AND COMPLIANCE.**

6.1 **Permitted Use; Permitted Name.** Tenant shall use the Premises only for the use set for on the Lease Schedule and for the retail sale of products and services reasonably ancillary thereto. Tenant shall not use the Premises for the sale of any products not normally associated with such use. Tenant shall operate the Premises under only the Permitted Name(s) (as defined in **Section 1.9**). Tenant acknowledges that Landlord shall be permitted to grant to other Tenants in the Building certain exclusive rights to engage in the sale of certain products which are not normally sold as a primary product by business engaged in the business which is the approved use herein. Upon the granting of any such exclusive rights to any other tenant and notice thereof to Tenant, Tenant agrees that it shall not thereafter add to the products which it sells any product which conflicts with such exclusive use.

6.2 **Compliance With Laws and Covenants.** During the Lease Term, Tenant, at its sole expense, in its use and possession of the Premises, shall:

(a) comply promptly and fully with (i) all laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, including but not limited to The Americans with Disabilities Act, 42 U.S.C. Section 12101 et. seq., and the ADA Disability Guidelines promulgated with respect thereto, and (ii) all requirements (A) of the National Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions) which are applicable to any or all of the Premises, or (B) imposed by any policy of insurance covering any or all of the Premises, and (iii) all covenants and restrictions which may encumber the title to any or all of the Premises, all if and to the extent that any of such requirements relate to any or all of the Premises or to any equipment, pipes, utilities or other parts of the Premises which exclusively serve the Premises, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

(b) keep in force at all times all licenses, consents and permits necessary for the lawful use of the Premises for the purposes herein provided.

(c) pay when due all personal property taxes, income taxes, license fees and other taxes assessed, levied or imposed upon Tenant or any other Person in connection with the operation of its business upon the Premises or its use thereof in any other manner;

(d) not obstruct, annoy or interfere with the rights of other tenants in the Building;

(e) not allow the transmission of any unreasonably loud or objectionable sounds or noises or vibration from the Premises, and

(f) be responsible for the maintenance, cleaning and security of the Premises.

With respect to The Americans with Disabilities Act and the ADA Disability Guidelines thereto, Tenant shall be responsible for the compliance of the entire Premises, including all entry doors and signage (subject to the restrictions of **Section 6.4**), and Landlord shall be responsible for compliance for the Building and the Common Areas.

6.3 **Parking.** Tenants will have, on a limited and shared, first-come, first-served basis, loading dock access for temporary loading and unloading, but shall to abide by University parking procedures at all times. All of Tenant's non-student employees may purchase university parking permits to park at a university parking area. Tenant will be responsible for all payments to Landlord's University Parking Services department for Tenant's and its employees' parking. Landlord may, by notice to Tenant, require Tenant to obtain from its employees and provide to Landlord a complete listing of all its employees employed at the Premises, which listing shall include, as to each employee, such employee's name, address, telephone number, and the make, model, color and model year of any vehicle which such employee utilizes to commute to the Building, and shall update such listing as often as there are changes in such listing but not more often than once each month, during the Term.

6.4 **Signs.** Except as otherwise provided herein, Tenant shall have no right to place or erect signs upon the Building or the Premises unless Landlord has given its express, written consent thereto, which consent may be withheld for any reason or for no reason. Tenant shall be permitted to place its business name on the front of the Premises and/or the glass portion of the entry door to the Premises, which may be illuminated, upon receiving Landlord's consent which will not be unreasonably withheld. Tenant's said sign at the entry of the Premises is subject to Landlord's approval as to location, size, shape, content and materials, which approval shall not be unreasonably withheld. If Landlord chooses, in Landlord's sole and absolute discretion, to erect a monument, pole or pylon sign on or adjacent to the Building, Tenant, for a reasonable fee and at Tenant's sole costs and expense, may choose to acquire rights to place Tenant's business name and/or logo on such monument sign, subject to Landlord's reasonable approval as to content, size and location; provided that Landlord shall have sole and absolute discretion to determine the location of any such monument, pole or pylon sign and the location and size of Tenant's sign thereupon, so long as other tenants with reasonably comparable premises are offered reasonably comparable sized signs. Landlord may elect to construct such a sign which may not be large enough to contain signs for all tenants in the Building in which event, Landlord may select which tenants may be allowed to utilize a portion of such sign.

6.5 **Floor Load.** Tenant shall not place any load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry. Landlord reserves the right to prescribe the weight and position of all sales and other heavy equipment, and to prescribe the reinforcing necessary, if any, which in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's sole expense. Business machines and mechanical equipment shall be placed and maintained by Tenant in settings sufficient in Landlord's judgment to absorb and prevent vibration and noise, and Tenant shall, at its sole expense, take such steps as Landlord may direct to remedy any such condition.

6.6 **Area Above Standard Finish Ceiling Line.** Tenant shall have no right to use, enter into or cause to be entered into that portion of the Premises above the standard ceiling line (as established by Landlord) without the prior written consent of Landlord, which shall not be unreasonably withheld or conditioned.

6.7 **Mechanics' Liens.**

6.7.1 Tenant shall not create or permit to be created, and if created shall discharge or have released, any mechanics' or materialmen's lien arising during the Lease Term and affecting any or all of the Premises or the Building, and Tenant shall not permit any other matter or thing whereby Landlord's estate, right and interest in any or all of the Premises or the Building might be impaired. Tenant shall defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or expense (including but not limited to that of reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim.

6.7.2 If Tenant fails to discharge any such lien within fifteen (15) days after it first becomes effective against any of the Premises or the Building, then, in addition to any other right or remedy held by Landlord on account thereof, Landlord may (a) discharge it by paying the amount claimed to be due or by deposit or bonding proceedings, and/or (b) in any such event compel the prosecution of any action for the foreclosure of any such lien by the lienor and pay the amount of any judgment in favor of the lienor with interest, costs and allowances. Tenant shall reimburse the

Landlord for any amount paid by Landlord to discharge any such lien and all expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of twelve percent (12%) per annum from the respective dates of Landlord's making such payments or incurring such expenses (all of which shall constitute Rent).

6.7.3 Nothing in this Lease shall be deemed in any way (a) to constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialmen provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Premises, the Building and/or the Property, or (b) to give Tenant any right, power or authority to contact for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the Premises or the Building, or Landlord's estate or interest therein, or (c) to evidence Landlord's consent that the Premises or the Building be subjected to any such lien.

7. **COMMON AREAS**

7.1 **"Building Common Areas"** shall mean those areas of the Building which may be designated by Landlord, from time to time, as Common Areas. As further described in **Section 7.4**, Landlord, in its sole and absolute discretion, from time to time, may relocate and/or reconfigure the Building Common Areas in the Building. Notwithstanding the foregoing, Building Common Areas shall include all footways, sidewalks, general public lobbies, elevators, stairwells, corridors, restrooms, excluding any such feature located on rentable square footage or within any rented Building square footage. Landlord shall designate a portion of the Building Common Areas as Food Court Common Areas, which shall include those areas intended for use

by customers of the tenants of the Building in connection with their consumption of products sold by such tenants and for ingress and egress through the Building Common Areas into the Food Court Common Areas and the Premises.

7.2 Non-exclusive License. Landlord hereby grants to Tenant a non-exclusive license to use (and to permit its officers, directors, agents, employees, subcontractors, licensees, and invitees to use), in the course of conducting business at the Premises, Food Court Common Areas, subject, however, to the Rules and Regulations, as found in **Exhibit A**. Such license shall be exercised in common with the exercise with the common use of Common Areas by Landlord, the other tenants or occupants of the Building and their respective officers, directors, agents, employees, subcontractors, licenses, and invitees and University students. No license is granted with respect to Building Common Areas other than the Food Court Common Areas.

7.3 Building Alterations and Remodels. Notwithstanding anything to the contrary, Landlord reserves the right at any time and from time to time to (i) to change or alter the location, layout, nature, or arrangement of the Common Areas or any portion thereof, including but not limited to the arrangement and/or location of entrances, passageways, doors, corridors, stairs, restrooms, elevators, parking areas, and other public areas of the Building; and (ii) construct additional improvements on the Building and make alterations thereof or additions thereto and build additional stories on or in any such buildings adjoining the same; provided, however, that no such change or alteration shall deprive Tenant of access to or unreasonably hinder or burden Tenant's operation in the Premises; provided, however, that all preserved, relocated or additional footways, sidewalks, general public lobbies, elevators, stairwells, corridors, restrooms, excluding any such feature located on rentable square footage or within any rented Building square footage, will become Common Areas.

7.4 Landlord's Control and Right to Restrict Use of Common Areas. Landlord shall at all times have full and exclusive control, management and direction of the Common Areas. Without limiting the generality of the foregoing, Landlord shall have the right to maintain and operate lighting facilities for all of the Common Areas and to police and provide other security to the Common Areas. In addition, Landlord reserves the right to temporarily close off Common Areas, University areas, civic areas and/or retail areas for special events from time to time. Advance notice will be provided to Tenant for any special events. Tenant shall be entitled to no abatement of Base Rent on account of any such close off.

8. Liability of Landlord. Landlord and its agents and employees shall not be liable to Tenant or any other person whatsoever (a) for any injury to person or damage to the Premises caused by any defect in or failure of equipment, pipes, wiring or broken glass, or the backing up of any drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, or (b) for any loss or damage that may be occasioned by or through the acts or omissions of any other tenant of the Premises or of any other person whatsoever, other than the gross negligence or willful misconduct of Landlord's duly authorized employees or agents acting within the course and scope of the authority of such employees or agents.

9. Hazardous Materials. Tenant warrants and agrees that Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord

harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises or the Building, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Building or the Premises generally, damages from any adverse impact on marketing of space in the Building, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority because of Hazardous Material present in the soil or ground water or under the Premises or the Building generally. As used herein (i) "**Environmental Laws**" means the Clean Air Act, the Resource Conservation Recovery Act of 1976, the Hazardous Material Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Clean Water Act, the Federal Water Pollution Control Act, the National Environmental Policy Act, as each of the foregoing shall be amended from time to time, and any similar or successor laws, federal, state or local, or any rules or regulations promulgated thereunder, and (ii) "**Hazardous Materials**" means and includes asbestos; "oil, petroleum products and their by-products" "hazardous substances;" "hazardous wastes" or "toxic substances," as those terms are used in Environmental Laws; or any substances or materials listed as hazardous or toxic in the United State Department of Transportation, or by the Environmental Protection Agency or any successor agency under any Environmental Laws.

10. **INSURANCE.**

10.1 **Tenant's Insurance.** Tenant shall, at Tenant's sole expense, procure, maintain, and keep in force for the duration of the Lease the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by Landlord, the required insurance shall be in effect at and as a condition to the effectiveness of the commencement of the Lease and shall continue in force as appropriate until the Lease expires or terminates and Tenant vacates the Premises.

10.1.1 **Workers' Compensation and Employer's Liability Insurance.** Tenant shall carry and provide proof of workers' compensation insurance if such insurance is required of Tenant by NRS 616B.627 or shall provide proof that compliance with the provisions of NRS, Chapter 616A-D and all other related chapters is not required.

10.1.2 **Commercial General Liability Insurance.** Coverage shall be on an occurrence basis and shall be at least as broad as ISO form CG 00 01 10 01 and shall cover liability arising from Premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract. The following minimum limits are required:

\$2,000,000 General Aggregate
\$2,000,000 Products & Completed Operations Aggregate

\$2,000,000 Personal and Advertising Injury
\$2,000,000 Each Occurrence

10.1.3 **Business Automobile Liability Insurance.** The minimum limit required is \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage shall include Tenant owned, non-owned, and hired vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute providing equal or broader liability coverage.

10.1.4 **Property Insurance.** Tenant shall carry property insurance on an all-risk basis for loss to any tenant improvements or betterments and the personal property of others in Tenant’s possession in, upon or about the Premises. To the extent applicable, Tenant shall obtain Plate Glass coverage in an amount sufficient to cover the replacement cost of any plate glass within the Premises. This coverage shall be written on a replacement cost basis and Landlord shall be named as a loss payee on the policy. Tenant further agrees to waive its right of subrogation against Landlord and to require that its property insurer do the same.

10.1.5 **Rent Continuation Insurance.** Tenant shall carry Rent Continuation insurance in an amount sufficient to cover its Rent obligations hereunder.

10.2 **General Requirements.**

10.2.1 **Additional Insured.** Landlord shall be named as an additional insured by endorsement to Tenant’s Commercial General Liability policy using ISO form CG 20 26 07 04) or an endorsement providing equally broad coverage. Tenant’s Umbrella Liability or excess liability policy shall also name Landlord as additional insureds using language as broad as that used on the Commercial General Liability policy.

10.2.2 **Waiver of Subrogation.** The Commercial General Liability Policy shall provide for a waiver of subrogation in favor of Landlord using ISO form CG 24 04. Tenant’s Umbrella Liability policy shall also provide for a waiver of subrogation in favor of Landlord using language as broad as that used on the Commercial General Liability policy. Each Workers Compensation policy shall provide for a waiver of subrogation in favor of Landlord using National Counsel of Compensation Insurance endorsement WC 00 03 13.

10.2.3 **Cross-Liability.** All required liability policies shall provide cross-liability coverage.

10.2.4 **Policy Cancellation Endorsement.** Except for ten (10) days written notice to Landlord for non-payment of premium, each insurance policy shall be endorsed to specify that without sixty (60) days prior written notice to Landlord, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified herein.

10.2.5 Deductibles and Self-Insured Retentions. Insurance maintained by Tenant shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by Landlord. Such approval shall not relieve Tenant from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence.

10.3 Approved Insurer and Notice of Insurance. All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurance companies rated not lower than "A" and in the Class IX Financial Size category in Best's Insurance Reports (current edition) and authorized to do business in the State of Nevada. Such policies shall be endorsed to indicate that Tenant's coverage shall not be invalid due to any act or omission by Landlord. The policies shall further be endorsed to indicate that such policies shall cover Tenant's obligations up to the limits of such policies. The insurance companies issuing such insurance shall agree to notify Landlord in writing of any cancellation, reduction in coverage, changing types of coverage, or non-renewal of said insurance at least thirty (30) days prior thereto. Tenant shall deliver to Landlord, within 30 days after execution of this Lease, or prior to entering the Premises for any purpose, whichever is first to occur, certificates (in the form of Acord 25 Certification of Insurance or a form substantially similar) evidencing the insurance coverage required herein and confirming that the premiums therefor have been paid in full. Said certificates shall also include a footnote referring to this Lease and certifying that the policy or policies issued to Tenant comply with all of the provisions of this Section 10. If Tenant fails to obtain the insurance required herein and deliver said certificates to Landlord as provided above, Landlord shall be entitled, but without obligation, to obtain said policies at Tenant's expense. All coverages for Tenant's assignees and subtenants shall be subject to the requirements stated herein.

10.4 Policy Requirements. Landlord and Tenant agree that on January 1 of the second (2nd) full calendar year during the Term and on January 1 of every second (2nd) calendar year thereafter, Landlord will have the right to request commercially reasonable changes in the character and/or amounts of insurance required to be carried by Tenant pursuant to the provisions of this **Section 10**, and Tenant shall comply with any requested change in character and/or amount within thirty (30) days after Landlord's request therefore.

10.5 Landlord not Responsible for Acts of Others. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying or using space adjoining the Premises or any part of the premises adjacent to or connecting with the Premises or any other part of the Building, or for any loss or damage resulting to Tenant (or those claiming by, through or under Tenant) or its or their property, from (a) the breaking, bursting, stoppage or leaking of electrical cable and/or wires, or water, gas, sewer or steam pipes, (b) falling plaster, or (c) dampness, water, rain or snow in any part of the Building. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises, and to use such other portions of the Building as Tenant is herein given the right to use, at Tenant's own risk.

10.6 Increase in Insurance Premiums. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises or the Building which will

contravene Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies from companies acceptable to Landlord. If anything done, omitted to be done, or suffered by Tenant to be kept in, upon or about the Premises or the Building shall cause the rate of fire or other insurance on the Premises or the Building to be increased beyond the minimum rate from time to time applicable to the Premises or to any such other property for the use or uses made thereof, Tenant shall pay to Landlord, as Rent, the amount of any such increase upon Landlord's demand therefore.

11. UTILITIES.

11.1 **Utilities Provided by Tenant.** Tenant shall: (i) make application in Tenant's own name for all utilities not provided by Landlord, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities directly from, and pay for the same when due directly to the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, gas, water, sewer, steam, fire protection, telephone, Ethernet and other communication and alarm services, and all taxes or other charges thereon. Tenant shall install and connect all equipment and lines required to supply such utilities to the extent not already available at or serving the Premises, or at Landlord's option shall repair, alter or replace any such existing items. Tenant shall maintain, repair and replace all such items, operate the same, and keep the same in good working order and condition. Tenant shall not install any equipment or fixtures, or use the same, so as to exceed the safe and lawful capacity of any utility equipment or lines serving the same. The installation, alteration, replacement and connection of any utility equipment and lines shall be subject to the requirements for alterations of the Premises set forth in **Section 13**.

11.2 **Utilities Provided by Landlord.** Landlord reserves the right from time to time to provide any or all utilities to the Premises. In such case, Tenant shall pay such charges as Landlord may reasonably establish from time to time, which Landlord may determine on a per-square-foot basis applicable to the square footage of the Premises as a monthly charge, or which Landlord may determine based on the quantity of utilities used or consumed at the Premises on a monthly or other regular basis. Such charges shall not exceed the rates, if any, that Landlord is permitted to charge pursuant to applicable law. In addition, if Landlord establishes charges based on consumption or use: (i) such charges shall not be in excess of the rate that Tenant would be charged directly by the utility company serving the general area in which the Premises is located, (ii) if the Premises are separately metered for such utilities, Tenant shall pay for amounts of such utilities based on such meters, and (iii) if the Premises are not separately metered for such utilities, Tenant shall pay for amounts of such utilities based on the reasonable estimates of Landlord's engineer or consultant, or, at Landlord's election, shall pay Landlord's cost for installing separate meters, and shall thereafter pay based on such meters. Except to the extent prohibited by applicable law, Landlord may also impose a reasonable administrative charge to cover meter-reading and other overhead expenses. All such charges shall be payable as Rent ten (10) days after billed by Landlord. Landlord may discontinue providing any utilities then being provided by Landlord upon fifteen (15) days' advance written notice to Tenant (in which case Tenant shall obtain such utilities directly from the applicable utility company). If Landlord supplies ventilated air or chilled or heated air or water for air-conditioning or heating of the Premises, Landlord may nevertheless require that Tenant, at Tenant's expense, maintain,

repair and replace any portion of the systems and equipment therefore exclusively serving the Premises, including without limitation any air handling equipment, ductwork and lines.

11.3 Interruptions in Utilities. Landlord does not warrant that any utilities provided by any utility company or Landlord will be free from shortages, failures, variations or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, governmental requirements or requests, or other causes beyond Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of such shortage, failure or variation, including without limitation loss of profits, business interruption or other incidental or consequential damages.

12. REPAIRS AND MAINTENANCE.

12.1 Landlord's Duty to Maintain Structure. Landlord shall maintain or cause to be maintained in good operating condition the Building, including the Common Areas, University/civic areas, and the structure of the Building, and shall be responsible for maintenance of such and structural repairs to the exterior walls, load bearing elements, foundations, roofs, structural columns and structural floors with respect thereto, and Landlord shall make all required repairs thereto, provided, however, that if the necessity for such repairs shall have arisen, in whole or in part, from the negligence or willful acts or omissions of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors, or by any unusual use of the Premises by Tenant, then Landlord may collect the cost of such repairs, as Rent, upon demand, accompanied by a reasonably detailed explanation of the same.

12.2 Tenant's Duty to Maintain Premises.

12.2.1 Unless otherwise provided in **Exhibit B**, Tenant shall keep and maintain the Premises and all fixtures, equipment, light fixtures and bulbs, doors (including, but not limited to, entrance doors, patio doors and balcony doors), door hardware, carpeting, floor and wall tiles, window and door glass, security systems, ventilation fans, window and door treatments (including, but not limited to, blinds, shades, screens and curtains), plumbing fixtures and drains, ceiling tiles and grids, counters, shelving, light switches, base cove and moldings, locks, bathroom and kitchen equipment and appliances (including, but not limited to, tissue dispensers, handrails, mirrors, cabinets, disposals, dishwashers, sinks, faucets, drinking fountains and water purifiers) located therein in a good, safe, clean and sanitary condition consistent with the operation of a first-class operation at a University building, and in compliance with all legal requirements with respect thereto. Except as provided in **Exhibit B**, all injury, breakage and damage to the Premises (and to any other part of the Building, if caused by any act or omission of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors) shall be repaired or replaced by Tenant at its expense. Tenant shall keep and maintain all pipes and conduits and all mechanical, electrical and plumbing systems contained within the Premises in good, safe, clean and sanitary condition and shall make all required repairs thereto. In the event Landlord agrees, upon request by Tenant, to repair or maintain any of the items listed in

this **Section 12.2.1**, Tenant shall pay all costs and expenses in connection with Landlord's repair or maintenance services, including, but not limited to, wages, materials and mileage reimbursement.

