

TOMMY'S MALT SHOP LEASE

1103 Adams Street South, aka SandVenture Aquatic Park

Shakopee, Minnesota

City of Shakopee, Minnesota

Landlord

and

Tommy's old Fashioned Malt Shop, LLC

Tenant

Date: _____, 2023

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TOMMY'S MALT SHOP LEASE

This Tommy's Malt Shop Lease (this "Lease") is entered into as of _____, 2022, by and between the City of Shakopee, Minnesota, a municipal corporation, as Landlord, and Tommy's Old Fashioned Malt Shop, LLC, a Minnesota limited liability company, as Tenant.

ARTICLE I

DEFINITIONS

1.1 Capitalized terms used in this Lease have the meanings ascribed to them on the attached Exhibit A, the terms of which are incorporated into and made a part of this Lease by this reference.

ARTICLE II

GRANTING CLAUSE

2.1 In consideration of the obligation of Tenant to pay rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord the Premises TO HAVE AND TO HOLD during the Term, all upon the terms and conditions set forth in this Lease.

ARTICLE III

RENT

3.1 Tenant covenants and agrees to pay to Landlord, without set off, deduction or demand, at 485 Gorman Street, Shakopee MN 55379, Attention _____, or at such other place as Landlord may designate in writing to Tenant, base rental ("Base Rent") which shall be equal to Percentage Rent (as defined in Article IV of this Lease) provided, that Base Rent shall not be less than and shall not exceed the following amounts:

	Annually	Monthly
Minimum Base Rent	\$40,000.00	\$3,333.33
Maximum Base Rent	\$60,000.00	\$5,000.00

To the extent that the Tenant Improvement Allowance is not yet determined, payment of Base Rent shall be held in abeyance pending such determination. Once the Tenant Improvement Allowance is determined, Tenant shall be allowed a credit against Base Rent next due in the amount of the Tenant Improvement Allowance.

Notwithstanding the foregoing, commencing on the first (1st) anniversary of the Rent Commencement Date and each anniversary thereafter (the "Adjustment Date(s)"), the Minimum Base Rent and the Maximum Base Rent shall be adjusted (up, but not down) by multiplying the Minimum Base Rent and the Maximum Base Rent by a fraction the numerator of which is the CPI (as hereinafter defined) for the December immediately prior to the Adjustment Date and the denominator of which is the CPI for the December immediately prior to the Rent Commencement Date. The "CPI" shall mean the Consumer Price Index (1982=100) for all goods for the

Minneapolis/St. Paul Area, or successor index promulgated by the federal government of United States of America.

The Base Rent shall be payable monthly, in advance, in equal installments as set forth above, commencing on the Rent Commencement Date and continuing on the first day of each and every month of the Term thereafter for the next succeeding months during the balance of the Term. If the Rent Commencement Date is on a date other than the first day of a calendar month (i) Base Rent for the month containing the Rent Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month, and (ii) the initial monthly rental period shall cover the month containing the Rent Commencement Date and the following month.

Tenant shall pay Additional Rent concurrently with the installment of Base Rent, unless a different time for such payment is specified in this Lease. If the Rent Commencement Date is on a date other than the first day of a calendar month, Additional Rent for the month containing the Rent Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month.

3.2 In the event any payment due from Tenant is not received within 5 days after Tenant's receipt of written notice (or email) of non-payment from Landlord, then, in addition to the past due amount, Tenant shall pay to Landlord a "late charge" equal to five percent (5%) of the past due installment, as Additional Rent, in order to compensate Landlord for its administrative and other overhead expense and, in addition, the past due amount shall bear interest at the Interest Rate, such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the aforesaid due date and terminating with the date on which Tenant makes full payment of all amounts owing to Landlord at the time of said payment. Any such interest shall be payable as Additional Rent hereunder, and shall be payable immediately on demand. Tenant's covenants to pay Base Rent and Additional Rent are independent of any other covenant, condition, provision or agreement herein or elsewhere contained.

