

**BOARD OF REGENTS
BRIEFING PAPER**

Agenda Item Title: Lease with Tahoe Creamery for Retail Space in the Joe Crowley Student

Union.

BACKGROUND & POLICY CONTEXT OF ISSUE:

- In March of 2004, the Board of Regents of the Nevada System of Higher Education (NSHE) approved the mandatory student fee to build a new student union.
- At the request of graduate and undergraduate student governments, the Board of Regents approved naming the building the Joe Crowley Student Union in fall 2005.
- The union will include retail food operations most requested by students in a campus-wide survey. These include a coffee house/cafe, convenience store, sports grille, and branded food concepts (national and/or regional). The student union is scheduled to open fall 2007.
- Brailsford & Dunlavey, market research consultants, developed a retail plan for the new union based on the student survey results and market research data. The report indicated that the food court, coffeehouse and a sports themed bistro would be focal points of activity in the building. It was recommended to select a mix of national and regional brand food operations with indoor and outdoor dining seating options.
- The initial UNR RFI and RFP Bid Processes did not produce any responses of interest from owners of an ice cream company. With the approval from the UNR Purchasing Office, other food vendors were contacted by the Director of the Student Union, or his designee(s). A representative from Tahoe Creamery contacted UNR with an expressed interest in submitting a proposal to be a food vendor in the Joe Crowley Student Union. The Tahoe Creamery proposal was submitted according to the UNR Purchasing guidelines and the provisions cited in the Retail Food RFP.
- The Retail Committee for the Joe Crowley Student Union reviewed all of the proposals submitted through the RFP Process under the direction of the Purchasing Office. The members of this committee included the Director of Purchasing, Director of Real Estate, the Associate Vice President of Business and Finance, Director of the Student Union, the Special Assistant to the Vice President for Student Services, ASUN President, undergraduate students, GSA President, graduate students and a representative from the UNR Small Business Development Center.
- The members of the Retail Committee identified the key elements of the RFP for food tenants in the Joe Crowley Student Union to include: Annual return to the student union based on an annual minimum \$ 19.00 square foot rental charge, type of food concept based on student demand, price range, product mix of menu, term of lease, proposed hours of operation, staffing plan, management plan, marketing plan, accounting plan, and financial position of the company. The minimum \$19.00 square foot annual rental rate was based on local rates for comparable space. Consideration of academic calendar limitations and closure periods was also factored in the minimum charge.

- The proposal from Tahoe Creamery to operate a retail food operation in the Joe Crowley Student Union was accepted based on the following rationale:
 - They will provide a retail ice cream shop designed to sell freshly made gourmet premium ice cream in a unique and pleasant Tahoe-style atmosphere.
 - The initial term is for five years with one additional five year option to renew.
 - For the first year, Tahoe Creamery agrees to pay an annual rent of \$ 30.00 per rental square foot of the Premises and annual Consumer Price Index (CPI) increases with a minimum of three percent (3%).
 - Their hours of operation will complement the general operating hours of the Joe Crowley Student Union.
 - Tahoe Creamery agrees to cover all the build out costs for their 598 square feet which are estimated to be approximately \$ 149,500. All construction must be done under the supervision of and subject to approval of the university's Facilities Services department.
- Board of Regents' approval is required for these leases under Procedures & Guidelines Manual Chapter 5, Section 3 (formerly Chancellor's Memorandum 02-04, NRS 396.430).

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

- The University is requesting approval of the lease with Tahoe Creamery to operate a retail food operation in the Joe Crowley Student Union ([Lease, Attachment A](#)).

IMPETUS (WHY NOW?):

Approval of the lease will allow the tenant to begin the build out of the space as soon as possible to complement the fall 2007 opening of the Joe Crowley Student Union (Tahoe Creamery Floor Plan, [Attachment B](#)).

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- This lease was developed as the result of a comprehensive bidding process to award food tenant leases through a national formal Request for Proposal Process (RFP) based on Board of Regents Policy.
- The lease agreement is beneficial for UNR, the students and the Joe Crowley Student Union for the following reasons:
 - The rent is based on an annual guaranteed rental payment.
 - Tahoe Creamery is a Nevada based company.
 - Tahoe Creamery agreed to pay \$ 30.00 per square foot which exceeded the minimum rent of \$19.00 requested by UNR in the RFP.
 - First year revenue from the UNR - Tahoe Creamery Agreement will generate \$ 16,146 (\$ 1,495 monthly). These funds will be applied to the operating expenses for the Joe Crowley Student Union. Operating expenses, at the request of the Board of Regents, were not part of the mandatory student fees approved to construct the new student union.
 - The UNR lease with Tahoe Creamery will be for 5 years with one additional 5

year option to renew following the initial term.