12.2.2 Tenant shall keep the service areas adjacent to the Premises swept and free from trash, rubbish, garbage and other refuse. Tenant shall maintain in a neat and clean condition that area designated by Landlord as the refuse collection area, and shall not place or maintain anywhere within the Building or elsewhere, other than within the area which may be designated by Landlord from time to time as such refuse collection area, any trash, garbage or other items, except as may otherwise be expressly permitted by this Lease; provided, however, that in the event there is no room in the refuse collection area for Tenant's trash, Landlord shall notify Tenant thereof and Tenant shall be required to make its own arrangements for the removal of its trash from the Premises.

13. IMPROVEMENTS.

13.1 **Landlord Approval.** Tenant shall not make any alteration, improvement or addition (collectively "**Alterations**") to the Premises without first (a) presenting to Landlord plans, drawn and sealed by a licensed architect or space planner of a reasonable scale and amount of detail to clarify the work to be done, and specifications, therefore and obtaining Landlord's written consent thereto (which shall not, in the case of (i) non-structural interior Alterations, or (ii) Alterations which would not affect any electrical, mechanical, plumbing or other Building systems, be unreasonably withheld so long as such Alterations will not violate applicable law or the provisions of this Lease, or impair the value of the Premises or the Building or be visible from the exterior of the Building) and (b) obtaining any and all governmental permits or approvals for such Alterations, which are required by applicable law; provided, that (i) any and all contractors or workmen performing such Alterations must first be approved by Landlord, (ii) all work is performed in a good and workmanlike manner in compliance with all applicable codes, rules, regulations and ordinances, and (iii) all persons, contractors, tradesman or workman performing such improvements or alteration work shall be a licensed tradesman for the type of work they are doing on the property, evidence of which shall be submitted to Landlord prior to the commencement of the work and (iv) Tenant shall restore the Premises to its condition immediately before such Alterations were made, free of Tenant's fixtures and furniture by not later than the date on which Tenant vacates the Premises or the Termination Date, whichever is earlier, with the exception of all Landlord approved partitions or other specified Alterations. Tenant, at its own expense, shall repair promptly any damage to the Building caused by bringing therein any property for its use, or by the installation or removal of such property, regardless of fault or by whom such damage is caused. As a further condition for approving any such Alterations, Landlord shall have the right to require Tenant and/or its contractor(s) to execute a copy of Landlord's "Design Construction Standards and /or Appendices Design/ Construction Standards."

13.2 **Acceptance of Possession.** In addition to the following, upon taking possession of the Premises, Tenant shall for all purposes of this Lease be deemed to have accepted the Premises and the Building and to have acknowledged them to be in the condition called for hereunder.

13.2.1 **Condition of Premises.** Tenant acknowledges, represents and agrees to the following: (i) Tenant shall be responsible for making its own inspection and investigation of the Premises and the Building, (ii) Tenant shall be responsible for investigating and establishing the suitability of the Premises for Tenant's intended use thereof, and all zoning and regulatory matters pertinent thereto, (iii) Tenant is leasing the Premises "AS IS" based on its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Landlord or its agents, employees or representatives, except as expressly set forth in this Lease, (iv) each portion of the Premises, upon the earliest of Tenant's possession or Tenant's entry therein to construct or install improvements, was in good order and satisfactory condition, and (v) the Premises and Tenant's rights thereto under this Lease include only the interior space within the Premises. Tenant's rights do not include and Tenant has no rights to or expectations of any improvements below floor level, above ceiling level, or rights to any particular view or view corridor, any particular angle or degree of sun or light exposure, or any particular air rights or corridor above or around the Premises.

13.2.2 **Construction.** Subject to **Section 24.6**, Landlord shall, in the exercise of reasonable diligence, perform the construction and/or installation work provided for on **Exhibit C** attached hereto, if any. In no event will Landlord be responsible for performing any other work or installing any other improvements except for the work described in **Exhibit C**.

13.3 **Fixtures.** Any and all improvements, repairs, alterations and all other property attached to, used in connection with or otherwise installed within the Premises by Landlord or Tenant shall become Landlord's property, without payment therefore by Landlord, immediately on the completion of their installation; provided that any machinery, equipment or fixtures installed by Tenant and used in the conduct of Tenant's trade or business (rather than to service the Premises or the Building) and not part of the Building Service Equipment shall remain Tenant's property; but further provided that if any leasehold improvements made by Tenant replaced any part of the Premises, such leasehold improvements that replaced any part of the Premises shall be and remain Landlord's property.

14. **LANDLORD'S RIGHT OF ENTRY.** Landlord and its authorized representatives shall be entitled to enter the Premises at any reasonable time during Tenant's usual business hours, after giving Tenant at least twenty-four (24) hours' oral or written notice thereof, (a) to inspect the Premises, (b) to exhibit the Premises (i) to any existing or prospective purchaser or mortgagee thereof, or (ii) to any prospective tenant thereof, provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require, and (c) to make any repair thereto and/or to take any other action therein which Landlord is permitted to take by this Lease or applicable law (provided, that in any situation in which, due to an emergency or otherwise, Landlord reasonably believes the physical condition of the Premises or the Building would be unreasonably jeopardized unless Landlord were to take such action immediately, Landlord shall not be required to give such notice to Tenant and may enter the same at any time). Nothing in this **Section 14** shall be deemed to impose any duty on Landlord to make any such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. Landlord shall not in any event be liable to Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by Tenant by reason of the making of such repairs, the taking of such action or the bringing of materials, supplies and equipment upon

the Premises during the course thereof, and Tenant's obligations under this Lease shall not be affected thereby.

15. DAMAGE OR DESTRUCTION

15.1 **Option to Terminate.** If during the Term either the Premises or any portion of the Building, the Common Areas, the total leased area, or the Property are Substantially Damaged or Destroyed by fire or other casualty, Landlord shall have the option (which it may exercise by giving written notice thereof to Tenant within sixty (60) days after the date on which such Substantial Damage or Destruction occurs) to terminate this Lease as of the date specified in such notice (which date shall not be earlier than the thirtieth (30th) day after such notice is given). "**Substantial Damage and Destruction**" and "**Substantially Damaged or Destroyed**" shall mean serious damage or destruction rendering unusable 33% or more of the rentable square feet of the Premises, the Food Court Common Area and/or the total square footage of the Building. On such termination, Tenant shall pay to Landlord all Base Rent, Rent and other sums and charges payable by Tenant hereunder and accrued through such date (as justly apportioned to the date of such termination). If Landlord does not terminate this Lease pursuant to this **Section 15.1**, Landlord shall restore the Building and/or Premises as soon thereafter as is reasonably possible, but not longer than 90 days, to their condition on the date of completion of Landlord's Work, taking into account any delay experienced by Landlord in recovering the proceeds of any insurance policy payable on account of such damage or destruction and in obtaining any necessary permits and, failing such, Tenant may terminate this Lease. Until the Premises are so repaired, the Base Rent (and each installment thereof) and the Rent shall abate in proportion to the floor area or essential operating area of so much, if any, of the Premises as is rendered substantially unusable by Tenant by such damage or destruction.

15.2 **No Termination of Lease.** Except as is otherwise expressly permitted by **Section 15.1**, no total or partial damage to or destruction of any or all of the Premises shall entitle either party hereto to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the Base Rent, any Rent and all other sums and charges which are otherwise payable by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Premises, or to have any suspension, diminution, abatement or reduction of the Base Rent or any Rent or other sum payable by Tenant hereunder.

16. CONDEMNATION.

16.1 **Termination.** If the Premises, the Building, the Food Court Common Area or any portion thereof are taken under power of eminent domain or conveyed by Landlord under the threat thereof (a "**Condemnation**"), this Lease shall automatically terminate as to the part so taken as of the date of Condemnation. If a portion of the floor area of the Premises, or all or a substantial portion of the Building, is taken by Condemnation, and Landlord determines that it would not be economically feasible for Landlord or for the Tenant to utilize the Premises for the purposes for which the same were being used at the time of said taking, then Landlord may terminate this Lease as of the date of condemnation by giving written notice thereof to Tenant on or before twenty (20) days after said date. If more than twenty-five percent (25%) of the floor

area of the Building (regardless of whether or not any portion of the Premises is taken), then Landlord shall be entitled to terminate this Lease as of the date of Condemnation by written notice to Tenant on or before twenty (20) days after said date.

16.2 **Rent Adjustment.** In the event of Condemnation of only a portion of the Premises, Base Rental and Tenant's Operating Costs obligation shall also be reduced in proportion to the amount of rentable square footage taken.

16.3 **Award.** Landlord shall be entitled to the entire Condemnation award for any partial or entire taking of the Premises and/or the Building, including any award for the leasehold estate created hereby, and Tenant hereby waives any claim with respect thereto; provided that Tenant may seek a separate award from the taking authority (and not from Landlord), in Tenant's own name, for any damages to Tenant's business (excluding the loss of its leasehold estate) and any costs incurred by Tenant in removing Tenant's Property.

16.4 **Restoration.** If only a part of the Premises is condemned and this Lease is not terminated pursuant hereto, then Landlord shall, in the exercise of reasonable diligence and its own cost, restore the Premises to its previous condition as nearly as is reasonable under the circumstances. In no event, however, shall Landlord be obligated to commence such restoration until it has received the entire Condemnation award and in no event shall Landlord be obligated to incur restoration expenses in an amount greater than such award, less costs, expenses and fees (including attorneys' fees and costs) incurred by Landlord in collecting such award.

16.5 **Date of Condemnation.** The date of Condemnation, for the purposes hereof, is the earlier of the date (i) possession of the property subject to Condemnation is delivered to the taking authority, or (ii) title is vested in the taking authority.

17. ASSIGNMENT AND SUBLETTING.

17.1 **Landlord's Consent Required.** Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease portions therein, nor otherwise permit any other person to occupy or use any portion of the Premises (collectively, a "Transfer"), without in each instance first obtaining the written consent of Landlord. The consent will not be unreasonably withheld or delayed, provided that, among other things as reasonably required by Landlord, the net worth and financial condition of the proposed assignee or transferee is provided to Landlord, in writing, with Tenant's request for Landlord's consent. This prohibition includes any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure (including, without limitation, the transfer of partnership interests, the creation of additional partnership interests or the transfer of corporate shares or beneficial interests), or an assignment or subletting to or by a receiver or trustee in any federal or state bankruptcy, insolvency or other similar proceedings. Consent by Landlord to any assignment, subletting, licensing or other transfer shall not (i) constitute a waiver of the requirement for such consent to any subsequent assignment, subletting, licensing or other Transfer, (ii) relieve Tenant from its duties, responsibilities and obligations under the Lease, or (iii) relieve any guarantor of this Lease from such guarantor's obligations under its guaranty agreement, if any, except that any of the above may be waived upon agreement by Landlord.

Any proposed assignment, subletting or transfer of Tenant's status arising under this Lease shall be subject to the prior approval of the Chancellor of the Nevada System of Higher Education which approval may be granted or withheld by said Chancellor in his/her sole and absolute discretion. Notwithstanding the foregoing, Tenant, without further Landlord consent, shall be allowed to Transfer this Lease to a Tenant affiliated entity upon showing to Landlord evidence of such transferee affiliate's ownership structure, financial condition and assumption of Tenant's obligations hereunder.

17.2 Acceptance of Rent from Transferee. The acceptance by Landlord of the payment of Rent from any person following any act, assignment or other Transfer prohibited by this **Section 17** shall not constitute a consent to such act, assignment or other Transfer, nor shall the same be deemed to be a waiver of any right or remedy of Landlord's hereunder.

17.3 Conditions of Consent.

17.3.1 If Tenant receives consent to a Transfer under **Section 17.1** above, then, in addition to any other terms and conditions imposed by Landlord in the giving of such consent, Tenant and the transferee shall execute and deliver, on demand, an agreement prepared by Landlord providing that the transferee shall be directly bound to Landlord to perform all obligations of Tenant hereunder including, without limitation, the obligation to pay all Rent and other amounts provided for herein; acknowledging and agreeing that there shall be no subsequent Transfer of this Lease or of the Premises or of any interest therein without the prior consent of Landlord pursuant to **Section 17.1** above; acknowledging that, unless otherwise agreed by Landlord and Tenant, Tenant as originally named herein shall remain fully liable for all obligations of the tenant hereunder, including the obligation to pay all Rent provided herein and including any and all obligations arising out of any subsequent amendments to this Lease made between Landlord and the transferee (whether or not consented to by Tenant), jointly and severally with the transferee; and such other provisions as Landlord shall require.

17.3.2 All costs incurred by Landlord in connection with any request for consent to a Transfer, including costs of investigation and the reasonable fees of Landlord's counsel, shall be paid by Tenant on demand as a further condition of any consent which may be given.

17.4 Profits from Use or Transfer. Tenant agrees that in the event of a Transfer, Tenant shall pay Landlord, within ten (10) days after receipt thereof, one hundred percent (100%) of the excess of (i) any and all consideration, money or thing of value, however characterized, received by Tenant or payable to Tenant in connection with or arising out of such Transfer, over (ii) all amounts otherwise payable by Tenant to Landlord pursuant to this Lease.

18. RULES AND REGULATIONS. Landlord shall have the right to prescribe, at its sole discretion, reasonable rules and regulations (the "**Rules and Regulations**") having uniform applicability to all tenants of the Building (subject to their respective leases) and governing their use and enjoyment of the Property; provided, that the Rules and Regulations shall not materially interfere with Tenant's use and enjoyment of the Premises in accordance with this Lease for the purposes listed in **Section 6**. The Rules and Regulations may govern, without limitation, the use of sound apparatus, noise or vibrations emanating from machinery or equipment, obnoxious fumes and/or odors, the parking of vehicles, lighting and storage and disposal of trash and

garbage. Tenant shall adhere to the Rules and Regulations and shall cause its agents, employees, invitees, visitors and guests to do so. A copy of the Rules and Regulations in effect on the date hereof is attached hereto as **Exhibit A**. Landlord shall have the right to amend the Rules and Regulations from time to time. The Rules and Regulations attached hereto as **Exhibit A** and as amended from time to time, are incorporated here by reference as though fully set forth.

19. SUBORDINATION AND ATTORNMENT.

19.1 Subordination. Unless a Mortgagee otherwise shall elect as provided in **Section 19.2**, and subject to the covenant of quiet enjoyment under **Section 22** hereof, Tenant's rights under this Lease are and shall remain subject and subordinate to the operation and effect of any mortgage, deed of trust or other security instrument constituting a lien upon the Premises, and/or the Building, whether the same shall be in existence on the date hereof or created hereafter (any such lease, mortgage, deed of trust or other security instrument being referred to herein as a "**Mortgage**," and the party or parties having the benefit of the same, whether as beneficiary, trustee or noteholder, being referred to hereinafter collectively as "**Mortgagee**"). Tenant's acknowledgment and agreement of subordination as provided for in this **Section 19** is self-operative and no further instrument of subordination shall be required; however, Tenant shall execute, within ten (10) days after request therefore, a document providing for such further assurance thereof and for such other matters as shall be requisite or as may be requested from time to time by Landlord or any Mortgagee.

19.2 Mortgagee's Unilateral Subordination. If a Mortgagee shall so elect by notice to Tenant or by the recording of a unilateral declaration of subordination, this Lease and Tenant's rights hereunder shall be superior and prior in right to the Mortgage of which such Mortgagee has the benefit, with the same force and effect as if this Lease had been executed, delivered and recorded prior to the execution, delivery and recording of such Mortgage, subject, nevertheless, to such conditions as may be set forth in any such notice or declaration.

19.3 Attornment. If any Person shall succeed to all or any part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise and if such successor-in-interest requests or requires, Tenant shall attorn to such successor-in-interest and shall execute within ten (10) days after receipt thereof an agreement in confirmation of such attornment in a form as may be reasonably requested by such successor-in-interest. Failure to respond within such (10) day period shall be deemed to be a confirmation by Tenant of the facts and matters set forth therein.

20. DEFAULTS AND REMEDIES.

20.1 Tenant's "Event of Default" Defined. Any one or more of the following events shall constitute a default under the terms of this Lease ("**Event of Default**");

20.1.1 the failure of Tenant to pay any Rent or other sum of money due hereunder to Landlord or any other person, within ten (10) days after the same is due;

20.1.2 the sale of Tenant's interest in the Premises under attachment, execution or similar legal process without Landlord's prior written approval;

20.1.3 the filing of a petition proposing the adjudication of Tenant as a bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, whether pursuant to the Federal Bankruptcy Act or any similar federal or state proceeding, unless such petition is filed by a party other than Tenant and is withdrawn or dismissed within sixty (60) days after the date of its filing;

20.1.4 the admission in writing by Tenant of its inability to pay its debts when due;

20.1.5 the appointment of a receiver or trustee for the business or Premises of Tenant, unless such appointment is vacated within sixty (60) days of its entry;

20.1.6 the making by Tenant of an assignment for the benefit of its creditors;

20.1.7 a default by Tenant in the performance or observance of any covenant or agreement of this Lease to be performed or observed by Tenant (other than as set forth in clauses (a) through (f) above), which default is not cured within thirty (30) days after the giving of written notice thereof by Landlord, unless such default is of such nature that it cannot be cured within such 30-day period, in which event such Event of Default shall be deemed to have been cured if Tenant institutes a cure within the 30-day period and thereafter diligently and continuously prosecutes the curing of the same until completion, but in no event shall such cure period exceed ninety (90) days; provided, however, that if Tenant defaults in the performance of any such covenant or agreement more than two (2) times during the Term, then notwithstanding that such defaults have each been cured by Tenant, any further defaults shall be deemed an Event of Default without the ability to cure; or (h) the vacating or abandonment of the Premises by Tenant at any time during the Term.

20.2 Landlord's Remedies. Upon the occurrence of any Tenant Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

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

20.2.1.1 The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

20.2.1.2 The worth at the time of award of any amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

20.2.1.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

20.2.1.4 Any other reasonable amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease; and

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

All such amounts shall be computed on the basis of the monthly amount thereof payable on the date of Tenant's default. As used in paragraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest in the per annum amount equal to the Default Rate. As used in paragraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%) per annum.

20.2.2 Enter upon and take possession of the Premises and expel or remove Tenant and other persons who may be occupying the Premises, or any part thereof, by force if necessary, without being liable to prosecution or for any claim for damages, and relet the Premises, as Tenant's agent, and receive the rent therefor; and Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of such reletting; or

20.2.3 Enter upon the Premises, without being liable to prosecution or for any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any reasonable and necessary expenses which Landlord may incur in thus effecting compliance with Tenant's obligations hereunder.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damage accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon the occurrence of a Tenant Event of Default shall not be deemed or construed to constitute a waiver of such default.

20.3 **Default by Landlord.** Landlord shall not be considered in default or breach of this Lease for the non-performance of any obligation imposed herein unless Tenant provides Landlord with written notice of said non-performance and:

20.3.1 If the same relates solely to the non-payment of money, Landlord fails to perform within fifteen (15) business days after receipt of said written notice, or

20.3.2 If the same does not relate solely to the non-payment of money, Landlord fails to commence performance within said 15 business-day period and to diligently continue such performance until the obligation is fulfilled.

In the event of a default by Landlord as defined in this **Section 20.3**, Tenant, at its option, without further notice or demand, and as its sole remedy shall have the right to any one or more of the following remedies: (a) to pursue the remedy of specific performance; and/or (b) to pursue injunctive relief.

20.4 **Landlord's Liability.** Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed by and between the parties hereto that: (i) the recourse of Tenant, or its successors or assigns, against Landlord with respect to any alleged breach by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in this Lease or otherwise arising out of Tenant's use of the Premises or the Project (collectively "**Landlord's Lease Obligations**") shall extend only to Landlord's interest in the Building of which the Premises are a part ("**Landlord's Real Estate**") and the rents derived therefrom, and not to any other real property, personal property or other assets of Landlord or its former or current members, or any of the current or former directors, officers, employees, agents, members, or partners thereof; and (ii) except to the extent of Landlord's interest in Landlord's Real Estate, no personal liability or personal responsibility of any sort with respect to any of Landlord's Lease Obligations or any alleged breach thereof is assumed by, or shall be asserted or enforceable against, Landlord or any current or former members thereof, or any of Landlord's or such member's current or former directors, officers, employees, agents, members, or partners.

20.5 **Waiver of Jury Trial.** Each party hereto hereby waives any right which it may otherwise have at law or in equity to a trial by jury in connection with any suit or proceeding at law or in equity brought by the other against the waiving party or which otherwise relates to this Lease, as a result of an Event of Default or otherwise. Tenant further agrees that in the event Landlord commences any summary proceeding for nonpayment of rent or possession of the Premises, Tenant will not, and hereby waives, all right to interpose any counterclaim of whatever nature in any such proceeding.

20.6 **Landlord's Security Interest.** In addition to any lien for Rent available to Landlord, Landlord shall have, and Tenant hereby grants to Landlord, a continuing security interest for all Rent and other sums of money becoming due hereunder from Tenant, upon all Tenant's accounts receivable, inventory, equipment and all other personal property located on the Premises. If an Event of Default occurs, Landlord shall have, in addition to any other remedies provided herein or by law, all of the rights and remedies afforded to secured parties under the Uniform Commercial Code, as codified in applicable state law ("the U.C.C."), including but not limited to (a) the right to sell Tenant's said property at public or private sale upon ten (10) days' notice to Tenant, and (b) the right to take possession of such property without resort to judicial process in accordance with applicable provisions of the U.C.C. Tenant, on its receipt of a written request therefore from Landlord, shall execute such financing

statements and other instruments as are necessary or desirable, in Landlord's judgment, to perfect such security interest.