ARTICLE IV

PERCENTAGE RENT

4.1 Subject to the provisions regarding Minimum Base Rent and Maximum Base Rent as specified in Article III, Tenant shall pay to Landlord percentage rent ("Percentage Rent") equal to six percent (6%) of Tenant's Gross Receipts (as hereinafter defined). Percentage Rent for each month during the term of this Lease shall be payable by Tenant to the Landlord on the first (1st) day of the second month after the end of each calendar month. Each calendar month of the term hereof shall be a separate and distinct accounting period. As utilized herein, the term "Gross Receipts" shall mean any and all receipts of the Tenant and/or its subtenants, concessionaires or licensees derived from any and all business conducted upon, from or through the Premises by the Tenant or any other party having a contractual commitment thereto, whether for cash or credit, and, in the case of sales on credit, whether or not payment be actually made therefor, and shall include, but not be limited to, the amounts received for sales or services performed on or at the Premises, together with any and all amounts derived from orders received at the Premises, whether said orders are fulfilled at the Premises or elsewhere. Notwithstanding any contrary provision contained in this Lease, Gross Receipts shall be evidenced by Tenant's reports to the Minnesota Department of Revenue and Tenant's liquor sales reports (for beer and wine). The following shall be excluded in the computation of Gross Receipts: Amount of any sales, use or gross receipt taxes imposed directly on sales by any governmental or quasi-governmental authority and collected from third-party purchaser.

ARTICLE V

DELIVERY AND ACCEPTANCE OF PREMISES

5.1 Landlord shall make the improvements to the Premises described in Exhibit B attached hereto and made a part hereof. Landlord shall use reasonable efforts to ensure that the Delivery Date occurs on or about April 1, 2024. If the Delivery Date has not occurred by June 1, 2024, Landlord shall not be deemed to be in default hereunder or otherwise liable in damages to Tenant, nor shall the terms of this Lease be affected; provided, however, that Tenant shall offer concessions out of the building for the Summer season 2024. If Landlord does not deliver the premises by April 1, 2025, Tenant shall have the option to cancel this lease.

5.2 Tenant shall perform Tenant's Work in accordance with the conditions and limitations set forth in Article X and in Exhibit C attached hereto and made a part hereof. Tenant agrees to accept possession of the Premises on the Delivery Date and to proceed with due diligence to perform Tenant's Work, and to install its fixtures, furniture and equipment subject to all of the terms, covenants and conditions of this Lease other than payment of rent. Tenant hereby approves Exhibit C and all of the improvements, plans and specifications described therein. It is understood and agreed by Tenant that changes in such improvements, plans and specifications which will not materially interfere with Tenant's use of the Premises and which may be necessary during construction of the Premises shall not affect, invalidate, or change this Lease or any of its terms and provisions. If on the Delivery Date there should remain items of construction or finishing work to be completed which do not materially interfere with Tenant's Work, Landlord and Tenant shall within ten (10) days from the Delivery Date prepare a written list (the "Punch List") of such uncompleted items. Landlord agrees to complete the Punch List item(s) with all due diligence in a manner which does not unreasonably interfere with Tenant's Work. Landlord's Work in accordance with Exhibit C shall be deemed approved by Tenant in all respects 10 days after the Delivery Date, unless prior thereto Landlord receives written notice from Tenant of any defect in such work. Any disagreement which may arise between Landlord and Tenant Concerning the work to be performed by Landlord shall be resolved by the decisions of a mutually acceptable architect. By taking possession of the Premises on the Delivery Date, Tenant acknowledges that it has inspected the Premises and accepts them as being in good order and repair and in the condition in which Landlord is obligated to deliver them, subject to the Punch List.

ARTICLE VI

INTENTIONALLY OMITTED

ARTICLE VII

TAXES

7.1 Tenant shall pay before delinquency all real estate taxes and installments of special assessments imposed on the Premises.