- Tahoe Creamery commits to provide funds for the build out of their food service operation in the Joe Crowley Student Union.
- Tahoe Creamery USA, Inc. and Tahoe Creamery Operations, LLC were formed on November 22, 2006. Tahoe Creamery's first store, located in the new Sparks Galleria Business Complex in Northern Nevada, is open and operating. TC/USA plans to franchise additional locations in Northern Nevada, California and other states. The terms, including rent payments, by Tahoe Creamery are based on the bid and subsequent negotiations (Schedule of Payment, [Attachment C](#)).
- The lease submitted for approval has been reviewed by the NSHE Risk Management Officer and the BCN Risk Management staff. Their input has been incorporated into the lease.
- The lease submitted for approval includes the negotiated points of Henry Stone, Esq., System Counsel/Director of Real Estate Planning for NSHE. It has also been reviewed by Mary Dugan, UNR General Counsel.
- The Vice President for Finance and Administration and his key staff members have been involved in the negotiations of the lease agreement.
- Revenue generated from the vendor based on the lease agreement is necessary to contribute to the operating expenses for the Joe Crowley Student Union.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- Some could argue that this type of retail does not make optimal utilization of the existing space.

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

- Forego planned revenue from retail tenants and look to increase student fees to make up the loss.

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: _____
- Fiscal Impact: Yes____ No____
Explain: _____

LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made as of the ___ day of _____, 2007 (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 TAHOE CREAMERY SPARKS, LLC, a Nevada limited liability company (“**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
c/o University of Nevada, Reno
17th Street and West Stadium Way
Reno, NV 89503
Attn: Director of Purchasing
Fax: 775.784.1130

With a copy to:

General Counsel
University of Nevada, Reno
2601 Enterprise Road
Reno, Nevada 8951

For Payments:

Board of Regents of the Nevada System of Higher Education
c/o University of Nevada, Reno
17th Street and West Stadium Way
Reno, NV 89503
Attn: Director, Student Union
Fax: 775.784.1858

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 punchlist 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 counterclaim 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** above. 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 Landlord's 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 Tenant's 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 forth 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 (# 7529) issued on April 14, 2006, 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 _____ ("**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:

Milton D. Glick, President

Date _____

LANDLORD:

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

James E. Rogers, Chancellor

Date _____

TENANT:

TAHOE CREAMERY SPARKS
LLC, a Nevada limited liability
company

By: TC OPERATIONS, LLC
Nevada limited liability company

By:

Andrew Black, Manager

By:

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 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).

16. 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:

Landlord to install gas meter (at Tenant's expense) for the Premises.

All utilities, including power, water; gas, sewer, and phone shall be brought to the Premises by Tenant from their respective "mains".

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.

Build Out:

Landlord shall deliver the Premises to Tenant in accordance with the terms and conditions of the Lease and the following conditions:

STOREFRONT: Tenant's storefront within the building shall be per Tenant's approved development improvements as applicable.

WALLS:

All demised walls framed ready for final finish by tenant.

HVAC: Appropriate load capacity for applicable system available within the Building:

ELECTRICAL:

Landlord will provide conduit for the extension of Tenant's electrical service to the main electric room.

PLUMBING: Landlord will provide the following:

4" sanitary waste line brought within the Premises at suitable depth to drain per local code from any location within the Premises.

1 1/2" cold water supply line with a minimum one inch service to Tenant's meter

Water supply must maintain at least 60-PSI minimum.

4" vent located above proposed ceiling brought within the Premises from properly flashed vent through roof, or connected with other available, appropriate venting available in the Building.

3/4" water line feed to Building face (not Tenant's space).

GAS: Supplied gas, separately metered at Tenant's expense, 2" line.

A “Grease Interceptor” will be installed for Food Tenants by Landlord.

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.

FLOORS: Floors will be concrete slab with limited access after Building construction.