21. **ESTOPPEL CERTIFICATE.** Tenant shall, without charge, at any time and from time to time, within ten (10) days after receipt of request therefore from Landlord, execute, acknowledge and deliver to Landlord, and to such Mortgagee or other party as may be designated by Landlord, a written estoppel certificate in form and substance as may be requested from time to time by Landlord, the other party or any Mortgagee, certifying to the other party, any Mortgagee, any purchaser of Landlord's interest in all or any part of the Property, or any other person or entity designated by the other party, as of the date of such estoppel certificate, the following: (a) whether Tenant is in possession of the Property; (b) whether this Lease is in full force and effect; (c) whether there are any amendments to this Lease, and if so, specifying such amendments; (d) whether there are any then-existing setoffs or defenses against the enforcement of any rights hereunder, and if so, specifying such matters in detail; (e) the dates, if any, to which any rent or other sums due hereunder have been paid in advance and the amount of any security deposit held by Landlord; (f) that Tenant has no knowledge of any then-existing defaults of Landlord under this Lease, or if there are such defaults, specifying them in detail; (g) that Tenant has no knowledge of any event having occurred that authorized the termination of this Lease by Tenant, or if such event has occurred, specifying it in detail; (h) the address to which notices to Tenant should be sent; and (i) any and all other matters reasonably requested by Landlord, any Mortgagee and/or any other person or entity designed by Landlord. Any such estoppel certificate may be relied upon by the person or entity to whom it is directed or by any other person or entity who could reasonably be expected to rely on it in the normal course of business. The failure of Tenant to execute, acknowledge and deliver such a certificate in accordance with this **Section 21** within ten (10) days after a request therefor by Landlord shall constitute an acknowledgment by Tenant, which may be relied on by any person or entity who would be entitled to rely upon any such certificate, that such certificate as submitted by the requesting party to the other party is true and correct, and the requesting party is hereby authorized to so certify.

22. **QUIET ENJOYMENT.** Landlord hereby warrants that, so long as all of Tenant's obligations hereunder are timely performed, Tenant will have during the Term quiet and peaceful possession of the Premises and enjoyment of such rights as Tenant may hold hereunder to use the Common Areas, except if and to the extent that such possession and use are terminated pursuant to this Lease. Tenant hereby acknowledges that it has examined the Premises, the title thereto, the zoning thereof, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state of title, without restriction, representation, covenant or warranty, express or implied, in fact or at law, by Landlord or any other person, and without recourse to Landlord, as to the title thereto, any encumbrances thereon, any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Premises may be put.

23. **NOTICES.** Except as may be otherwise provided in this Lease, any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided (i) two (2) days following the date sent as certified mail in the United States mails, postage prepaid,

return receipt requested, (ii) on the day following the date it is deposited prior to the close of business with FedEx or another national courier service, (iii) on the date of hand delivery (if such party's receipt thereof is acknowledged in writing), or (iv) via facsimile, with receipt of transmission, in each case to the address of such party set forth in **Sections 1.6** and **1.7** or to such other address as such party may designate from time to time by notice to each other party hereto.

24. GENERAL

24.1 **Effectiveness.** This Lease shall become effective on and only on its execution and delivery by each party hereto.

24.2 **Complete Understanding.** The original RFP # 7976 issued on September 22, 2011,, and attached hereto as **Exhibit I**, is incorporated into this Lease in so far as it is not superseded by specific language in the Lease. If there is a conflict, the language in the Lease prevails. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements and agreements, either written or oral, between the parties hereto as to the same.

24.3 **Amendment.** This Lease may be amended by and only by an instrument executed and delivered by each party hereto, provided, however, that Landlord shall have the right at any time, and from time to time, during the Term unilaterally to amend the provisions of this Lease if Landlord (or any of its partners) is advised by its counsel that all or any portion of the monies paid, directly or indirectly, by Tenant to Landlord (and/or its partners) hereunder are, or may be deemed to be, unrelated business income within the meaning of the United States Internal Revenue Code or regulations issued thereunder, and Tenant agrees that it will execute all documents or instruments necessary to effect such amendment or amendments, provided that no such amendment shall result in Tenant having to pay in the aggregate a larger sum of money on account of its occupancy of the Premises under the terms of this Lease as so amended, and provided further that no such amendment or amendments shall result in Tenant receiving under the provisions of this Lease fewer services than it is entitled to receive, nor services of a lesser quality. Furthermore, Tenant agrees not to take any steps or actions knowingly which may jeopardize Landlord's (and/or its partners') tax-exempt status.

24.4 **Waiver.** No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right. Without limiting the generality of the foregoing provisions of this **Section 24.4**, Landlord's receipt or acceptance of any Base Rent, Rent of other sum from Tenant or any other person shall not be deemed a waiver of Landlord's right to enforce any of its rights hereunder on account of any default by Tenant in performing its obligations hereunder.

24.5 **Applicable Law.** This Lease shall be given effect and construed by application of the laws of the state in which the Premises are located, and any action or proceeding arising hereunder shall be brought in the courts of the state in which the Premises are

located; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it may be brought only in the United States District Court for the state in which the Premises are located or any successor federal court having original jurisdiction.

24.6 Force Majeure. If Landlord or Tenant is delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, terrorism, acts of war, severe weather, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the reasonable control of Landlord or Tenant (financial inability excepted), performance of such act shall be excused for the period of delay.

24.7 Commissions. The parties hereto hereby acknowledge and agree that, in connection with the leasing of the Premises hereunder, neither party has used the services of any real estate broker. Each party hereto hereby represents and warrants to the other that, in connection with such leasing, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof.

24.8 Landlord's Liability. No Person holding Landlord's interest hereunder (whether or not such Person is named as the "Landlord" herein) shall have any liability hereunder after such Person ceases to hold such interest, except for any such liability accruing while such Person holds such interest. No Mortgagee not in possession of the Premises shall have any liability hereunder. Neither Landlord nor any principal of Landlord, whether disclosed or undisclosed, shall have any personal liability under this Lease. If Landlord defaults in performing any of its obligations hereunder or otherwise, Tenant shall look solely to Landlord's equity, interest and rights in the Premises to satisfy Tenant's remedies on account thereof.

24.9 No Partnership; No Joint Venture. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

24.10 Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease or of any breach by any other tenant under any other lease of any portion of the Building shall affect or alter this Lease in any way whatsoever.

24.11 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination.

Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

24.12 Authority. If Tenant is a corporation, partnership, limited liability company or similar entity, the person executing this Lease on behalf of Tenant represents and warrants that (a) Tenant is duly organized and validly existing and (b) this Lease (i) has been authorized by all necessary parties, (ii) is validly executed by an authorized officer or agent of Tenant and (iii) is binding upon and enforceable against Tenant in accordance with its terms.

24.13 Joint and Several Liability. If Tenant shall be one or more individuals, corporations or other entities, whether or not operating as a partnership or joint venture, then each such individual, corporation, entity, joint venturer or partner shall be deemed to be both jointly and severally liable for the payment of the entire Rent and other payments specified herein.

24.14 Recordation. Neither this Lease, any amendment to this Lease, nor any memorandum, affidavit or other item with respect thereto shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall (i) be deemed an Event of Default and (ii) at Landlord's election, make this Lease null and void.

24.15 Time of Essence. Time shall be of the essence with respect to the performance of the parties' obligations under this Lease.

24.16 Interpretation. Landlord and Tenant hereby agree that both parties were equally influential in preparing and negotiating this Lease, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Lease. Therefore, Landlord and Tenant agree that no presumption should arise construing this Lease more unfavorably against any one party.

24.17 Headings. The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

24.18 Construction. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Lease.

24.19 Exhibits. Each writing or drawing referred to herein as being attached hereto as a schedule, an exhibit or otherwise designated herein as a schedule or an exhibit hereto is hereby made a part hereof.

24.20 Guaranty of Lease. Tenant's obligations under this Lease shall be guaranteed by the person or person(s) identified in the Lease Schedule ("**Guarantor**") and

Guarantor shall execute the Guaranty Agreement attached hereto as **Exhibit D** as a condition precedent to the effectiveness of this Lease.

IN WITNESS WHEREOF, each party hereto has executed this Lease, or caused it to be executed on its behalf by its duly authorized representatives, on the date first written above.

RECOMMENDED BY:

LANDLORD:

FOR THE BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION ON BEHALF
OF THE UNIVERSITY OF NEVADA, RENO

Marc Johnson, President

Date _____

Daniel Klaich, Chancellor

Date _____

TENANT:

FAMILY YOGURT, II

By: 

Name: C M Lehiner

Title: Manager

EXHIBIT A

RULES AND REGULATIONS

1. The sidewalks, passages and stairways shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress from and to Tenant's Premises. Landlord shall in all cases retain the right to control or prevent access thereto by any person whose presence, in Landlord's judgment, would be prejudicial to the safety, peace, character or reputation of the Premises or of any tenant of the Building.

2. The toilet rooms, water closets, sinks, faucets, plumbing and other services apparatus of any kind shall not be used by Tenant for any purpose other than those for which they were installed, and no sweepings, rubbish, rags, ashes, chemicals or other refuse or injurious substances shall be placed therein or used in connection therewith by Tenant, or left by Tenant in the lobbies, passages, elevators or stairways of the Building. The expense of any breakage, stoppage or damage to such sinks, toilets and the like shall be borne by the tenant who, or whose employees, contractors or invitees, caused it.

3. No skylight, window, door or transom of the Building shall be covered or obstructed by Tenant, and no window shade, blind, curtain; screen, storm window, awning or other material shall be installed or placed on any window or in any window space, except as approved in writing by Landlord. If Landlord has installed or hereafter installs any shade, blind or curtain in the Premises, Tenant shall not remove it without first obtaining Landlord's written consent thereto which shall not be unreasonably withheld.

4. No sign, lettering, insignia, advertisement, notice or other thing shall be inscribed, painted, installed, erected or placed in any portion of the Premises which may be seen from outside the Building, or on any window, window space or other part of the exterior or interior of the Building, unless first approved in writing by Landlord. Names on suite entrances may be provided by and only by Landlord and at Tenant's expense, using in each instance lettering of a design and in a form consistent with the other lettering in the Building, and first approved in writing by Landlord. Tenant shall not erect any stand, booth or showcase or other article or matter in or upon the Premises or the Building without first obtaining Landlord's written consent thereto which shall not be unreasonably withheld.

5. Tenant shall not place any other or additional lock upon any door within the Premises and Tenant shall surrender all keys for all such locks at the end of the Term. Landlord shall provide Tenant with one set of keys to the Premises when Tenant assumes possession thereof.

6. Tenant shall not do or permit to be done anything which obstructs or interferes with the rights of any other tenant of the Building. No bird, fish or animal shall be brought into or kept in or about the Premises or the Building. Service animals are allowed

7. If Tenant desires to install signaling, telegraphic, telephonic, protective alarm or other wires, apparatus or devices within the Premises, Landlord shall direct where and how they are to be installed and, except as so directed, no installation, boring or cutting shall be permitted. Landlord shall have the right (a) to prevent or interrupt the transmission of excessive, dangerous

or annoying current of electricity or otherwise into or through the Premises or the Building, (b) to require the changing of wiring connections or layout at Tenant's expense, to the extent that Landlord may deem necessary, (c) to require compliance with such reasonable rules as Landlord may establish relating thereto, and (d) in the event of noncompliance with such requirements or rules, immediately to cut wiring or do whatever else it considers necessary to remove the danger, annoyance or electrical interference with apparatus in any part of the Building or the Premises.

8. Landlord shall in no event be responsible for admitting or excluding any person from the Premises. In cases of invasion, hostile attack, insurrection, mob violence, riot, public excitement or other commotion, explosion, fire or any casualty, Landlord shall have the right to bar or limit access to the Building to protect the safety of occupants of the Premises, or any property within the Premises.

9. The use of any area within the Premises as sleeping quarters is strictly prohibited at all times.

10. Tenant shall keep the windows and doors of the Premises (including those opening on corridors and all doors between rooms entitled to receive heating or air conditioning service and rooms not entitled to receive such service) closed while the heating or air-conditioning system is operating, in order to minimize the energy used by, and to conserve the effectiveness of, such systems. Tenant shall comply with all reasonable rules and regulations from time to time promulgated by Landlord with respect to such systems or their use.

11. Landlord shall have the right to prescribe the weight and position of inventory and of other heavy equipment or fixtures, which shall, if considered necessary by Landlord, stand on plank strips to distribute their weight. Any and all damage or injury to the Premises arising out of Tenant's equipment being on the Premises shall be repaired by Tenant at his expense. Tenant shall not install or operate any machinery whose installation or operation may affect the structure of the Building without first obtaining Landlord's written consent thereto, and Tenant shall not install any other equipment of any kind or nature whatsoever which may necessitate any change, replacement or addition to, or in the use of, the water system, the heating system, the plumbing system, the air-conditioning system or the electrical system of the Premises or the Building without first obtaining Landlord's written consent thereto. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, any other buildings on the Property, or any space therein to such a degree as to be objectionable to Landlord or to any tenant, shall be installed and maintained by Tenant, at its expense, on vibration eliminators or other devices sufficient to eliminate such noise and vibration. Tenant shall remove promptly from any sidewalks and other areas on the Premises any of Tenant's furniture, equipment, inventory or other material delivered or deposited there.

12. Tenant shall not place or permit its agents, employees or invitees to place any thing or material on the roof or in the gutters and downspouts of the Building or cut, drive nails into or otherwise penetrate the roof, without first obtaining Landlord's written consent thereto. Tenant shall be responsible for any damage to the roof caused by its employees or contractors. Tenant shall indemnify Landlord and hold Landlord harmless against expenses incurred to correct any damage to the roof resulting from Tenant's violation of this rule, as well as any

consequential damages to Landlord or any other tenant of the Property. Landlord shall repair damage to the roof caused by Tenant's acts, omissions or negligence and Tenant shall reimburse Landlord for all expenses incurred in making such repairs. Landlord or its agents may enter the Premises at all reasonable hours to make such roof repairs. If Landlord makes any expenditure or incurs any obligation for the payment of money in connection therewith, including but not limited to attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of twelve percent (12%) per annum, and costs, shall be deemed to be Rent and shall be paid by Tenant to Landlord within five (5) days after rendition of any bill or statement to Tenant therefore. Tenant shall not place mechanical or other equipment on the roof without Landlord's prior written consent, which shall be conditioned in part upon Landlord's approval of Tenant's plans and specifications for such installations. The costs of any roof improvements made pursuant hereto shall be borne by Tenant.

13. Landlord reserves the right to institute energy management procedures when necessary.

14. Tenant shall assure that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant and its employees leave the Premises each day.

15. Tenant shall permit service animals to the Premises when such animals are providing assistance as required by law.

16. Landlord shall have the right to rescind, suspend or modify these Rules and Regulations and to promulgate such other rules or regulations as, in Landlord's reasonable judgment, are from time to time needed for the safety, care, maintenance, operation and cleanliness of the Building or the Property, or for the preservation of good order therein. Upon Tenant's having been given notice of the taking of any such any action, the Rules and Regulations as so rescinded, suspended, modified or promulgated shall have the same force and effect as if in effect at the time at which Tenant's lease was entered into (except that nothing in the Rules and Regulations shall be deemed in any way to alter or impair any provision of such lease).

17. Nothing in these Rules and Regulations shall give any Tenant any right or claim against Landlord or any other person if Landlord does not enforce any of them against any other tenant or person (whether or not Landlord has the right to enforce them against such tenant or person), and no such nonenforcement with respect to any tenant shall constitute a waiver of the right to enforce them as to Tenant or any other tenant or person.

EXHIBIT B
TENANT'S WORK

Tenant's Work. Tenant shall be solely responsible for the following:

SPACE/ FACILITY AREAS

Storage: All storage will be contained within Tenant's space.

Restrooms: Requests for restrooms within individual retail areas will be at Tenant's expense and part of the rental area.

Build Out:

All construction must be done under the supervision of and subject to approval of Landlord's Facilities Services.

Tenant is required to notify Landlord at least ten (10) business days prior to commencing any work, including alterations, so that Landlord can record a notice of non-responsibility prior to the commencement of any work or alterations by Tenant.

Contractors and architects must have all appropriate licenses as required by the State of Nevada and shall be subject to the prior approval of the University. Tenant shall ensure that there is labor harmony with other trades during the construction process.

Tenant will submit with the proposal a schedule, detailing the time frame of site preparation and a proposed design (elevations, color selections, signage, utility requirements, etc.).

The proposed design will be subject to the University's approval and must meet University Facilities Services Standards. These Facilities Services Standards may be found on the University's web site.

Any modifications or renovation of the Premises must be at the approval of the University and at an agreed-upon time.

All electrical and plumbing connections per code and manufacturer's specifications.

UTILITIES:

Tenant will be expected to make every effort to conserve utilities and to operate his/her equipment in an efficient manner.

The University will not be liable for any loss that may result from the quality, quantity, interruption, or failure of any such utilities or services under any circumstances.

Tenant will be responsible for all telephone, Ethernet and fax services, including but not limited to installation, monthly equipment charges, local and long distance charges or similar services. These services must be arranged with the University Telecommunications Office.

For the Grease Interceptor Trap, Tenant will be responsible for its proportionate share of all maintenance, cleaning and operating costs of the trap.

SPRINKLERS: Tenant is responsible to “drop” and “distribute” the sprinkler heads within their respective space as required.

BUILDING DOCUMENTATION: Prior to Lease acceptance, Tenant shall submit to Landlord complete drawings in the form of construction documentation and “as-built” specification of shell Premises to include but not be limited to the following:

- Architectural
- Structural
- Electrical
- Mechanical
- Plumbing
- Fire Sprinklers (if applicable)

All work is to be permitted and approved by the applicable local code inspectors.

Any Title 24 Calculations or other utility approvals shall be completed by Tenant, verified by University, and then submitted to appropriate agencies by Tenant. Tenant to send approved copies of all to University prior to acceptance of the Premises.

Tenant to have the right to make interior non-structural alterations to Premises. All alterations must be approved by Landlord prior to the commencement of any work.

Inspections and Final Inspection: Throughout the build-out there will be on going inspections by local agencies and Landlord’s inspectors. At the conclusion of Tenant’s retail build-out, local agencies, Landlord, its representatives and /or the contractor will conduct a final sign-off inspection of the store. The inspection allows for all parties to review the build-out, the equipment and the readiness of your store to open. As Built drawings and related documents to be provided in both reproducible Velum and electronic formats using the most current version of AutoCad to Landlord by Tenant no later than _thirty (30) calendar days after completion of improvements.

CHANGES DURING BUILDING CONSTRUCTION: Changes to the building plans to accommodate retail units will be considered with adequate advance notice. Tenant is responsible for all related costs including change order costs. Any and all changes to approved construction plans to be fully indicated in “as-built” documents that are to be turned over to Landlord

MAINTENANCE:

Maintenance and repair of Tenant's food facility fixtures, equipment, interior facilities and premises are the responsibility of Tenant.

If there is evidence of Tenant abuse or neglect causing utility maintenance, Landlord will charge Tenant for the direct cost of repairs.

If there is evidence of Tenant abuse or neglect causing needed maintenance in common areas or with common equipment (e.g., garbage disposal, receiving area, rest rooms, public areas), Landlord will charge Tenant for the direct and indirect cost of repairs.

FIRE AND SAFETY CODES:

Tenant will maintain its food facility according to all appropriate state, city and Landlord's fire codes. Tenant's food facility will be subject to periodic inspection by Landlord's personnel plus state and local inspectors.

EQUIPMENT AND FURNISHINGS:

Tenant is responsible, at his/her expense, for providing and maintaining any and all equipment and furnishings needed to operate the food facility. All equipment and furnishings will be removed at the end of the contract period and the Premises returned to Landlord in its original state, reasonable wear and tear excepted.

Tenant will submit with the proposal a list of all equipment and furnishings that are proposed to be used, along with their specifications, including utilities, voltage, plumbing, amperage, water/drains, etc.

Landlord requests that all Tenant electrical equipment be Energy Star rated equipment.

Landlord will provide a common seating area / program space on the second floor with appropriate finishes and furnishings. Cost to be shared by second floor retail food tenants.

HANDICAP ACCESSIBILITY: All means of ingress/egress shall be at street/walkway level acceptable to ADA inspectors. It will be Tenant's responsibility to ensure full public and employee access and ADA accessibility compliance within their developed spaces and tenant improvements.

SIGNAGE:

Tenant will be allowed up to two (2) electrical hook-ups for sign(s) at storefront locations exterior of premises agreed to by Tenant and Landlord. Landlord's guidelines prohibit exterior Building signage. There may be signage options provided by Landlord for stand alone exterior signage (at Tenant's expense).

SECURITY and POLICE:

Tenant is responsible for all security of the individual retail areas including locks and alarms. Tenant is responsible for security of all deliveries from the loading dock to the Premises.

Tenant will cooperate with Landlord's Police Department concerning enforcement of Landlord's regulations and internal security and theft control in the food facility. Tenant will not, except in physically dangerous or other emergency situations, summon public emergency services other than through Landlord's Police Department. Tenant will not have employees of the food facility who were convicted of theft, robberies, and/or larcenies, including embezzlements, by public authorities without prior consultation with Landlord's Police Department.

SANITATION:

Tenant will maintain its food facility and ensure that all employees perform according to all appropriate state, county, city and Landlord health codes. Tenant's retail area will be subject to periodic inspection by Landlord, local and state officials. Tenant will take all appropriate precautions to ensure that sanitation is maintained to the highest possible degree.

Tenant will be responsible for the cleaning of the entire Premises including service, preparation and storage areas, equipment, floors, ceiling and walls. All areas will be kept orderly, sanitary and in good condition and be kept free of insects, rodents, vermin and other pests.

Landlord will be released from any and all liability concerning a case of food borne illness that is traced to Tenant's food facility.

All food storage racks in walk-in coolers must be on casters. (per Nevada Health Division)

Provide barriers between hand sinks and food contact surfaces. (per Nevada Health Division)

Indicate an area for storage of employees' personal possessions, or an area for lockers. (per Nevada Health Division)

Tenant to provide the Nevada Health Division with a copy of Tenant's sanitation plan. Plan should include such items as: employees' illness policy, hand wash policy, training program, proposed menus, and cleaning schedules. (per Nevada Health Division)

TRASH REMOVAL:

Tenant is responsible for the placing of all refuse in the appropriate compactor and for providing trash receptacles and plastic liners for Tenant's food facility on the interior (and exterior (if applicable)) of the building.

Costs for removal of trash in common areas will be shared proportionally.

ENVIRONMENTAL CONSERVATION:

Tenant will initiate and/or cooperate with Landlord in providing environmental conservation programs such as recycling cardboard, glass and plastic and exercising control of the use of utilities to conserve natural resources.

Landlord encourages Tenant to utilize green or sustainable equipment and policies as much as possible.

EXHIBIT C

LANDLORD'S WORK

Landlord shall be solely responsible for the following:

SPACE/ FACILITY AREAS

Restrooms: All food areas share a common restroom/ changing room. Requests for restrooms within individual retail areas will be at tenants expense and part of the rental area. Landlord would construct all required restroom facilities. All food areas share a common restroom/ changing room.

SPRINKLERS: Landlord will provide a main sprinkler line system for the building to Tenant's space. Tenant is responsible to "drop" and "distribute" the sprinkler heads within their respective space as required.

UTILITIES:

Landlord will provide all reasonable utility services, including domestic hot and cold water, heating, air conditioning and electricity.

Landlord will not be liable for any loss that may result from the quality, quantity, interruption, or failure of any such utilities or services under any circumstances.

MAINTENANCE:

Landlord will provide any general maintenance associated with utilities services that it supplies.

Landlord will provide grounds maintenance.

EQUIPMENT AND FURNISHINGS:

Landlord will provide a common seating area / program space on the second floor with appropriate finishes and furnishings. Cost to be shared by second floor retail food tenants.

SANITATION:

In the unfortunate case of any report of food borne illness, Landlord will determine who conducts the investigation. Any release of information concerning a report of food borne illness will be handled by Landlord's Marketing and Communications Department.

Landlord will coordinate with Tenant for appropriate pest control services and cost sharing for these services.

EXHIBIT D GUARANTY

For valuable consideration, the undersigned individual(s) (jointly and severally if more than one Guarantor), having an address as set forth below such individual's signature ("Guarantor"), absolutely and unconditionally guarantees and promises to pay to THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF NEVADA, RENO ("Creditor"), or its successors and assigns, on demand, in lawful money of the United States, any and all indebtedness of YOGURT FAMILY II LTD., A Nevada Limited Liability Company ("Tenant") owed to Creditor arising under that certain Lease from Guarantor to Tenant dated as of _____, the Lease Schedule between Guarantor and Tenant and any other obligations of Tenant arising under or related to Tenant's occupancy of the premises described therein (all of such agreements and obligations of Tenant to Guarantor being referred to herein as the "Lease" and the premises to which the Lease applies being referred to herein as the "Premises").

Creditor has agreed to enter into the Lease and to give possession of the Premises to Tenant upon the representation that Guarantor would guarantee Tenant's obligations to Creditor under the Lease. Guarantor acknowledges that the Lease shall result in substantial benefit to Guarantor.

The word "indebtedness" is used herein in its most comprehensive sense and includes any and all advances from Creditor or debts, monetary obligations and liabilities of Tenant in favor of Creditor, now or hereafter made, incurred or created, whether voluntary or involuntary, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, and whether Tenant may be liable individually or jointly with others.

The indebtedness of Tenant (the "Obligations") guaranteed by Guarantor and the liability of Guarantor hereunder shall include, without limitation:

- (a) All rent due or which will become due under the Lease; plus
- (b) All additional sums which may arise or become due to Creditor pursuant to the terms of the Lease whether classified as rent or otherwise; plus
- (c) All advances, costs, attorney's fees and expenses incurred by Creditor by reason of Tenant's default in the payment of such indebtedness; plus
- (d) Any and all other amounts due Creditor pursuant to the Lease or other obligations of Tenant arising out of or based on Tenant's execution of the lease and/or its possession of the Premises.

This Guaranty shall bind and obligate the Guarantor and its [their] successors and assigns with said Tenant, jointly and severally, for the payment of the Obligations as if the same had been contracted with Creditor and was due and owing by the Guarantor in person. The obligations of Guarantor hereunder are separate and independent of the Obligations of Tenant and separate

action or actions may be brought and prosecuted against the Guarantor, whether the action is brought against Tenant or whether Tenant be joined in any such action or actions and irrespective of any invalidity, illegality, irregularity or unenforceability of the obligations of Tenant.

Guarantor authorizes Creditor, without notice or demand and without affecting its liability hereunder, to, from time to time, with the knowledge of the Tenant:

- (a) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Obligations or any part thereof, including increasing or decreasing the rate of interest on any portion of the Obligations;
- (b) Take and hold additional security for the payment of the Obligations or the indebtedness guaranteed, and exchange, enforce, waive and release any such security;
- (c) Apply such security and direct the order or manner of sale thereof as Creditor, in its discretion, may determine; and
- (d) Release or substitute any one or more of the Guarantors or add additional Guarantors.

Guarantor acknowledges and agrees that the Creditor has the right to notify any person and entity, including but not limited to any and all credit reporting agencies that Guarantor is in default under this Guaranty at any time subsequent to any default under the terms and conditions of the Lease or any of the Obligations. The Creditor hereby reserves the right to report a default under this Guaranty to a credit reporting agency prior to the initiation of any legal action whatsoever against the Guarantor or Tenant. Guarantor acknowledges that a default reported on a credit report could jeopardize Guarantor's eligibility for credit-based loans and may have a negative impact on the Guarantor's credit. Furthermore, Guarantor holds the Creditor harmless for any such negative impact reporting Guarantor's default may have on Guarantor's credit.

The obligation of the Guarantor under this Guaranty shall remain in full force and effect until the entire indebtedness shall have been paid, and shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation, any of the following, with or without notice to or the consent of the Guarantor:

- (a) To the extent permitted by applicable law, the failure to give notice, whether or not required by any agreement, to the Guarantor of the occurrence of any event of default in the payment or performance of the indebtedness evidenced by the Lease or included in the Obligations;
- (b) The waiver by Creditor of the payment, performance or observance by the Tenant of any of its obligations, covenants or agreements related in any way to the indebtedness evidenced by the Lease or included in the Obligations;

(c) The modification, release or amendment (whether material or otherwise) of any obligation, covenant or term of any agreement related to the indebtedness evidenced by the Lease or included in the Obligations;

(d) The taking or the omission of any action referred to in any agreement related to the indebtedness evidenced by the Lease or included in the Obligations;

(e) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets or any insolvency, bankruptcy, reorganization or other similar proceedings affecting Tenant; or

(f) Any event or action that would, in the absence of this clause, result as a matter of law in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained herein to pay the indebtedness in full.

Creditor may, without notice and consent, assign its interest in this Guaranty in whole or in part to any third party.

Guarantor waives any right to require Creditor to:

(a) Proceed against Tenant, the Guarantor, or other guarantors, if any;

(b) Proceed against or exhaust any security held from Tenant; or

(c) Pursue any other remedy in Creditor's power whatsoever.

Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation, for any cause whatsoever, of the liability of Tenant. Until all indebtedness of Tenant to Creditor shall have been paid in full, Guarantor shall have no right of subordination unless Creditor, at its option, so elects, and Guarantor hereby waives any right to enforce any remedy which Guarantor now has, or may hereafter have, against Tenant, and hereby waives any benefit of, and any right to participate in, any security now or hereafter held by Creditor. Guarantor agrees that any payments received by Creditor, other than from Guarantor under this Guaranty, whether from the Tenant or from the proceeds of any collateral or otherwise, may be applied by Creditor upon any amounts owed to Creditor in such order and manner as Creditor may determine in its sole discretion.

Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notice of protest, notice of dishonor and notice of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness. Guarantor waives, to the fullest extent permitted by applicable law, the benefits of Nevada Revised Statutes Section 40.430. Guarantor waives any defense based upon an election of remedies by Creditor, including without limitation the marshaling of assets or any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal. To the fullest extent permitted by applicable law, Guarantor further waives any right to the benefits of any

statutory provision limiting the right of Creditor to recover deficiency judgment, or to otherwise proceed against any person or entity obligated for payment for the indebtedness, after any public sale, private sale, foreclosure or trustee's sale of any security for the indebtedness. Guarantor waives any right to assert any statute of limitations with respect to recovery of the indebtedness.

Guarantor represents and warrants to Creditor that (a) no representation or agreement of any kind has been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (b) this Guaranty is executed at Tenants' request and not at the request of Creditor; (c) Guarantor has the full power, right and authority to enter into this Guaranty; (d) Guarantor has not and will not, without the prior written consent of Creditor, sell, transfer, assign or otherwise dispose of all or substantially all of the Guarantor's assets or Guarantor's interest in Tenant; and (e) Creditor has made no representation to Guarantor as to the credit worthiness of Tenant.

If any legal action is brought for the enforcement of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding.

Guarantor agrees that any suit or proceeding against it in connection with, arising out of, or relating to this Guaranty, shall be instituted in the Second Judicial District Court in Washoe County, State of Nevada, and Guarantor, for the purpose of any such suit or proceeding, irrevocably submits to the jurisdiction of such court in any such suit or proceeding.

CONSENT TO JURISDICTION, ETC.: GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF NEVADA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE LEASE, THIS GUARANTY OR ANY OF THE DOCUMENTS GIVEN IN CONNECTION WITH THE OBLIGATIONS, AND (B) WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE TO OBJECT TO JURISDICTION WITHIN THE STATE OF NEVADA OR VENUE OF ANY PARTICULAR FORUM WITHIN THE STATE OF NEVADA.

NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT CREDITOR FROM BRINGING ANY SUIT, ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST ANY SECURITY AND AGAINST TENANT OR GUARANTOR OR ADDITIONAL GUARANTOR OF THE OBLIGATIONS, AND AGAINST ANY PROPERTY OF TENANT OR GUARANTOR, IN ANY OTHER STATE. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY STATE SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF THE STATE OF NEVADA SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF GUARANTOR AND CREDITOR HEREUNDER OR THE SUBMISSION HEREIN MADE BY GUARANTOR TO PERSONAL JURISDICTION WITHIN THE STATE OF NEVADA.

Waiver of Jury Trial: In any controversy or claim adjudicated before a court of law, the parties mutually agree to waive the right of trial by jury as to such controversy or claim.

Superpriority Bankruptcy Loans Prohibited: Guarantor acknowledges and agrees that Tenant has agreed to never in the course of a Bankruptcy Chapter proceeding seek or consult to obtain credit or incur debt pursuant to 11 United States Code Section 364(d), nor will Tenant otherwise seek a "Superpriority Loan" secured by a senior or equal lien to the Creditor's rights relating to the Premises.

This Guaranty is exclusive and cumulative as to amount and shall not serve to revoke or alter any continuing guaranty previously delivered to Creditor or (unless otherwise specifically provided in writing at the date of execution thereof) be revoked by any guaranty subsequently delivered to Creditor.

Guarantor shall be discharged and released of any obligation under this Guaranty only upon full payment and satisfaction by Tenant of the indebtedness evidenced by the Lease and other documents evidencing the Obligations, and any renewals, extensions or substitutions thereof.

Guarantor expressly acknowledges that Creditor, concurrent with the execution of this Guaranty, may assign all of its right, title and interest in and to this Guaranty to one or more of its assigns.

If any part or parts of this Guaranty shall at any time be held to be invalid or unenforceable by binding arbitration or by a court of competent jurisdiction, the remaining part or parts of this Guaranty shall be and remain in full force and effect.

This Guaranty shall be construed in accordance with laws of the State of Nevada.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the dates set forth below.

GUARANTOR:



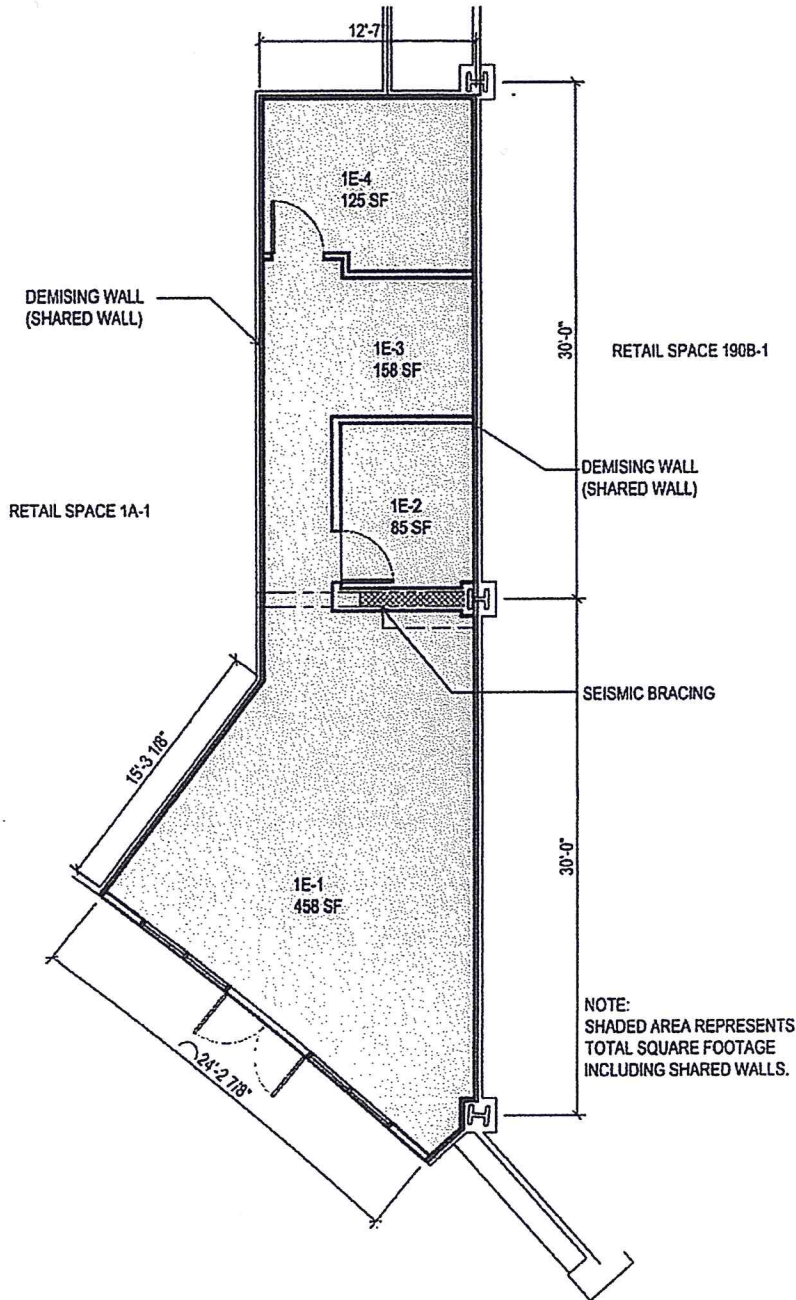
Dr. Larry Lehrner

Address: 9709 Camden Mills Ave
Las Vegas NV 89145

DATED: 13 Jan 14

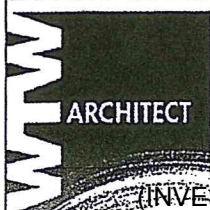
Floor Plan of Premises

Exhibit E to Lease



CSU Retail Space 1-E (Rooms 1-4) 827 S.F.

1/8" = 1'-0"



1936 E. COOPER
137 ANGENSON STREET
TWIN FALLS, IDAHO 83421-2501
TEL: (410) 211-6552
FAX: (410) 221-2511

**COLLABORATIVE
DESIGN
STUDIO**

9244 DOUGLASS BLVD SUITE E | SEVEN VALLEY 89521 | 775.343.7777 | 775.343.0747

University of Nevada,
Reno
Student Union

University of Nevada, Reno
North Virginia Street
Reno, Nevada 89557

CSU
Retail Space
(Rooms 1-4)

SCALE 1/8" = 1'-0"

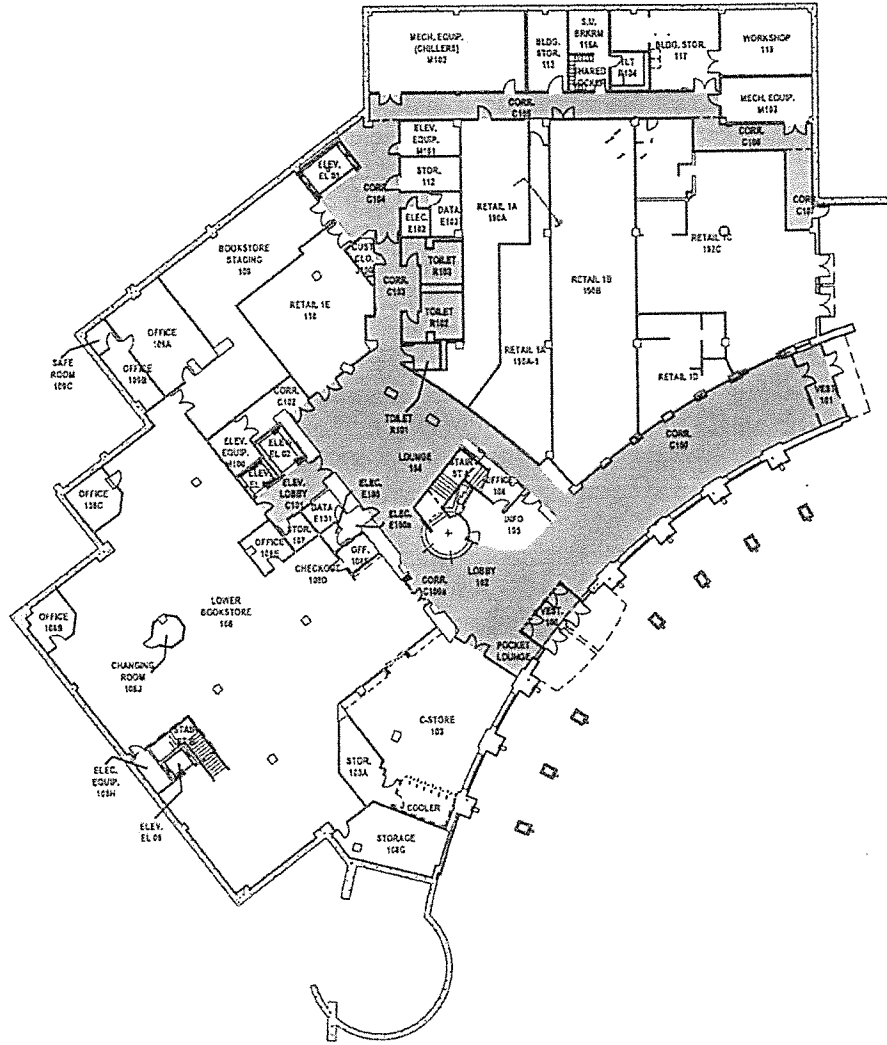
03-21-11

Not for Construction

EXHIBIT F COMMON AREAS MAP

Dated as of 4-24-09

(Subject to change pursuant to Section 7 of the Lease)



CSU Building Common Areas

7,994 S.F.

1"=30'-0"

Drawing of 2nd floor common areas of University of Nevada, Reno, Nevada, prepared by COLLABORATIVE DESIGN STUDIO, 1277 FANCY SHOES STREET, PITTSBURGH, PA 15212-5801, TEL: (412) 231-0520, FAX: (412) 231-2431.