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

EXHIBIT E
FLOOR PLAN OF PREMISES

EXHIBIT F

COMMON AREAS MAP

Dated as of _____

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

EXHIBIT G

OPTION

[If there is no option, mark this Exhibit INTENTIONALLY DELETED]

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

Dated as of _____

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

EXHIBIT I

RFP # 7529, dated April 14, 2006

LEASE SCHEDULE

This Lease Schedule is a part of that certain Lease entered into as of the ___ day of _____, 2007 (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 Tahoe Creamery, Inc., a Nevada corporation (“**Tenant**”).

1.2 Premises. The Premises referred to in the Lease is the Retail space identified as 290 D as more particularly described on Exhibit 1 to this Lease Schedule (Exhibit E to the Lease). The Premises consist of approximately 598 Gross Rental Square Feet.

1.3 Term.

Lease Term: Sixty (60) months

Commencement Date: The date referred to in Section 1.3 of the lease is date of full execution of the Lease, or September 1, 2007, whichever is earlier

Rent Commencement Date: May 1, 2008.

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 Thirty-three Dollars (\$30.00) per square foot in the rentable area of the Premises. Notwithstanding the CPI adjustment provisions of Section 1.4, the minimum annual adjustment to Base Rent shall be an increase of Three Percent (3%) over the prior year’s Base Rent.

1.4 Security Deposit. Three Thousand Dollars (\$3000).

1.7 Address for Notices:

Tahoe Creamery, Inc.
348 Mill Street
Reno, NV 89501
Fax No. (775) 824-0105

1.9 Permitted Use: Sale of frozen dairy products

4.2 RentableArea. Load Factor: One (1)

4.6.2 Food Court Contribution. Landlord waives Tenant contribution.

4.6.3 Food Court Maintenance Fee. No Food Court Maintenance fee is payable.

4.7 Percentage Rent.

Percentage Rent Rate: Zero
Gross Sales Credit: Not Applicable

6.1 Permitted Use. Tenant acknowledges that Landlord has entered into an agreement which prohibits Landlord 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 Landlord to refrain from marketing, selling or using any product which is restricted by such Agreement with Pepsi or any other party with 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 all those damages incurred by Landlord under its agreement with Pepsi or any Successor Contracting Party, including but not limited to (i) applicable liquidated damages, (ii) lost price breaks, rebates, or other pricing benefits; (iii) promotional fees which become refundable or are charged back to Landlord; and (iv) any other amounts 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 food court tenant in the Building to sell hand scooped ice cream over the counter as its primary business. For purposes of this provision, a tenant shall not be deemed to have the sale of hand scooped ice cream over the counter as its primary business unless gross sales of hand scooped ice cream over the counter exceeds ten percent (10%) of such tenant’s total sales, computed on an annual basis.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Lease Schedule and adopted the Lease referred to above as of the date set forth above.

LANDLORD:

BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION

By: _____

Name: _____

Title: _____

TENANT:

TAHOE CREAMERY, INC.,
A Nevada corporation

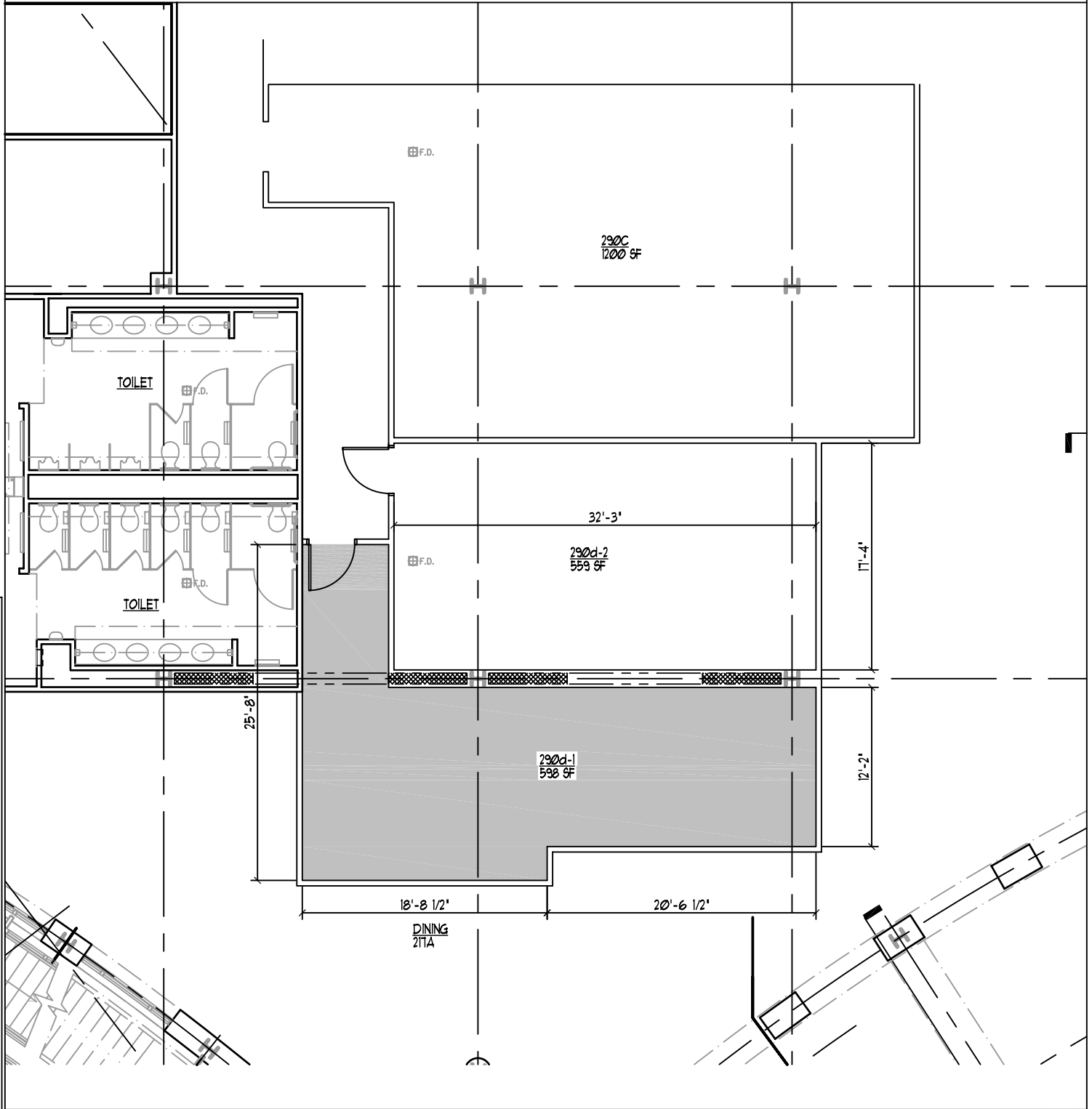
By: _____

Name: _____

Title: _____

NSHE Agenda Attachment B EXHIBIT 1 TO LEASE SCHEDULE

Drawing = Z:\0202-UNR STUDENT UNION\Construction Admin\Tenant Improvement\70-4086_A1.120_A1.120_T1.dwg Tab = 290d_study Layer Config = Usemainfile = Shell04 Date = Sep 05, 2007 - 11:26am



TIMBER COURT
127 ANDERSON STREET
PITTSBURGH, PA 15212-5801
TEL (412) 321-0550
FAX (412) 321-2431

LUNDAHL & ASSOCIATES
9444 DOUBLE R BLVD, SUITE B
RENO, NEVADA
(775) 348-7777
FAX (775) 348-0201

**COLLABORATIVE
DESIGN
STUDIO** architecture of experience and place
9444 DOUBLE R BLVD | SUITE B | RENO NV 89521 | T 775.348.7777 | F 775.348.0904

**University of
Nevada, Reno
Student Union**
University of Nevada, Reno
North Virginia Street
Reno, Nevada 89557

**RETAIL
290D**
SCALE 3/32" = 1'-0"
OPTION "E"
Not For Construction

NSHE AGENDA ATTACHMENT C			
Tahoe Creamery			
Projected Rental Income Forecast			
Schedule of Payments			
Basic Assumptions:			
Estimated Square Feet:		598	
Base Rent (Inclusive of NNN fees) Annually per SF:	\$	30.00	
Base Rent (Inclusive of NNN fees) Monthly per SF:	\$	2.50	
Initial Monthly Estimated rent @ \$ 2.50 per SF:	\$	1,495	
Annual percentage increase: 3%			
		RENT	Annual Total
	\$	17,940	\$ 17,940
Year One:	\$	18,478	\$ 18,478
Year Two:	\$	19,033	\$ 19,033
Year Three	\$	19,604	\$ 19,604
Year Four	\$	20,192	\$ 20,192
Year Five			
Total Projected Rental Income Forecast:			
Total:	\$	95,245.90	\$ 95,245.90