ARCHITECT

THAYER COURT
1277 FANCY SHOES STREET
PITTSBURGH, PA 15212-5801
TEL: (412) 231-0520
FAX: (412) 231-2431

**COLLABORATIVE
DESIGN
STUDIO** architecture of experience and place

9244 DOUGLASS BLVD SUITE B | DENVER CO 80221 | T: 775.345.7777 | F: 775.345.6704

University of Nevada, Reno

FIRST FLOOR
SCALE 1"=30'-0"

University of Nevada, Reno
North Virginia Street
Reno, Nevada 89557

4-24-09
Not For Construction

EXHIBIT G

OPTION

An Option to extend the Lease, if granted in this Lease, shall be exercised, if at all, pursuant to the following provisions:

1. Written notice of exercise duly executed on behalf of Tenant shall be given to Landlord by Tenant at least 180 days prior to the expiration of the Lease Term (determined without regard to such Option to extend). Such written notice shall be effective only if it includes statements as follows:
 - a. Tenant hereby exercises its option to extend that certain Lease between BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the University of Nevada, Reno (“**Landlord**”), and _____ a(n) _____ corporation (“**Tenant**”) dated as of [insert date of Lease].
 - b. By giving this notice of exercise and upon acceptance by Landlord, Tenant agrees that the Lease is extended for the period of time set forth in the Lease Schedule as the “Length of Option” and the terms and conditions of the Lease shall continue to have full force and effect through the Lease Term as extended hereby, without any further action on the part of Tenant.
2. Tenant agrees that no Option to extend may be exercised while there exists an uncured Event of Default. An uncured Event of Default shall be deemed to exist during any period of time after Landlord has sent any notice of such Event of Default to Tenant and until the Event of Default specified therein has been fully cured. Any attempt to exercise an Option to extend or any notice of exercise sent while any uncured Event of Default exists shall be deemed a nullity and notice as herein provided must be given upon fully curing any such noticed Event of Default after full cure thereof.
3. If there shall have occurred 3 or more Events of Default during the Lease Term (as extended), even though Tenant shall fully cure each such Event of Default, there shall be no further right or option to extend the Lease Term and any Option to extend theretofore exercised which extension has not yet commenced shall be void and the Lease Term shall expire without regard to the exercise of such Option.

EXHIBIT H
FOOD COURT FLOOR PLAN

DOES NOT APPLY



Exhibit I to Lease Agreement
 NEVADA SYSTEM of HIGHER EDUCATION
 BUSINESS CENTER NORTH, PURCHASING DEPARTMENT

REQUEST FOR PROPOSAL (RFP):

**Leasing Retail Spaces for Food and Non Food in the Joe Crowley Student Union
 Remains Open Until Filled**

RFP No.: 8098

On behalf of
University of Nevada, Reno

KEY RFP DATES

TIMETABLE FOR RFP	
Issue RFP	June, 27, 2013
Optional Walk Thru	TBD
Question Submittal Deadline	TBD
Answers to Questions Deadline	TBD
Proposal due Date & Time (Public Bid Opening)	Accepting Bids Until Filled

This RFP is issued by the office and person named below. All correspondence, including RFP questions, requests for clarification, and completed responses should be directed to the office and person named in the box below.

All proposals must be clearly labeled with this RFP number and the name of the proposer on the outside of the package(s)

Paper: One (1) original and (3) copies **Electronic Format:** (1) USB drive or CD required

All paper and electronic copies must be exact duplicates of the original.

<p>Nevada System of Higher Education (NSHE) Business Center North (BCN) Purchasing Department, Bldg. 137 Attention: Betsy Brownfield Buyer RFP No.: 8092 1664 North Virginia Street Reno, NV 89557-0242 Phone: 775-784-6552 Fax: 775-784-6017 Email: bbrownfield@unr.edu</p>

Please acknowledge receipt of this document by emailing bbrownfield@unr.edu Include with your acknowledgement your company's name and contact person along with postal address, email address, fax and telephone number.

All costs incurred in the preparation and submission of the response to this RFP shall be the responsibility of the Proposer. Recipients of an RFP who do not wish to submit a proposal should email the above listed buyer or send a letter to the above address stating "NO BID" in reference to the RFP number in question.

Any communication with University/College/College staff regarding this Request for Proposal without prior approval of the above individual may result in the rejection of your proposal.

Sincerely,
 Betsy Brownfield
 Buyer, BCN Purchasing

Business Center North Purchasing Department:
 Desert Research Institute • Great Basin College • Truckee Meadows Community College
 University of Nevada, Reno • Western Nevada College
 NSHE System Administration • System Computing Services
<http://www.bcn-nshe.org/purchasing/>

Rev. Jan. 10, 2013

Leasing Food and Non Food in the Joe Crowley Student Union

RFP No.:8098

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SECTION 1: PROPOSAL PREPARATION

A. Issuing Authority:

The Nevada System of Higher Education (NSHE), Business Center North (BCN) Purchasing Department is the Issuing Authority for this RFP and for questions concerning the RFP process. All correspondence and questions pertaining to the content of this RFP must be emailed to the issuing Purchasing buyer listed below.

BCN Contact:

Betsy Brownfield
BCN Purchasing
1664 N. Virginia Street, Mail Stop 0242
Reno, Nevada 89557-0242
775-784-6552
bbrownfield@unr.edu

B. Instructions

1. Preparation, Format of Proposals:

Proposals shall be signed by an individual authorized to commit the company or corporate entity and to conduct discussions, if required, prior to issuance of a contractual document resulting from this Request for Proposal (RFP). The NSHE reserves the right to reject any or all proposals, or to make an award in the best interests of the NSHE and the University/College to the selected proposer(s) without further discussion or negotiations. It is solely the proposer's responsibility to submit their proposal in the format required. Failure to do so may result in your proposal being declared non-responsive.

Specific elements of a properly prepared proposal include:

- a) The name of the proposer, the RFP number and page number must appear on each page.
- b) The person signing the proposal must initial erasures or other changes.
- c) All cost information must be submitted separately, following the balance of the proposal.
- d) All proposers must submit a minimum of three references with similar installations with the products and services specified in the Request for Proposal Statement of Work.
- e) All proposers shall submit all contracts and agreements expected to be executed should they be selected as the awarded vendor for vetting by NSHE and the UNIVERSITY/COLLEGE.

The suggested format to be followed is:

- Complete Table of Contents;
- Introduction or executive summary;
- Unequivocal statement of proposer's agreement to all terms and conditions with clear explanations of any exceptions;
- List of a minimum of three references including complete contact information;
- Signed Certifications of Non-segregated Facilities, Non-Discrimination in Employment, and Debarment, Suspension or Ineligibility;
- Detailed description of proposal that includes content requested in Sec.3, Statement of Work.

2. Submission of Proposals:

Proposals should be prepared simply and economically, providing a straightforward, concise description of the respondent's capability to satisfy the requirements of the proposal.

Proposals shall be packaged and mailed or hand carried so as to arrive at the location designated herein no later than the time and date set for receipt of the proposals.

This Request for Proposal number and the name of the proposer shall appear on the outside of the package for the number of hard copies specified in the RFP Statement of Work following these formats:

- Acceptable electronic formats are Microsoft Word, Microsoft Excel and Adobe PDF.
- Electronic copies must be supplied on a USB drive or CD when required.
- FAXED or EMAILED proposals will not be accepted.

3. Modification of Proposals:

The proposer may modify Proposals at any time if mailed or hand carried so as to arrive on or before the date and time set for receipt of proposals.

4. Withdrawal of Proposals:

Proposals may be withdrawn by email, written or fax notice received by the NSHE prior to the due date and time of this proposal.

5. Proposal Opening Procedure:

Proposals shall be opened by the NSHE BCN Purchasing Department, in a manner that avoids disclosure of contents to competing proposers. A register of proposals containing the names of all responses received shall be prepared and retained by the Director of Purchasing. This register shall be open for public disclosure after contract award, except as otherwise outlined herein.

6. Late Proposals:

Proposals, modifications, or withdrawals received after the date and time set for receipt of this proposal will not be considered.

7. Validity of Proposals:

Proposals in response to this Request for Proposal shall be valid for a period of ninety (90) days from the due date of the proposal.

8. Disclosure Restrictions:

The NSHE advises that the content of your proposal or other information submitted to the NSHE is subject to the Nevada Public Record Law (Chapter 239 of Nevada Revised Statutes) and under said law; all NSHE records are available to public release, upon request, after contract award. The proposer shall mark as "proprietary" those parts of its proposal that it deems confidential and proprietary. However, the proposer is alerted that this marking is advisory only and not binding on the NSHE. If there is a request from the public to inspect any part of the proposal so marked, the NSHE will advise the proposer and request further justification in support of the "proprietary" marking. If the NSHE determines after receipt of the justification that the material is releasable, the proposer will be notified immediately.

9. Evaluations:

Proposals will be evaluated in terms of the completeness and quality of features contained in the Proposal, compliance with the RFP process, pricing, proven track record, references, timeline, payment terms and previous performance with NSHE or the specific UNIVERSITY/COLLEGE. Evaluation criteria and weights defined in this RFP will be used by the evaluators to determine the best qualifying proposal. NSHE shall not be obligated to accept low bid, but will make an award in the best interest of NSHE after careful evaluation of all proposals received. Not meeting a certain criteria does not necessarily exclude a respondent from the evaluation.

The acceptance by the University of any offer of purchase is explicitly subject to approval by the NSHE Board of Regents in the sole and absolute discretion of the Board. If the approval of the Board is withheld or is not obtained, for any reason or for no reason, any contract of sale shall be deemed void and of no legal or equitable effect whatsoever, in which event a proposed purchaser shall have no right whatsoever arising from such contract or cause of action against NSHE or the University.

Evaluation Criteria:

The University/College will review all accepted responses based on the following Criteria:

Criteria
• Compliance w/ RFP specifications
• References
• Menu
• Menu pricing
• Experience/Expertise
• Pricing/payment terms

- Approach to environmental sustainability

10. Oral Presentation:

NSHE reserves the right to require any or all Proposers to make a formal, oral presentation. The presentation may be either in-person at a designated site specified by NSHE or a web based meeting. The Purchasing Department shall coordinate the scheduling of any presentations required. Each proposer should be prepared to discuss and substantiate all areas of its proposal. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers. The proposer shall be responsible for all costs associated with the presentation.

11. Rejection of Proposals:

NSHE reserves the right to reject any and all proposals received, or any part thereof. Proposals may be rejected for any of, but not limited to, the following causes:

- Proposal lacks signature by an authorized representative of Proposer;
- Evidence of collusion exists between the Proposers;
- Proposer fails to meet the terms and conditions as specified in the RFP;
- Evidence submitted by the Proposer leads NSHE to believe that Proposer will be unable to carry out the obligations of the agreement and to complete any or all of the work described;
- NSHE investigation determines the Proposer is not qualified to meet the obligations of the agreement and complete work described;
- Proposed cost of services exceeds budgetary constraints.

12. Protests:

In accordance with Nevada Revised Statutes, NRS Section 338.142, a person who bids on a contract may file a notice of protest regarding the awarding of a contract within 5 business days after the date the bids were opened. The protest must include a written statement specifying the reasons where the applicable NRS provisions have been violated. A person filing a protest will be required to post a protest bond with a solvent surety authorized to do business in Nevada. The bond posted or other security submitted with a notice of protest must be in an amount equal to, or the lesser of 25% of the total value of the bid submitted by the person filing the notice of protest or \$250,000.

All costs incurred in responding to the bid protest will be deducted from the protest bond as per the cost schedule available in the Purchasing Department.

13. Award of Contract:

- The Director of Purchasing reserves the right to enter discussions with any or all proposers after the NSHE has initially reviewed proposals. This Request for Proposal may result in the award of contract(s) to the most qualified responsive and responsible proposer whose proposal, after evaluation by the NSHE and UNIVERSITY/COLLEGE, is considered the most advantageous to the NSHE and UNIVERSITY/COLLEGE.
- This Request for Proposal will be subject to "evaluation" by the NSHE BCN Purchasing Department and UNIVERSITY/COLLEGE. The proposer is solely responsible for ensuring the content of its proposal meets the evaluation criteria set forth in the Request for Proposal. Additional, previously published information describing product features and capabilities and/or the vendor's capabilities and track record will be evaluated if such data is current and reflects the proposer's existing situation.
- The BCN and UNIVERSITY/COLLEGE reserve the right to reject any or all proposals and to waive minor irregularities not considered by the NSHE to be essential to the evaluation process. The NSHE and UNIVERSITY/COLLEGE may, at their option, award parts of tasks if the Scope of Work lends itself to division and it is in the best interest of the NSHE and UNIVERSITY/COLLEGE.
- NSHE reserves the right, where appropriate, to request for "Best and Final" offers. Such responses shall be subject to all provisions, and terms and conditions as set forth in the Request for Proposal, unless otherwise modified.
- Contractual commitments are contingent upon the availability of funds as evidenced by the issuance of a signed purchase order.
- Agreements may be subject to the approval of NSHE's legal counsel and may require Board of Regents approval prior to execution.
- Unless specifically stated herein, if there exists a conflict or inconsistency between the terms set forth in this

RFP document and successful Proposer's proposal, the language in this RFP document shall take precedence.

C. General Terms and Conditions

The following terms and conditions govern the RFP process and any agreement(s) entered into as a result of award of this RFP:

1. Term of Contract:

In the event a contract is entered into resulting from this awarded RFP it shall be a five year lease with one additional five year option. Any contract term(s) will be mutually agreed upon. Contract renewals may be based on satisfactory vendor performance in compliance with original proposal requirements.

2. Governing Law:

All contracts resulting from award of this RFP shall be governed by and construed in accordance with the laws of Nevada. No action involving this contract may be brought except in the district and federal courts located in Washoe County, Nevada, USA.

3. Contract Representatives:

The Director of Purchasing will handle most contractual matters. A designated manager(s) for the University/College will address day-to-day operations as well as specific procedural matters. Vendors are expected to designate and maintain comparable representatives with authority to carry out their duties.

4. Assignment:

The Vendor shall not assign the contract in whole or in part without the express written consent of the Director of Purchasing nor shall the Vendor have the right to authorize or permit the use of NSHE facilities by third parties without the express written consent of the NSHE.

5. Termination:

The contract, or any portion of the contract, may be canceled for convenience by the NSHE, by giving sixty (60) days written notice to the vendor.

The contract, or any portion of the contract, may be canceled for "just cause" by the NSHE, by giving sixty (60) days written notice to the vendor. "Just cause" is defined as unsatisfactory performance or as any failure on the part of the vendor to comply with any of the provisions or terms and conditions of the contract.

In the event the vendor fails to materially carry out or comply with any of the terms and conditions of the established contract, the Director of Purchasing reserves the right to demand remedy of any failure or default within ten (10) days of notification. In the event the vendor fails to remedy the failure or default within the specified period, the Director of Purchasing shall have the right to terminate all or any part of the established contract in accordance with Terms and Conditions of the contract document.

It is understood and agreed, notwithstanding the provisions, terms and conditions of this RFP, that in the event any recognized funding authority fails to appropriate sufficient funds to the using department to enable obligations to be fulfilled under the award contract, the NSHE will notify the Vendor by giving sixty (60) days written notice. The NSHE will reimburse the Vendor for all services rendered through the end of the sixty (60) day notification period.

6. Joinder Clause

Within the parameters of NRS 332.195 – "Joinder or mutual use of contracts by local governments" and with the agreement of the vendor, the NSHE may join, or mutually use, the contracts or pricing agreements of appropriate federal, state, and local entities and consortiums. Where the NSHE uses the original contract in order to obtain quantity pricing or other competitive discounts, the original contract is not liable for the obligations of the NSHE. The requirements for competitive quotations and/or formal bidding may be considered satisfied through the use of the joinder contracts, including federal/state/local contracts, consortium agreements, and the educational pricing agreements.

7. Service of Notice:

Any notice may be served effectively upon the NSHE by delivering it in writing to the Nevada System of Higher Education, Business Center North, 1664 N. Virginia St. MS/242, Director of Purchasing, Reno, Nevada 89557-0242, or by depositing it in a United States Mail Box with postage prepaid and addressed to the Director of Purchasing at the previously stated address.

8. Liability:

The Vendor, in performance of contract, shall release and discharge the Nevada System of Higher Education and the Board of Regents from liability for, and assume the risk of, loss or damage to property of the Vendor. Further, the Vendor shall save the Nevada System of Higher Education and the Board of Regents harmless from and defend against all losses, all liabilities, expenses and other detriments of every nature and description, to which the Nevada System of Higher Education and the Board of Regents may be subjected by reason of any negligent act or omission of the Vendor, or any of the Vendor's subcontractors, employees, agents, invitees or licensees where such loss, liability, expense or other detriment arises out of or in connection with the performance of work under the contract, including, but not limited to liens, personal injury and loss of or damage to property of the Nevada System of Higher Education or others.

9. Insurance Requirements:

Contractor shall, at Contractor's sole expense, procure, maintain, and keep in force proper insurance for the duration of the Contract conforming to BCN Risk Management's minimum requirements which can be found at the following website:

<http://www.bcn-nshe.org/downloads/riskmgmt/NoticeToContractors.pdf>

Vendor must agree to add the "Board of Regents of the Nevada System of Higher Education" as an additional insured entity to the vendor's commercial general liability policy and include a waiver of subrogation.

Unless specifically noted herein or otherwise agreed to by BCN Risk Management, the required insurance shall be in effect on or prior to the commencement of work by Contractor and shall continue in force as appropriate until the latter of:

- a. Final acceptance by (Campus/College/Department) of the completion of this contract; or
- b. Such time as the insurance is no longer required by (Campus/College/Department) under the terms of this contract.

Note: Deductibles in excess of \$100,000 and self-insured programs will require review and approval on a case-by-case basis.

10. Evidence of Insurance:

Contractor shall provide the following documents in their proposal response:

- Certificate of Insurance: the Accord 25 Certification of Insurance form to evidence the insurance policies and coverage required of Contractor.
- Upon award of any contract, Contractor will be required to provide an updated Accord 25 Certification of Insurance including the required additional insured status and related endorsements.

11. Worker's Compensation Insurance:

For work performed on campus, Nevada Law requires that the Contractor shall provide worker's compensation insurance as stated in NRS 616B.627 or proof that compliance with the provisions of NRS Chapter 616A-D and all other related chapters is not required. The Contractor shall require the same insurance when the work is to be performed by a subcontractor. Certificates of Contractor's insurance shall be filed with the Nevada System of Higher Education, Business Center North's Director of Purchasing prior to commencing work.

12. Change Orders:

Changes in the scope, work or design, after award of contract, may be made or altered, increased or decreased. In such event, the Vendor shall furnish a written cost estimate of the work to be added or omitted and, thereafter, shall not proceed to make any change(s) until a written Change Order has been issued by the Nevada System of Higher Education, Business Center North's Director of Purchasing or designee.

13. Contracts / Purchases by the Vendor:

The vendor shall not use the name of the NSHE or UNIVERSITY/COLLEGE in contracts with suppliers or in any other manner. The Vendor shall make all contracts in its own name and the Vendor alone shall be responsible for those purchases and contracts. Nothing herein shall be construed as creating the relationship of partners, joint ventures, or agency.

14. Codes/Regulations:

Vendor shall be responsible for complying with all City, County, State and Federal Codes and Regulations, as applicable, in the performance of the Contract.

15. Liquidated Damages:

It is hereby mutually agreed, between the Vendor and *NSHE*, that Contract Time is an essential condition of the Contract. The Vendor agrees that all work shall be prosecuted regularly, diligently, and without interruption at a rate of progress that will ensure completion of the Work within the Contract Time. It is expressly understood and agreed, by and between the Vendor and *NSHE*, that the time for completion described in the Contract Documents is an acceptable time for the completion, taking into consideration the average climatic range and usual industrial and labor conditions prevailing in the locality of the Work. If the Vendor shall neglect, fail, or refuse to complete the Work within the specified Contract Time, as it may be extended by Change Order, then the Vendor does hereby agree, as a part of the consideration for receiving the award of the Contract, to pay to *NSHE*, not as a penalty, but as liquidated damages, the amount of money specified for each and every excess calendar day that is required to complete the Work.

The unit amount of liquidated damages is established as one percent (1%) of the Contract Amount for every Calendar Day after the Contract Time that the Work is not complete, and is a minimum and fixed amount mutually agreed upon by and between the Vendor and *NSHE* due to the impracticability and extreme difficulty of ascertaining in advance the actual damages *NSHE* would sustain should the Work not be completed within the Contract Time. Should monies due the Vendor for work performed be insufficient to cover such liquidated damages, then *NSHE* shall have the right to recover said sum or sums from the Vendor, from his Surety, or both. Liquidated damages will be assessed against the Vendor for the time that is required to complete the Contract over and above the authorized Contract Time. All changes to authorized Contract Time shall be set forth in Change Orders. Liquidated Damages shall cease to be assessed on the date of Notice of Completion.

16. Claims for Damages:

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents, or others for whose acts he is legally liable, claim shall be made in writing to such other party within 14 days after the first knowledge of such injury or damage. Any costs caused by defective or ill-timed work shall be paid by the Vendor.

17. Contractor's License:

All Bidders shall be licensed by the State of Nevada to do the type and value of work contemplated in this project. The successful bidder shall possess a valid and applicable Contractor's License issued by the Nevada State Contractors Board under the provisions of Chapter 624 of Nevada Revised Statutes, at the time of submitting his bid. All bidders shall ensure that all sub-bids utilized in preparing the bid have been obtained from subcontractors who are properly licensed on the bid date by the Nevada Contractors Board to perform their portion of the work. A subcontractor named by the bidder who is not properly licensed for that portion of the work is unacceptable. The bidder shall provide an acceptable subcontractor within 48 hours of discovery of the exception and before any further work on the project is undertaken. Bidders proposing to submit a "Joint Venture Bid" shall obtain the written approval of the Nevada State Contractors Board prior to submitting such a bid and shall include a copy of that approval with their bid submittal.

18. Taxes, Permits, Fees and Notices:

The Contractor shall pay all sales, consumer, use, and other taxes required by law. The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the Work. The Contractor shall not be required to pay for a municipal or county building permit, or permanent utility connection fees.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the Work and *NSHE*. If the Contractor observes that any of the Contract Documents are at variance therewith, he shall promptly notify *NSHE* and/or Architect. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

19. Warranty:

Contractor shall fully warrant all materials, equipment, and service against poor and inferior quality or workmanship for a period of not less than one (1) year from date of final acceptance by the *NSHE*. Time is of the essence of this contract. Contractor shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

The Contractor shall unconditionally guarantee the workmanship and materials of the entire contract to be free of defects and remain free of defects in workmanship and materials for a period of one year from date of completion or acceptance of the final payment by the Contractor, or as called for in the specifications.

Each subcontractor shall unconditionally guarantee the workmanship and materials of his portion of the Contract to be free of defects and remain free of defects in workmanship and materials for a period of one year from the date of completion or acceptance of the final payment by the Contractor, or as called for in the specifications. Such guarantees shall be signed by the Subcontractor and shall be countersigned by the Prime Contractor who shall be responsible for the entire Work.

20. Disadvantaged Vendor Enterprise:

The Nevada System of Higher Education and Business Center North recognize the benefit of creating an equal opportunity for all vendors to participate in the procurement process; Business Center North is committed to diversity and nondiscrimination in its business operations. Accordingly, NSHE will make a good-faith effort to utilize minority business enterprises, women-owned business enterprises, disabled business enterprises, veteran/disabled or veteran-owned business enterprises, and small business enterprises throughout the procurement process. This effort does not equate to a quota or set percentage. All efforts to contact and engage small, minority, disabled, veteran, and women vendors will be fair and impartial.

20. Compliance with US Employment Law:

The awarded Contractor, sub-contractor and all applicable staff, required to fulfill the requirements of the award of this contract, whether in the form of a purchase order and/or a formal contract, shall be in compliance of all federal, state and local laws, in regards to employee eligibility to work in the United States. Failure to comply with this requirement may result in termination of the contract.

D. Required Certifications

All proposers are required to certify and attest to their company's compliance with the below statements.

These certifications must be followed by an authorized signature.

1. BUSINESS LICENSE:

Bidders are required to possess all necessary business licenses for performance of the work described in the bid. NSHE may require successful bidder to provide evidence of such license at any time.

- 1) Are all registrations with the Secretary of State regarding your business organization current?
(This does not apply to a sole proprietorship or partnership that is not required to file its organizational documents with the Secretary of State).

Yes _____ No _____

- 2) Provide your current Nevada state business license number. If you don't have a Nevada state business license, what exemption from that requirement do you claim?

Current Nevada State Business license number: _____

What exemption from that requirement do you claim? _____

2. CERTIFICATION OF NONSEGREGATED FACILITIES

By submitting a bid, the undersigned bidder, vendor or subcontractor certifies to the Nevada System of Higher Education and the Department of Defense that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The bidder, vendor or subcontractor understands that the phrase "segregated facilities" includes facilities which are in fact segregated on a basis of race, color, creed or national origin because of habit, local custom, or otherwise. The bidder, vendor or subcontractor understands and agrees that maintaining or providing segregated facilities for his employees or permitting his employees to perform their services at any location under his control, where segregated facilities are maintained is a violation of the equal opportunity clause required by Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973, and USC 2012 (Disabled Veterans and Veterans of the Vietnam Era).

The bidder, vendor or subcontractor understands and agrees that a breach of the assurance herein contained subjects him to the provisions of Order 32 Federal Regulation 7439, of the Secretary of Labor dated May 19, 1967, and the provisions of the equal opportunity clause enumerated in purchase orders or contracts between the Nevada System of Higher Education and the bidder, vendor or subcontractor.

Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 USC 1001.

3. NON-DISCRIMINATION IN EMPLOYMENT

By submitting a bid, during the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers representative of the contractors commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor will comply with all provisions of Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973, USC 2012 (Disabled Veterans and Veterans of the Vietnam Era) and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Orders 11246 and 11375, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any other such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Orders 11246 and 11375, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. CERTIFICATION REGARDING DEBARMENT SUSPENSION OR INELIGIBILITY FOR AWARD
(Executive Order 12549)

By submitting a bid, the offer or certifies, to the best of its knowledge and belief that the offeror and/or any of its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

5. CLEAN AIR ACT:

By submitting a bid, the bidder affirms and certifies that the Proposer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Federal sponsoring agency and the Regional Office of the Environmental Protection Agency.

6. COPELAND "ANTI-KICK BACK" ACT:

By submitting a bid the bidder affirms and certifies that the Proposer shall comply with provisions of the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3), which act provides that each Proposer shall be prohibited from inducing, by any means, any person employed in the

construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

7. DAVIS-BACON ACT:

When required by the federal program legislation, all construction contracts awarded by the recipients and sub-recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act Proposers shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Proposers shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the federal sponsoring agency.

8. EQUAL EMPLOYMENT OPPORTUNITY:

By submitting a bid, the bidder affirms and certifies that the Proposer shall comply with provisions of Executive Order No. 11246, entitled "Equal Opportunity," as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR, Part 60). The Equal Opportunity Clause is included herein as Federal Government Regulations, Section 2, Equal Opportunity Clause.

9. PCI SECURITY COMPLIANCE:

Applicable vendors must comply with the Payment Card Industry Data Security Standard (PCI DSS). The PCI Data Security Standard requirements apply to all payment card network members, merchants and service providers that store, process or transmit cardholder data. The requirements apply to all methods of credit card processing; the most comprehensive and demanding of which apply to e-commerce websites, and retail POS systems that process credit cards over the Internet. PCI official website at: <https://www.pcisecuritystandards.org>.

Proposer certifies that their proposal meets all specifications, terms and conditions contained herein.

Yes _____ No _____

If no, proposer must explain all deviations and exceptions in writing and attach to their bid response.

COMPANY NAME: _____

Authorized Business Partner Company Name: *(If applicable)*

TAX IDENTIFICATION NUMBER: _____

NAME AND TITLE: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE :(____) _____

FAX NUMBER :(____) _____

WEB PAGE: _____

EMAIL ADDRESS: _____

**This form must be completed and signed (manual or electronic)
by an authorized person and returned with bid.
If this is not completed, entire bid will be considered non-responsive and void.**

SIGNATURE Date

E. References

Provide the name and contact number of at least 3 references.

Company Name	Contact Name	Address	Telephone	E-mail	Years of experience with this client
1.					
2.					
3.					

SECTION 2: STATEMENT OF WORK

PURPOSE

This Request for Proposals is being conducted in order to identify potential tenant(s) for a vacant coffee retail operation plus a vacant juice style operation (e.g. smoothie, juice, yogurt, ice cream). The University is seeking to identify the operations that provide the most benefits to the University, its students and staff. Proposals can be submitted for one or both of the operations.

A. Overview and Background

The Joe Crowley Student Union has formed exciting partnerships with various retail vendors housed in the student union. Our retail partners are an integral addition to the product offerings of the campus; our university community is faithful in their patronage and support. Faculty, staff, and students have developed a culture of coming to the Joe for shopping, meals and programs. They plan meetings and attend events in the building, making it comfortable and preferable to hang out. Each retail vendor has a unique opportunity to provide its special brand to patrons who remain on campus between classes and meetings. As enrollment continues to grow, surpassing 18, 000 this year, sales will also expand. The Student Union has more than 15,000 meetings and events annually; more than 1.5 million visitors come through our doors each year. A team of positive colleagues, a university ripe with opportunity and an environment centered on community are just a taste of what the student union has to offer. Join us and see what the excitement is all about!

The University of Nevada, Reno ("UNR"), Nevada's land grant university and one of the preeminent research institutions in the western United States, opened its state of the art student union in November, 2007. The Joe Crowley Student Union, a facility of more than 167,000 square feet, has quickly become the most vibrant center for student and faculty activity on campus. A full description of this student union can be found at: <http://www.unr.edu/union/>. More retail info can be found at: <http://www.unr.edu/union/food-and-drink> and <http://www.unr.edu/union/about-the-student-union/vendor-opportunities>

Key components of the student union have been the retail food and shopping areas. The floor plans for the retail portions of the union can be found at the web site referenced above.

The Joe Crowley Student Union current retail sites: See Attachment A

B. Scope of Work

DETAILS

TO THE EXTENT THAT ANY OF THE FOLLOWING INFORMATION IS IN CONFLICT WITH THE TERMS AND CONDITIONS OF THE ATTACHED FORM OF LEASE AND LEASE SCHEDULE, THE TERMS AND CONDITION OF SAID LEASE SHALL PREVAIL. BIDDERS ARE CAUTIONED TO CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THE FORM OF LEASE.

SPACE/ FACILITY AREAS

Size of space. There are two options currently available: See Attachment A

All square footage numbers are approximate using BOMA standards. All numbers are exclusive of the common seating area adjacent to the food court and other common areas in the union. While no direct base rent is charged for the common seating area or other common areas in the building, the tenant will share in the cost of utilities and maintaining this area.

RENT/COMMISSION INFORMATION:

- The minimum income level needed to submit a proposal is \$ 27.00 per square foot annually/ \$ 2.25 psf monthly.
- This low initial sf cost is in recognition of some slower time periods (i.e. winter break, spring break, summer)
- The sf base rent for initial months will be "free". Base rent will commence on September 1, 2013
- The University may consider the tenant paying a fixed basic rent plus percentage gross sales.
- Vendors are encouraged to list any additional proposed rent in the form of commission or additional income as part of their proposal.
- Other charges will be:
 - Common Area Maintenance charges for (currently \$.50 per sf monthly multiplied by a load factor of 1.5),
 - Common Marketing shared costs (currently at \$.10 per sf monthly).
 - Utilities, other than metered gas and electric, will be initially charged at an initial rate of \$ 0.18 per square foot monthly. The square footage for utility calculation will include a load factor of 1.50 %. Utilities rates are set every two years on July 1st by the University and are non-negotiable.
- All fees, other than utilities, will be increased at the same rate as rent.
- No charge will be made for Insurance or real property taxes. The company is responsible for all taxes other than real property taxes, as well as all utility charges consumed on or allocated to the premises.
- Both minimum guaranteed rent and percentage rent will have tiered increases over the term of the lease. Rent and related fees will increase by CPI or 3% whichever is greater.

LENGTH OF CONTRACT:

- The initial contract will be a five year lease with one additional five year option.

FOOD COURT MAINTENANCE FEE:

- For tenants in the food court, there will be a Food Court maintenance fee. The initial fee will be \$ 0.50 per sf monthly. All fees will be increased annually at the same rate as rent.

RETAIL FOOD COURT CONTRIBUTION

- Common Area Seating and shared expenses: All food court tenants will participate in the cost of the seating area FF&E and all finishes. The initial one time contribution will be \$10,000 for Retail Space _____ or \$5,000 for either retail space _____ or _____.

EXPERIENCE:

- List the years of experience for both the Franchisor and the Franchisee in operating quality food services in general and on similar style college campuses or other public buildings.

OPERATING HOURS:

- Submit your proposed initial operating hours. This should include standard weekly hours during fall, spring and summer sessions. Also include hours proposed for any school breaks (e.g. winter, spring) and summer hours. Refer to: <http://catalog.unr.edu/content.php?catoid=1&navoid=4> for information about the university calendar and <http://www.unr.edu/union/about-the-student-union/hours> for current Student Union hours. The Tenant's hours of operation may not extend beyond the hours of operation of the Student Union unless approved in advance.
- Tenant's operating hours must be approved by the University in advance. There will be some mandatory days and /or hours required by the University.
- Tenant cannot close or modify hours without written approval by the University. Tenant cannot open any hours outside of Building Hours.
- Tenant's hours may be different from the hours of operation of other food service outlets in the Student Union.
- The University will provide reasonable notification to the Tenant for changes to the building schedule. All of the Tenant's operating hours are subject to approval by the UNIVERSITY. There may be times when the UNIVERSITY requires the TENANT to be open or to be closed.

Staffing:

- Submit a staffing proposal for the retail area, detailing the minimum number of employees and the maximum number of employees at peak times and at slow times.
- The Tenant will ensure that his/her/its employees are properly identified and in the customary or standard neat and clean uniforms and following proper sanitation practices and food handling procedures.
- The Tenant will be solely responsible for all employee compensation and ensure that all employees comply with all governmental rules. The contractor will comply with all current and future Federal, state and local laws and regulations pertaining to wages and hours of employment.
- The UNIVERSITY reserves the right to interview and approve the selection of the food facility managers.
- The Tenant will maintain an adequate staff of employees to provide efficient, prompt and courteous service.
- The University reserves the right to approve and/or make recommendations as to the staffing levels. The Tenant will submit with the proposal a staffing proposal for the food facility, detailing the minimum number of employees and the maximum number of employees at peak times.

- The UNIVERSITY reserves the right to require tenant's staff to participate in Building Wide employee training and team building programs.
- The Tenant must be willing to reassign any employee from direct contact with customers when requested to do so by the UNIVERSITY, provided that such request will be made only on the grounds that continued employment resulting in contact with customers would be detrimental to the UNIVERSITY's public relations. The UNIVERSITY may also ask the Tenant to remove any food facility employee from the site for cause, if due notice is given to the Tenant by the UNIVERSITY.
- The UNIVERSITY requests that whenever possible the Tenant hire UNIVERSITY students as part-time staff.

TENANT RECORDS AND INFORMATION:

- The Tenant will submit with the proposal the following information:
- A CPA-certified financial statement. In the absence thereof, a financial statement verified by the principal financial officer of the Bidder.
- Tenant's Dun and Bradstreet or similar rating, if available.
- Summary of Tenant's management experience.
- Listing of current clients, in particular, institutions of higher education or similar public settings for which the Tenant operates a food facility, including the name and telephone number of the Contract Administrator.
- Listing of former clients, in particular, institutions of higher education or similar public settings for which the Tenant operated a food facility, including the name and telephone number of the Contract Administrator.

FINANCIAL RECORDS AND TAXES:

- The Tenant will generate, using generally accepted accounting standards and principles, weekly financial statements for the food facility. A copy of such statements will be furnished to the UNIVERSITY within three (3) days after the close of each week for which the food facility is contracted.
- The Tenant will keep records pertaining to the Tenant's food facility for a period of at least five (5) years from the date the records are made.
- The Tenant will pay all federal, state and local taxes which may be assessed against the Tenant's equipment or inventory while in or upon the premises of the UNIVERSITY, as well as all federal, state and local taxes assessed in connection with the operation of its business on the premises of the UNIVERSITY.

AUDIT PRIVILEGES:

- The Tenant will give the UNIVERSITY and its agents the right and privilege of inspecting, examining, and auditing Tenant papers, bills, vouchers, invoices, records, books of account and sales slips for the Tenant food facility operated on UNIVERSITY premises. The Tenant will freely lend its assistance in making such inspections, examinations, and audits.
- Any information provided by the Tenant for any inspection, examination, or audit will be held in confidence by the University and its agents.

REFERENCES:

- List the names, contact information and relevance of three references from similar style settings

FINANCIAL STATEMENT: Attach the financial statement for the last three financial years for the company or both the Franchisor and Franchisee (if applicable)

LEASE GUARANTEE: Identify any proposed lease guarantors and provide financial information for each such guarantor similar to that information required of the Bidders.

PRODUCT EXCLUSIVES: Several current tenants have exclusives on certain products. The following products may not exceed more than 10% of any other tenants' sales: Mexican style food, Chinese and any wok prepared style food, submarine sandwiches or deli trays, bagels and bakery items and Italian style food including pizza. It is anticipated that successful Bidder(s) will have exclusives for Premium coffee, smoothies and fresh squeezed or blended juices.

ONE CARD PARTICIPATION:

All retail units will be expected to participate in the University of Nevada's Wolfcard program <http://www.unr.edu/wolfcard/>. All related costs (cash registers, readers, maintenance fees, transaction costs) will be borne by the tenant.

POURING RIGHTS (Pepsi exclusive):

The University has a long term relationship with Pepsi Bottling Group. The University requires that all tenants selling beverages at the University purchase all Post-mix Products, bottles, cups and lids directly from Pepsi Bottling Group.

Tenant acknowledges that the University has entered into, or from time to time may enter into, an agreement which prohibits [the University] and all tenants in the Building to market soft drinks which compete directly with products marketed by Pepsi. Tenant agrees to be bound by the terms of such agreement and agrees, and upon expiration of such agreement, to be bound by any successor agreement, on terms and conditions which are reasonably acceptable to [the University] to refrain from marketing, selling or using any product which is restricted by such Agreement with Pepsi or any other party with whom [the University] contracts. Tenant and its Sublessee cannot sell any products that compete with any Pepsi products. Tenant and its Sublessee are required to comply with these provisions. However, Tenant and its Sublessee may negotiate directly with Pepsi and PBG regarding prices.

PROPOSED MENU:

- Provide a list of ALL initial menu items with quantity and price points for each item.
- The UNIVERSITY reserves the right to approve any additional menu items to provide balance with other food providers in the student union. Any changes to the initially submitted menu or proposed services and/or methods must be approved by the UNIVERSITY through the life of the contract.
- The UNIVERSITY reserves the right to recommend menu items within the Tenant's trademark policy to be sold in the food facility and also reserves the right to request removal of menu items for sale in the food facility which the UNIVERSITY considers inappropriate or in direct conflict within the Student Union.
- The sale of any non-food items must be pre-approved by the UNIVERSITY.
- The Tenant will maintain retail selling prices that are comparable to other similar-branded outlets in the local campus area and Northern Nevada area. The Tenant must notify the University in writing if there are changes to pricing including "specials."
- The Tenant can in no way limit the UNIVERSITY as to what products can be sold in other places on campus outside of the Student Union building.
- The Tenant will maintain a menu board that is plainly readable, stating the offerings and the applicable resale prices

PARKING ACCESS:

- Parking on any college campus is challenging at peak times. For customers, there are two garages totaling about 2900 spots within 120 yards of the building. Currently, there is also a surface parking lot across from the main entrance to the building. Tenants will have loading dock access for loading and unloading, but will need to abide by university parking procedures at other times.
- The University will provide limited temporary access to the food unit only when a University employee is on site (during regular business hours). There may be a charge for this access. All of the tenant's non-student employees may purchase university parking permits to park at a university parking area. The tenant will be responsible for all payments to University Parking Services.

PROMOTION/ADVERTISING/MARKETING POLICIES:

- The Tenant will submit a statement of national, regional or local advertising dollars spent in the past three fiscal years.

COMMON AREA MARKETING:

- Tenant will pay commons area marketing fee for shared marketing of the building. The Common area Marketing fee is currently \$.10 per sf monthly.
- The Tenant will dedicate and expend a yearly portion of the gross sales for local promotion of the Student Union, which may include joint advertising ventures and promotional events with the UNIVERSITY. The Tenant will submit a quarterly report to the UNIVERSITY, verifying such expenditures.
- The Tenant will submit with the proposal information regarding its National/Regional/ Local advertising program, which would include local media, such as newspapers, and publications
- All marketing and promotional/advertising programs that use the Tenant's trademark, service mark, or other proprietary mark used by the UNIVERSITY are subject to approval by the Tenant prior to implementation.
- The Tenant also needs to obtain the University's approval for any use of any University name or logo. There may be a charge for use of University logos.
- The Tenant will submit with the proposal a detailed marketing plan covering the Retail unit during the opening, the first 3 months of service and on an annual basis.
- With the Tenant's approval, the University reserves the right to use the Tenant's logo in selected University publications.
- The Tenant must obtain approval from the UNIVERSITY for the placement of any signs, trade fixtures, decorations, lettering or advertising matter on or about the premises and will maintain such signage in good condition. Any such fixtures will be removed from the premises at the completion of the contract at the tenant's expense.

- The Tenant must obtain approval from the UNIVERSITY for any program or promotional event in or around the premises.

PUBLIC RELATIONS:

- The Tenant must recognize that satisfactory public relations with students, faculty, staff, and visitors to the University campus are an important part of the food facility service.
- The Tenant will provide with the proposal its customer service philosophy, including information on training programs which address customer service. Also included will be the Tenant's method of measuring the level of customer satisfaction and responding to customer suggestions and complaints.
- Coordinate with the UNIVERSITY on responses to sponsorship and funding requests.
- Coordinate all social media sites with the UNIVERSITY

COMMITMENT TO EDUCATION:

- The Tenant will submit with the proposal any programs and/or actions which demonstrate its commitment to education. The Tenant will include a listing of any institutions, including the name and telephone number of the contract administrator, where such programs are in effect or where such action was taken. With the Tenant's approval, the UNIVERSITY may conduct class tours of the operation, interviews, etc.

SPACE/ FACILITY AREAS

Size of space.

- See Attachment A

Storage: All storage will be contained within the tenant's space unless the lease includes additional storage space. Absolutely no storage in hallways, not even temporary storage, is permitted.

Restrooms: All food areas share a common restroom/ changing room. Requests for restrooms within individual retail areas will be at tenants expense and part of the rental area. The Landlord has constructed all required restroom facilities.

BUILD OUT:

- List how much time is needed for tenant build-out.
- All construction must be done under the supervision of and subject to approval of Facilities Services Department
- List proposed construction contractors and architects. (Contractors and architects must have all appropriate licenses as required by the State of Nevada and shall be subject to the prior approval of the University. Tenant shall ensure that there is labor harmony with other trades during the construction process).
- Tenant must pay prevailing wages on any new construction project where the cost of the construction exceeds \$100,000
- The Tenant will submit with the proposal a schedule, detailing the time frame of site preparation and a proposed design (elevations, color selections, signage, utility requirements, etc.).
- The proposed design will be subject to the University's approval and must meet UNIVERSITY Facilities Services Standards. These Facilities Services Standards may be found on the University's web site and are incorporated by reference herein.
- Tenant responsible to make their spaces floor and plumbing watertight to prevent water damage to spaces and finishes below
- STOREFRONT: To consist of the Union's standard security gates, location, design and installation to be provided by Tenant and approved by University.
- At the end of the term of the Lease, the demised premises shall be delivered in a broom clean condition, reasonable wear and tear excepted.
- Any modifications or renovation of the tenant space must be at the approval of the UNIVERSITY and at an agreed-upon time.
- Landlord shall deliver the Premises to Tenant in accordance with the terms and conditions of the Lease and the following conditions:
 - WALLS: All demised walls framed ready for final finish by tenant.
 - HVAC: Appropriate load capacity for applicable system available within the building:
 - All electrical and plumbing connections per code and manufacturer's specifications.

ELECTRICAL:

- University will provide connection of tenant's electrical service to the main electric room.
- Tenant's electricity to be separately metered using existing electric sub-metering system (Emon-Demon) Tenant to review existing system and connections and make any upgrades as needed.

PLUMBING: The University will provide the following:

- 4" sanitary waste line brought within demised space at suitable depth to drain per local code from any location within demised premises.
- 1 1/2" cold water supply line with a minimum one inch service to meter located per Tenant's plan, pressure reducing valve set at a maximum 80 PSI; in line water meter at gate valve.
- Water supply must maintain at least 60-PSI minimum.
- 4" vent located above proposed ceiling brought within the demised space from properly flashed vent through roof, or connected with other available, appropriate venting available in building.
- 3/4" water line feed to building face (not tenant's space).
- GAS: Supplied gas, separately metered, 2" line, stubbed to rear of Premises.
- A "Grease Interceptor" will be installed for Food Tenants by the university. Tenant will be responsible for their proportional share of all maintenance, cleaning and operating costs of the trap.
- SPRINKLERS: The University will provide a main sprinkler system for the building to the Tenant's space. Tenant is responsible to "drop" and "distribute" the sprinkler heads within their respective space as required.

UTILITIES:

- Utilities, other than metered gas and electric, will be initially charged at an initial rate of \$ 0.18 per square foot monthly. The square footage for utility calculation will include a load factor of 1.50 % for tenant's share of the food court seating area.
- All fees, other than utilities, will be increased at the same rate as rent. Utilities rates are set by the University and non-negotiable.
- Tenant to use gas meter for individual space. Tenant to review gas lines and upgrade if needed.
- All utilities, including power, water; gas, sewer, and phone shall be brought to the premises by Tenant from their respective "mains".
- The UNIVERSITY will provide all reasonable utility services, including domestic hot and cold water, heating, air conditioning and electricity.
- It is the responsibility of the Tenant to develop and operate all areas within their space within the established campus temperature guidelines of 68 to 78 degrees Fahrenheit during tenants normal occupied and/or operational hours.
- The Tenant will be expected to make every effort to conserve utilities and to operate his/her equipment in an efficient manner.
- The UNIVERSITY will not be liable for any loss that may result from the quality, quantity, interruption, or failure of any such utilities or services under any circumstances. The Tenant will be responsible for all telephone, Ethernet and fax services, including but not limited to installation, monthly equipment charges, local and long distance charges or similar services. These services must be arranged with the UNIVERSITY Telecommunications Office. Tenant to use existing campus network for data/communication tie in – Cat 6 cable is required by building standards. Any new temperature controls or HVAC equipment that will be installed by the tenant must tie into the existing buildings temperature control software system, including graphics (Existing temperature control package is a Metysis/Johnson Controls installed system) tie ins to the existing system must be coordinated and inspected with UNR temperature controls staff.

FLOORS: Floors will be concrete slab with limited access after building construction. Tenant is required to seal all flooring and other areas to prevent any leaks into adjoining space or lower floors. Tenant is responsible to make their floor, all penetrations in walls and floor, and plumbing watertight to prevent water damage to spaces and finishes in adjoining spaces and below. Tenant is responsible for any damages from leaks from their premises.

BUILDING DOCUMENTATION: Prior to Lease acceptance, Landlord shall submit to Tenant complete drawings in the form of construction documentation and "as-built" specification of shell Premises to include but not be limited to the following:

- Architectural
- Structural
- Electrical
- Mechanical
- Plumbing
- Fire Sprinklers (if applicable)
- All work is to be permitted and approved by the applicable local code inspectors.
- Any Title 24 Calculations or other utility approvals shall be completed by Tenant, verified by University, and then submitted to appropriate agencies by Tenant. Tenant to send approved copies of all to University prior to acceptance of the Premises.

- Tenant to have the right to make Interior non-structural alterations to premises. All alterations must be approved by the university prior to the commencement of any work.
- **CHANGES DURING BUILDING CONSTRUCTION:** Changes to the building plans to accommodate retail units will be considered with adequate advance notice. Tenant is responsible for all related costs including change order costs.

Inspections and Final Inspection: Throughout the build out there will be on going inspections by local agencies and University inspectors. At the conclusion of the tenant's retail build-out, local agencies, the University, its representatives and /or the contractor will conduct a final sign-off inspection of the store. The inspection allows for all parties to review the build-out, the equipment and the readiness of your store to open. As Built drawings and related documents to be provided to University by Tenant.

MAINTENANCE:

- Maintenance and repair of the Tenant's food facility fixtures, equipment, exhaust equipment; grease duct, interior facilities and premises are the responsibility of the Tenant.
- The UNIVERSITY will provide any general maintenance associated with utilities services that it supplies. If there is evidence of Tenant abuse or neglect causing utility maintenance, the UNIVERSITY will charge the Tenant for the direct cost of repairs.
- If there is evidence of Tenant abuse or neglect causing needed maintenance in common areas or with common equipment (e.g., garbage disposal, receiving area, rest rooms, public areas), the UNIVERSITY will charge the Tenant for the direct and indirect cost of repairs.
- The UNIVERSITY will provide grounds maintenance.

FIRE AND SAFETY CODES:

- The Tenant will maintain its food facility according to all appropriate state, city and UNIVERSITY fire codes. The Tenant's food facility will be subject to periodic inspection by the UNIVERSITY'S personnel plus state and local inspectors.

EQUIPMENT AND FURNISHINGS:

- The Tenant is responsible, at his/her expense, for providing and maintaining any and all equipment and furnishings needed to operate the food facility. All equipment and furnishings will be removed at the end of the contract period and the tenant space returned to the UNIVERSITY in its original state, wear and tear expected.
- The Tenant will submit with the proposal a list of all equipment and furnishings that are proposed to be used, along with their specifications, including utilities, voltage, plumbing, amperage, water/drains, etc.
- The University requests that all Tenant electrical equipment be Energy Star rated equipment.
- University will provide a common seating area / program space on the second floor with appropriate finishes and furnishings. Cost to be shared by second floor retail food tenants.

HANDICAP ACCESSIBILITY: All means of ingress/egress shall be at street/walkway level acceptable to ADA inspectors. It will be the tenant's responsibility to ensure full public and employee access and ADA accessibility compliance within their developed spaces and tenant improvements.

SIGNAGE:

- All Retail Tenants must conform to the signage standards for the Joe Crowley Student Union and University. Standards for retail areas in the Union are located at <http://www.unr.edu/union/about-the-student-union/vendor-opportunities>. The standards require a background grid to be provided by the designated sign company. The sign must be installed by designated sign company. The storefront signage must be installed upon substantial completion of the tenant improvement.

All signage must be approved by the UNIVERSITY in advance.

SECURITY and POLICE:

- Tenant is responsible for all security of the individual retail areas including locks and alarms. Tenant is responsible for security of all deliveries from the loading dock to the retail unit.
- The Tenant will cooperate with the UNIVERSITY Police Department concerning enforcement of UNIVERSITY regulations and internal security and theft control in the food facility. The Tenant will not, except in physically dangerous or other emergency situations, summon public emergency services other than through the UNIVERSITY Police Department. The Tenant will not have employees of the food facility who were convicted of theft, robberies, and/or larcenies, including embezzlements, by public authorities without prior consultation with the UNIVERSITY Police Department.

SANITATION:

- The Tenant will maintain its food facility and ensure that all employees perform according to all appropriate state, county, city and UNIVERSITY health codes. The Tenant's retail area will be subject to periodic inspection by the UNIVERSITY, local and state officials. The Tenant will take all appropriate precautions to ensure that sanitation is maintained to the highest possible degree.
- The Tenant will be responsible for the cleaning of the entire tenant space including service, preparation and storage areas, equipment, floors, ceiling and walls. All areas will be kept orderly, sanitary and in good condition and be kept free of insects, rodents, vermin and other pests.
- In the unfortunate case of any report of food borne illness, the UNIVERSITY will determine who conducts the investigation. Any release of information concerning a report of food borne illness will be handled by the UNIVERSITY Marketing and Communications Department.
- The UNIVERSITY will be released from any and all liability concerning a case of food borne illness that is traced to the Tenant's food facility.
- The UNIVERSITY will coordinate with the Tenant for appropriate pest control services and cost sharing for these services.
- All food storage racks in walk-in coolers must be on casters. (per Nevada Health Division)
- Provide barriers between hand sinks and food contact surfaces. (per Nevada Health Division)
- Indicate an area for storage of employees' personal possessions, or an area for lockers. (per Nevada Health Division)
- Tenant to provide the Nevada Health Division with a copy of the Tenant's sanitation plan. Plan should include such items as: employees' illness policy, handwash policy, training program, proposed menus, and cleaning schedules. (per Nevada Health Division)

TRASH REMOVAL:

- The UNIVERSITY will coordinate with all parties for the removal and disposal of all refuse and grease placed in the compactor and grease bin. All related costs will be shared proportionally.
- The Tenant is responsible for the placing of all refuse in the appropriate compactor and for providing trash receptacles and plastic liners for the Tenant's food facility on the interior (and exterior (if applicable) of the building.
- Costs for removal of trash in common areas will be shared proportionally.
- Costs for removal of grease will be the responsibility of the tenant.
- All food court tenants are required to collect their serving trays from the Food Court and surrounding areas.

ENVIRONMENTAL CONSERVATION:

- The Tenant will initiate and/or cooperate with the UNIVERSITY in providing environmental conservation programs such as recycling cardboard, glass and plastic and exercising control of the use of utilities to conserve natural resources.
- The University encourages the Tenant to utilize green or sustainable equipment and policies as much as possible.
- The University requests that TENANTS be able to provide for fair trade certified coffee and labeled with the Transfair USA certification mark or similar mark.

STANDARDS OF OPERATION

- In keeping with the UNIVERSITY's culture, philosophy and mission, the TENANT 's programs and procedures will need to adhere to the following University's standards of operation:
- Operate the site and the unit in a clean, safe and orderly manner, providing courteous, first-class service to the public;
- Make every reasonable effort to increase the sales and business and maximize the gross receipts of the unit;
- Advertise, market, promote and merchandise the business of the unit by the use of the proprietary marks;
- Prevent the operation of the site of the unit and refrain from using the proprietary marks in advertising or promotion in such a way as to impair the value or reputation of the proprietary marks of the TENANT;
- Prevent the use of the site or the unit for any illegal purpose;
- Stay familiar with and comply with all requirements in the TENANT 's Operations Manual which includes standards and specifications of operation, training and quality assurance programs, staffing guidelines, financial support, marketing and merchandising, and communications systems;
- Not operate the unit or otherwise sell the products from or to any location as otherwise outlined in the RFP Response without prior approval of the UNIVERSITY.
- Maintain at all times a sufficient inventory of products, ingredients and supplies to meet customers' demand for the products sold by the unit;
- Pay on a timely basis (i) for all products, ingredients, supplies and other goods and services purchased by TENANT for use in connection with the operation of the site or the unit, (ii) all national, federal, state and local income, sales, withholding, value added and other taxes for which TENANT is liable under a federal, state or local

government under any law, statute, ordinance or regulation, and (iii) any debt service on any debt incurred to finance the operation of the site or the unit;

- Comply with all supra-national, national, federal, state and local laws, statutes, ordinances and regulations affecting the operation of the site and the unit, including without limitation health, sanitation, fire, safety and environmental laws, statutes, ordinances and regulations;
- Timely obtain, maintain, pay for and avoid revocation or suspension of any and all licenses, permits, consents, certificates and registrations necessary or appropriate for TENANT to prepare or operate the site and the unit in compliance with all laws, statutes, ordinances and regulations and the provisions of the contract;
- Not operate the site or the unit in a manner that presents a health or safety hazard to its customers or creates environmental hazard;
- Refrain from performing any act which could be reasonably likely to damage or cause harm to the reputation, goodwill or credit of the unit, the proprietary marks, the TENANT's system, TENANT or University culture; and
- Sell all products in a manner which is not detrimental to UNIVERSITY's or Tenant's reputation or the positioning of the products in the market;
- Deliveries are to be made through the Student Union loading dock. The freight elevator is to be used to access other floors. Deliveries, stock, supplies, must be immediately stored within the vendor's space.

PROMOTION OF PROPRIETARY MARKS

- The University will at all times during the term of the contract at its own cost, use diligent efforts to advance the reputation of the TENANT and the products and to develop consumer awareness of the products and the proprietary marks.

STANDARDS FOR PRODUCTS AND SUPPLIES

- The TENANT will sell in the unit only products approved in advance by the UNIVERSITY. The TENANT will not under any circumstances sell any other products or conduct any other business in the unit or sell the products from any location other than the unit, unless approved in advance in writing by the UNIVERSITY.
- In preparing products for sale in the unit, the TENANT agrees to use only the ingredients, techniques and procedures designated or approved in advance. The TENANT will offer such products only in the proportions, appearance and packaging as may periodically be specified.
- The TENANT will utilize in the unit only those bags, boxes, wrappers, cartons, customer goodwill items and other food containers and customer convenience items that display one or more of the proprietary marks.

Miscellaneous Information from RFP 7976 page 22

SECTION 3: PROPOSAL REQUIREMENTS

A. PROPOSAL SUBMITTAL REQUIREMENTS:

Proposers interested in submitting a response to this Request for Proposal should provide a summary that addresses the criteria below. The items that are to be submitted with the TENANT's proposal, including the TENANT's Franchise Program (if applicable). Three (3) copies will be submitted and will be bound in a folder and presented in the same order as listed below.

- 1) Product/ Brand Proposal with overview of operations
- 2) Menu with initial price points
- 3) The TENANT will submit with the proposal a staffing proposal for the food facility detailing the minimum number of employees and the maximum number of employees at peak times and at the slowest times.
- 4) The TENANT will submit with the proposal a list of company principals and resumes of key administrative/support and on-site management personnel.
- 5) The TENANT will submit with the proposal the proposed menu, including a detailed list of the menu items, portion sizes, raw food costs, types of services and methods of product delivery to customers, nutritional information on the items and the proposed resale prices, along with the Product Profile information on the TENANT's Franchise Program sheets. In the case of special dietary menu items such as vegan, vegetarian, gluten-free, ingredients and preparation methods the TENANT will provide this information in the proposal. A customer taste panel may be conducted to evaluate product acceptability.
- 6) The TENANT must provide samples of food products and customer convenience items that display proprietary marks such as bags, boxes, wrappers, and cartons. The University also reserves the right to visit and inspect other sites of the potential TENANT.
- 7) The TENANT will submit with the proposal his/her intended hours and days of operation for the periods listed in this proposal (see "DAYS/HOURS OF OPERATION").

- 8) The TENANT will submit with the proposal evidence as to the fact that they are a National or (State) branded company. Include a statement of National advertising dollars spent in 2011 and 2012 as well as dollars spent in the state of Nevada (if applicable).
- 9) The TENANT will submit with the proposal information and associated costs regarding its National/Regional/ Local advertising program on an annual basis including examples of newspaper ads and/or publications, along with the Marketing/Advertising Program information on the TENANT's Franchise Program (if applicable) sheets.
- 10) The TENANT will submit with the proposal a detailed marketing proposal covering the opening at the Student Union opening, the first 3 months of service, and on an annual basis, any associated costs, along with the Marketing/Advertising Program information on the TENANT 's Franchise Program sheets (if applicable).
- 11) The TENANT will submit with the proposal its customer service philosophy, including information and associated costs on training programs which address customer service. Also included will be the TENANT's methods of measuring the level of customer satisfaction and responding to customer suggestions and complaints, along with the Training Costs information on the TENANT s Franchise Program Sheets.
- 12) The TENANT will submit with the proposal any programs and/or actions which demonstrate its commitment to education. The TENANT will include a listing of any institutions, including the name and telephone number of the Contract Administrator, where such programs are in effect or where such actions were taken.
- 13) The TENANT will submit with the proposal a schedule detailing the cost and time schedule of architectural, design, and construction costs; photos of the store front; and color selection, signage, and utility requirements, etc., along with the Projected Architectural, Design, and Construction Costs and Time Schedule information on the 's TENANT Franchise Program sheets.
- 14) The TENANT will submit with the proposal the following information:
- 15) A CPA-certified financial statement or annual report.
- 16) TENANT's Dun and Bradstreet rating.
- 17) Summary of TENANT's management experience.
- 18) Listing of current clients, in particular institutions of higher education for which the TENANT operates a food facility.
- 19) Listing of former clients, in particular institutions of higher education for which the TENANT operated a food facility. Include the name and telephone number of the Contract Administrator.
- 20) The TENANT will submit with the proposal the proposed SF rent above the minimum \$ 27.00 per square foot annually. After written proposals are reviewed, the University may require an oral presentation for the purpose of discussion. Upon request, the potential TENANT must provide samples of food products and customer convenience items that display proprietary marks such as bags, boxes, wrappers and cartons. The University also reserves the right to visit and inspect other sites of the potential TENANT.
- 21) The TENANT will submit with the proposal creative methods of determining additional revenues to the UNIVERSITY over and above the minimum base rent.

B. ADDITIONAL INFORMATION:

- It is the responsibility of the prospective TENANT to participate in the walk thru (optional) to inspect the site of the UNR Student Union and/or to review the plans in order to determine all requirements associated with any forthcoming contract prior to submitting a proposal. Failure to do so shall not relieve the successful TENANT from carrying out the intent of the resulting contract at no additional cost to the University.
- Proposals will be as thorough and detailed as possible so that the University may properly evaluate the TENANT's capability to provide the required services. TENANT must accept all responsibilities indicated throughout the proposal
- Once awarded, the successful TENANT will submit with the proposal a list of all equipment, furnishings, uniforms, and signage that are proposed to be used along with their specifications including utilities, voltage, plumbing, amperage, water/drains, etc., including associated costs.

*PLEASE NOTE: If awarded a new W9 and Vendor Application must be completed.
Link: <http://www.bcn-nshe.org/purchasing>*

Attachments

Lease Schedule



Lease Schedul.pdf

Lease Agreement



Lease
Agreement.pdf

RFP#

Page 22 of 22

Firm Name: _____

NSHE Briefing Paper Attachment B

LEASE SCHEDULE

This Lease Schedule is a part of that certain Lease entered into as of the ___ day of _____, 2014 (the "**Effective Date**"), by and between the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the University of Nevada, Reno ("**Landlord**"), and FAMILY YOGURT II Ltd., a Nevada limited liability company ("**Tenant**").

1.2 Premises. The Premises referred to in the Lease is the Retail space identified as 1-E as more particularly described on Exhibit 1 attached hereto. The Premises consist of approximately 827 Rental Square Feet.

1.3 Term.

Lease Term: Sixty two and one-half (62.5) months from the Commencement Date; expiring on May 31, 2019 at 11:59 p.m. Pacific Time.

Commencement Date: Notwithstanding the definition found in the Section 1.3 of the Lease, the "Commencement Date" shall be March 15, 2014.

Rent Commencement Date: August 1, 2014.

Options to Extend: Number of Options: One (1).

Length of Option: Sixty (60) months.

1.4 Base Rent. The initial Base Rent shall be equal to Two and 00/100 Dollars (\$2.00) per square foot in the rentable area of the Premises. Notwithstanding the CPI adjustment provisions of Section 1.4, during the Lease Term and Option period, the Base Rent shall increase by Three Percent (3%) over the prior year's Base Rent on each anniversary date of the Rent Commencement Date.

1.5 Security Deposit. Section 1.5 shall be deleted and replaced with the following:

1.5 Due At Lease Signing. Tenant shall pay the following sums to Landlord upon signing of the Lease:

- (a) The first installment of Base Rent as provided in Section 1.4;
- (b) A Security Deposit in the amount of Two Thousand Four Hundred Eighty One Dollars and 00/100 (\$2,481.00) which shall be held by Landlord as described in Section 5;
- (c) The first installment of Tenant's estimated share of Operating Expenses and Tenant's estimated share of the Utility Costs incurred by Landlord as provided in Section 4 in the amount of Eight Hundred Twenty Seven Dollars and 00/100 (\$827.00).

1.6 Landlord's Address. Landlord's address "for payment" shall be deleted and replaced with the following:

For Payment:

Board of Regents of the Nevada System of Higher Education
University of Nevada, Reno
Crowley Student Union (0056)
Reno, NV 89557-0550
Attn: Director of Joe Crowley Student Union
Fax: 775.784.1859

1.7 Address for Notices:

Family Yogurt II, Ltd.
c/o Larry Lehrner
9709 Camden Hills Ave.
Las Vegas, Nevada 89145
llehrner@prodigy.net
Fax No. (702) 269-9237

1.8 Tenant Improvements. Section 1.8 is deleted and replaced with the following:

1.8 Improvements.

- (a) **Landlord's Improvements.** Tenant accepts the Premises in "as is" condition. Notwithstanding the foregoing, consistent with Exhibit C to the Lease, Landlord will make all improvements to the Premises (the "Landlord Improvements") necessary to provide the following to the Premises:
- (i) a four inch (4") sanitary waste line to the demising wall of the Premises at a suitable depth to drain per local code from any location within the Premises;
 - (ii) a one and one-half (1 ½") inch cold water supply line to the demising wall of the Premises; and
 - (iii) a one and one-half (1 ½") inch hot water supply line to the demising wall of the Premises. Landlord shall deduct the cost of the above described Landlord Improvements from the Tenant Allowance provided in subsection (c) below.
- (b) **Tenant Improvements.** Tenant, using quality materials in a good and workman like manner, shall make any improvements to the Premises necessary for Tenant's permitted use (the "Tenant Improvements") in conformance with all applicable provisions of the Lease and Exhibit B thereto. Tenant acknowledges that the Premises is not separately metered for electrical service and that Tenant shall reimburse Landlord for Tenant's share of the costs of electrical service as provided in Section 4.1. Furthermore, Tenant acknowledges that the Premises does not have access to natural gas and that if natural gas is necessary for Tenant's use of the Premises Tenant shall be responsible for the installation of a gas line and separate meter.

- (c) **Tenant Improvement Allowance.** Landlord shall provide to Tenant an allowance in the amount of Ten Thousand Dollars and 00/100 (\$10,000.00) (the "Tenant Improvement Allowance") to construct and install the Tenant Improvements. The Tenant Improvement Allowance shall be used to design, prepare, plan, obtain approvals of, construct and install the Tenant Improvements. All payments of the Tenant Improvement Allowance to Tenant shall be by progress payment not more frequently than once per month and only after satisfaction of the following conditions: (a) receipt by Landlord of any and all documentation reasonably required by Landlord detailing the work that has been completed and the material and supplies used, including, without limitation, invoices, bills, statements and work orders, (b) receipt by Landlord of any mechanic or materialmens' releases as Landlord deems necessary for work completed, and (c) completion by Landlord or Landlord's agent of any inspections of the work on the tenant improvements that Landlord deems necessary. No payment of the Tenant Improvement Allowance will be made to Tenant until after Landlord has deducted the cost of Landlord's Work from the Tenant Allowance as provided in subsection (a). Landlord shall not be obligated to pay any Tenant Improvement Allowance progress payment if the Tenant is in default of the Lease. Should the total cost of designing and constructing the tenant improvements be less than the Tenant Improvement Allowance, Landlord shall, at its election, either (a) pay the remainder of the Tenant Improvement Allowance to Tenant, or (b) credit the remainder of the Tenant Improvement Allowance to Tenant's payment of Rent.
- (d) **Access to Chilled Water System.** Landlord shall provide Tenant access to and use of the Building's chilled water system. Tenant is responsible for all expenses related to the installation and maintenance of any equipment that attaches to or utilizes the Building's chilled water system. Tenant represents and warrants that it will not attach any equipment to the Building's chilled water system without the prior approval of Landlord, which approval shall not be unreasonably withheld. Tenant acknowledges that Landlord does not guarantee or represent that the chilled water system will be adequate for Tenant's equipment and intended use. Tenant further acknowledges that the Landlord does not guarantee the temperature of the Building's chilled water system, that the temperature may vary and that Landlord is not responsible for power outages and other occurrences that impact the performance of the Building's chilled water system. Tenant shall indemnify Landlord for any damage done to the Building's chilled water system caused by any equipment Tenant attached to the Building's chiller water system. Within ten (10) days of the installation of any equipment by Tenant to the Building's chilled water system Tenant shall report to Landlord the British Thermal Units per hour (BTU/h) used by the equipment as estimated by the manufacturer.

1.9 Permitted Use: Sale of frozen yogurt and toppings. The Permitted Name of Tenant's use of the Premises shall be U-Swirl to Go or other similar name as approved by the Director of the Joe Crowley Student Union.

4.1 Rent. Section 4.1 is deleted and replaced with the following:

Rent "Rent" shall mean and include all of the following (a) Base Rent, (b) Tenant's share of Landlord's operating expenses, including common area expenses and marketing fees (collectively "Operating Expenses"), and (c) Tenant's share of the utility costs associated with the Building, including, electrical utility, water and sewer service, trash and other services (collectively the "Utility Costs").

Tenant's share of the Operating Expenses shall be based on a Load Factor of one (1.). Tenant's share of the Utility Costs shall be based on a Load Factor of one and one-half (1.5.).

Tenant acknowledges that Tenant's share of Operating Expenses and Tenant's share of the Utility Costs shall be reconciled and adjusted annually and are currently billed at One Dollar 00/100 (\$1.00) per square foot per month, the calculation of which is set forth in Exhibit 2 attached hereto.

Tenant shall pay Landlord Rent without any deduction, recoupment, set-off or counter-claim except as otherwise set forth herein and with respect to any final judgments Tenant obtains against Landlord. Tenant shall pay Landlord an annual rent the "Base Rent") pursuant to Section 1.4 as set forth in this Lease Schedule and adjusted as provided in Section 1.4 of the Lease.

4.6.2 Food Court Contribution. Notwithstanding anything to the contrary in the Lease; No Food Court Contribution is payable.

4.6.3 Food Court Maintenance Fee. Notwithstanding anything to the contrary in the Lease; No Food Court Maintenance fee is payable.

4.7 Percentage Rent. Notwithstanding anything to the contrary in the Lease; No percentage rent is payable.

6.1 Permitted Use; Exclusive Uses. Tenant acknowledges that Landlord has entered into an agreement which prohibits Landlord and all tenants in the Building to market soft drinks and other products that compete directly with products marketed by Pepsi. Such agreement requires that all products, cups, and lids be purchased directly from Pepsi Bottling Company. Tenant agrees to be bound by the terms of such agreement and agrees, and upon expiration of such agreement, to be bound by an successor agreement, on terms and conditions which are reasonably acceptable to Landlord to refrain from marketing, selling or using any product which is restricted by such agreement with Pepsi or any other party to whom Landlord contracts ("Successor Contracting Party"). Tenant agrees that, to the extent it breaches any such agreement, the measure of damages for

which it is liable shall be those damages incurred by Landlord under its agreement with Pepsi or any Successor Contracting Party proximately caused by Tenant's continued breach after notice and an opportunity to cure, including but not limited to (i) applicable liquidated damages, (ii) lost price breaks, rebates, or other pricing benefits, (iii) promotional fees which became refundable or are charged back to Landlord; and (iv) any other amount payable by Landlord to any party as a result of such breach whether under the agreement with Pepsi or a Successor Contracting Party, or otherwise.

Tenant shall have the right to be the sole tenant in the Building to sell frozen yogurt and toppings as its primary business. For purposes of this provision, a tenant in the Building shall not be deemed to have the sale of yogurt as its primary business unless gross sales of yogurt exceed ten percent (10%) of such tenant's total sales, computed on an annual basis.

Tenant acknowledges that Landlord has given exclusive rights to other tenants in the Building with respect to products other than yogurt as described in the Exclusives List attached hereto as Exhibit 3 and that Tenant shall not engage in the sale of any product covered by any such exclusive rights, to the extent the sale of any such product exceeds the amounts permitted thereunder.

10.1.3 Business Automobile Liability Insurance. Section 10.1.3 is deleted and replaced with the following.

Business Automobile Liability Insurance. The minimum limit required is \$1,000,000 combined single limit per occurrence for bodily injury and property damages. Coverage shall include Tenant owned (if applicable) non-owned, and hired vehicles. Coverage shall be written on ISC form CA 00 01 or a substitute providing equal or broader coverage.

10.2.4 Policy Cancellation Endorsement. Section 10.2.4 is deleted and replaced with the following.

Policy Cancellation. Tenant shall not suspend, void, or cancel any of the insurance required in this Lease except after thirty (30) days prior written notice has been given to Landlord. When cancellation is made by Tenant's insurer for any reason, including for non-payment of premium, Tenant shall provide Landlord written notice of such cancellation at least ten (10) days prior to the lapse of coverage. Failure of Tenant to maintain the insurance policies required by this Lease or to provide evidence of such insurance shall be a material breach of the Lease.

10.3 Approved Insurer and Notice of Insurance. Section 10.3 is deleted and replaced with the following:

Approved Insurer and Notice of Insurance. All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurance

companies rated not lower than "A" and in the Class IX Financial Size category in Best's Insurance Reports (current edition) and authorized to do business in the State of Nevada. Such policies shall be endorsed to indicate that Tenant's coverage shall not be invalid due to any act or omission by Landlord. Tenant shall deliver to Landlord, within 30 days after execution of this Lease, or prior to entering the Premises for any purpose, whichever is first to occur, certificates (in the form of Acord 25 Certification of Insurance or a form substantially similar) evidencing the insurance coverage required herein and confirming that the premiums therefor have been paid in full. If Tenant fails to obtain the insurance required herein and deliver said certificates to Landlord as provided above, Landlord shall be entitled, but without obligation, to obtain said policies at Tenant's expense. All coverages for Tenant's assignees and subtenants shall be subject to the requirements stated herein.

10.7 Modification or Variation. The following is hereby added to the Lease as Section 10.7:

Modification or Variation. Any modification or variation from the insurance requirements in this Lease must be approved by the Risk Manager for the Nevada System of Higher Education. Such modification or variation shall not require a formal lease amendment, but may be approved by administrative action.

24.7 Commissions. Section 24.7 is deleted and replaced with the following.

Commissions. The parties hereby acknowledge that in connection with the leasing of the Premises Landlord has used the services of Avison Young/Western Alliance Commercial ("Avison Young") and Landlord shall be pay any commission or fee due to the same pursuant to a separate agreement. Tenant represents and warrants to Landlord that Tenant has not employed or dealt with any broker, agent or finder other than Avison Young in connection with this Lease. Tenant shall indemnify and hold Landlord harmless from and against any claims for brokerage or other commissions asserted by any broker, agent or finder employed by Tenant or with whom Tenant has dealt other than Avison Young.

24.20. Guaranty of Lease. Dr. Larry Lehrner shall serve as Guarantor of the Lease and shall execute the Guaranty Agreement attached as Exhibit D to the Lease.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Lease Schedule as of the Effective Date set forth above.

LANDLORD:

BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION ON
BEHALF OF THE UNIVERSITY OF
NEVADA, RENO

By: _____

Name: _____

Title: _____

Date: _____

Recommend by:

Marc Johnson, President
University of Nevada, Reno

Date: _____

TENANT:

YOGURT FAMILY II LTD.

By: *LM Lehmer*

Name: *L M Lehmer*

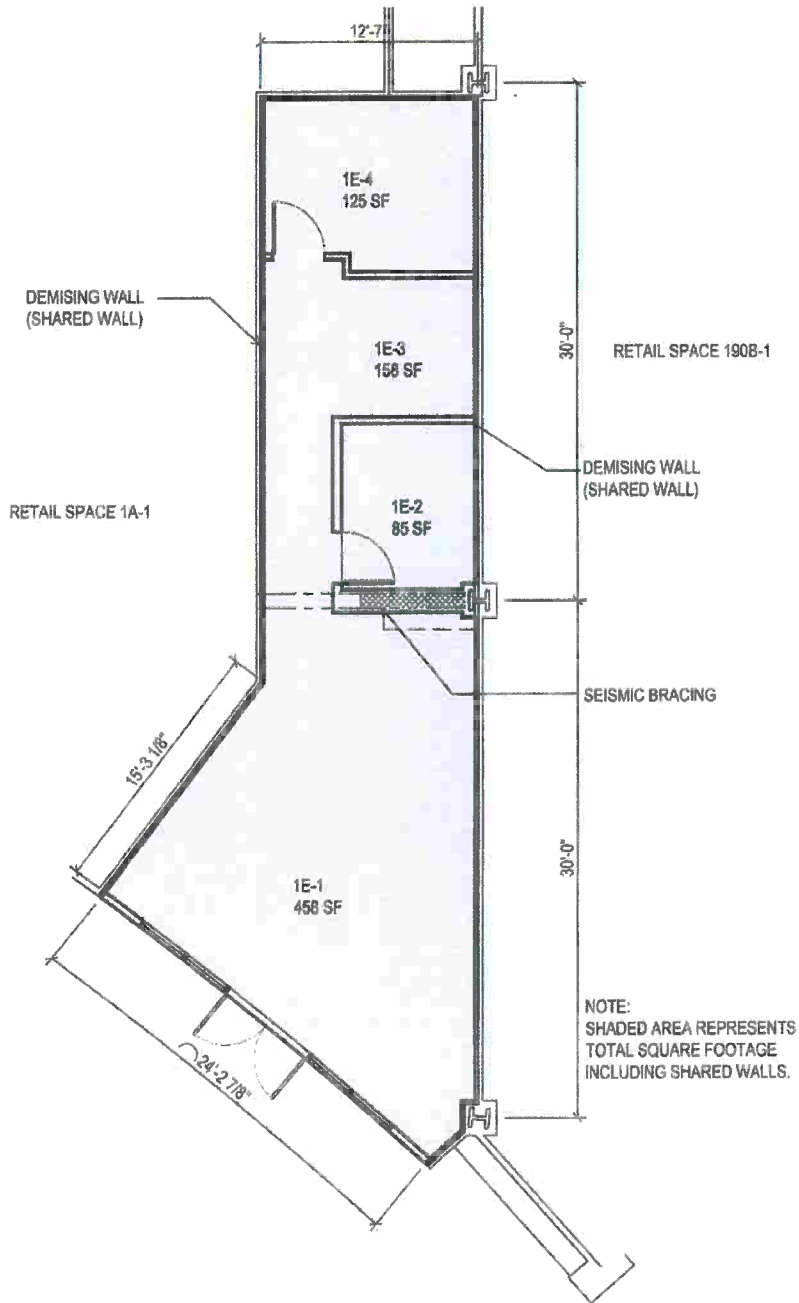
Title: *Manager*

Floor Plan of Premises

NSHE Briefing Paper Attachment D

Exhibit E to Lease

Exhibit 1 to Lease Schedule



CSU Retail Space 1-E (Rooms 1-4) 827 S.F.

1/8"=1'-0"



EMMER COURT
127 ANDERSON STREET
PITTSBURGH, PA 15212-6801
TEL: (412) 221-1552
FAX: (412) 221-2431

**COLLABORATIVE
DESIGN
STUDIO**

1014 DOUBLE BLDG DRIVE #111 RENO NV 89521 TEL: 775.348.7777 FAX: 775.348.4304

University of
Nevada, Reno
Student Union

University of Nevada, Reno
North Virginia Street
Reno, Nevada 89557

CSU
Retail Space
(Rooms 1-4)
SCALE 1/8" : 1'-0"

03-21-14
Not for Construction

**Exhibit 3 to LEASE SCHEDULE
Exclusives of Other Retail Tenants**

Booth Creek (Starbucks and Keva Juice):

Tenant shall have the right to be the sole tenant in the Building to sell premium coffee and espresso and smoothies and fresh blended juices as its primary business.

Wells Fargo:

Banking

Third Place, LLC (Einstein Bros. Bagels):

Tenant shall have the right to be the sole tenant in the Building to sell bagels and bakery items as its primary business. ("Bakery items" do not include bread products that are a part of sandwiches.)

Port of Subs, Inc.:

Tenant shall have the exclusive right in the Building to engage in the retail sale of submarine sandwiches, and deli trays, with the exception of catering and delivery.

Panda Express, Inc.:

Fast food Chinese food restaurant and related products, including foods which are customarily recognized as oriental (including Japanese and Thai food) in origin and preparation including, but not limited, items prepared in wok.

Role Model, LLC (Cantina Del Lobo):

Tenant shall use the Premises for the operation of a Mexican style restaurant.

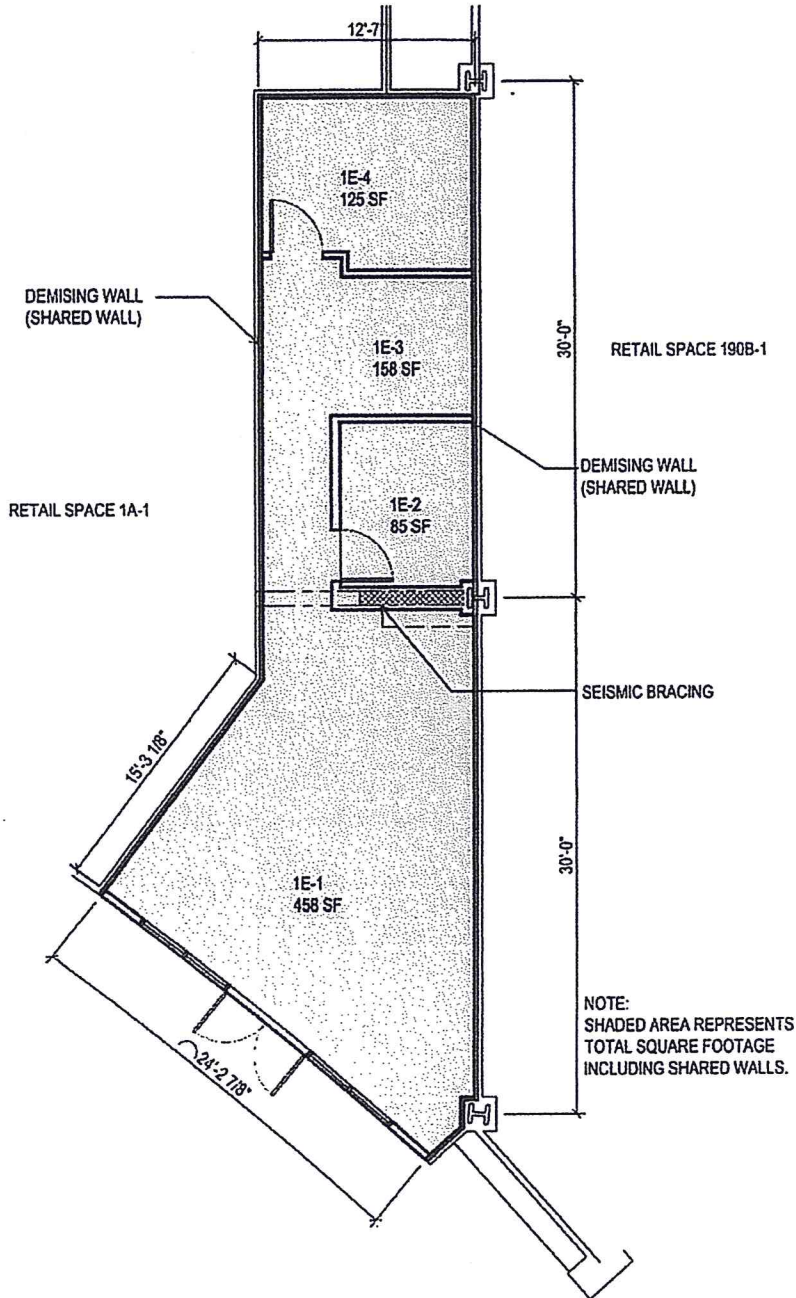
For Each:

For purposes of this provision, a tenant in the Building shall not be deemed to have the sale of "exclusive items" as its primary business unless gross sales of "exclusive items" exceed ten percent (10%) of such tenant's total sales, computed on an annual basis.

NSHE BRIEFING PAPER: ATTACHMENT C		
Family Yogurt II (DBA U-Swirl to Go)		
Projected Rental Income Forecast		
Schedule of Payments		
Basic Assumptions:		
Estimated Square Feet	827	
Base Rent Annually per SF	\$ 24.00	
Base Rent Monthly per SF	\$ 2.00	
Initial Monthly Estimated rent @ \$2.00 SF	\$ 1,654.00	
Annual Percentage Increase: 3%	3.0%	
	Annual Rent	
Year One	\$ 19,848.00	
Year Two	\$ 20,443.44	
Year Three	\$ 21,056.74	
Year Four	\$ 21,688.45	
Year Five	\$ 22,339.10	
Total Projected Rental Income Forecast	\$ 105,375.73	

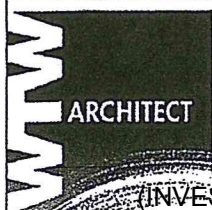
Floor Plan of Premises

Attachment D



CSU Retail Space 1-E (Rooms 1-4) 827 S.F.

1/8" = 1'-0"



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CSU
Retail Space
(Rooms 1-4)

SCALE 1/8" = 1'-0"

03-21-11