ARTICLE VIII

USE AND CARE OF PREMISES

8.1 The Premises shall be used and occupied solely for the Permitted Use and shall be open for operations, fully staffed and fully stocked during the Hours of Operations. Tenant agrees to open for business in the Premises on or before the date that is sixty (60) days following the Delivery Date. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the Term conduct in the entire Premises the Permitted Use. Tenant shall, except during reasonable periods of

repairing, cleaning and decorating, keep the Premises open for business with adequate and competent personnel in attendance, except to the extent Tenant may be prohibited from being open for business by applicable law, ordinance or government regulation.

8.2 In addition to other restrictions on the use of the Premises, the Premises shall not be used or occupied for any purpose or use which would violate any agreements affecting the Premises, Landlord, or the Project, including any declarations of reciprocal easements, covenants, conditions or restrictions or exclusive agreements effective as of the date hereof

8.3 Tenant shall not, without Landlord's prior written consent, keep anything within the Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Premises or other part of the Project. Tenant shall pay as Additional Rent, upon demand of Landlord, any such increased premium cost due to Tenant's use or occupancy of the Premises.

8.4 Tenant shall not (i) conduct within the Premises any fire, auction or bankruptcy sales, (ii) advertise that Tenant is "going out of business", (iii) permit any objectionable or unpleasant odors or noises to emanate from the Premises, (iv) place or permit any radio, television, loud-speaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the building or in SandVenture Aquatic Park, (v) place an antenna, awning fix spring or other projection on the exterior of the Premises, (vi) solicit business or distribute leaflets or other advertising material in SandVenture Aquatic Park, (vii) operate or permit the operation of any amusement or arcade type games in the Premises, (viii) use, or permit to be used, the sidewalks adjacent to the Premises, or any other premises outside such space for the sale or display of any merchandise or for any other business, occupation or undertaking, (ix) use or permit to be used within SandVenture Aquatic Park any automobiles, trailers, vans or other vehicles advertising the business of Tenant or any good or service provided by Tenant except Tenants delivery vehicles which shall have a delivery sign attached to the top of the vehicle which delivery vehicles shall not be parked in the front parking lot or next to the building, or (x) take any other action which would constitute a nuisance or would disturb or endanger other tenants of the Project or interfere with their use of their respective premises.

8.5 Tenant shall (i) be responsible for procuring and maintaining all permits and licenses that may be required for the transaction of its business in the Premises, (ii) comply with all applicable laws, ordinances, orders, rules and regulations relating to the use, condition and occupancy of the Premises including, without limitation, the Act, and (iii) comply with such reasonable rules and regulations as shall be promulgated by Landlord from time to time, provided the same are reasonably enforced on an equal basis against all tenants of the Project.

ARTICLE IX

MAINTENANCE AND REPAIR

9.1 Tenant shall, at its sole cost and expense, (i) keep the Premises in good condition, free from waste at all times and (ii) make all needed repairs and replacements to the Premises, including replacement of cracked or broken glass resulting from the activities or events originating from the interior of the Premises, (iii) furnish, maintain and replace all electric light bulbs, tubes and tube casings in the Premises, (iv) maintain all display windows in a neat, attractive condition, and shall keep all display windows and exterior electric signs in front of the Premises lighted during such hours as Landlord shall require, and (v) store all trash and garbage within the area designated by Landlord for such trash pickup and removal and only in receptacles of the size, design and color from time to time prescribed by Landlord. If any repairs, replacements or other action required to be made or taken by Tenant hereunder are not made or taken within 10 days after written notice delivered to Tenant by Landlord, Landlord may, at its option, make such repairs

or replacements or take such action without liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, replacements or actions and Tenant shall pay to Landlord immediately upon demand as Additional Rent hereunder the cost of such repairs, replacements or actions with interest at the Interest Rate from the date of commencement of such repairs, replacements or other actions until repayment. Notwithstanding any contrary provision contained in this Lease, Landlord shall, at its sole expense, maintain any HAC and hot water heater. Permitted

ARTICLE X

ALTERATIONS

10.1 Tenant shall not make any modifications, improvements, alterations, additions or installations in or to the Premises (hereinafter referred to in this Section 10.1 as the “work”) without Landlord’s prior written consent, which consent shall not be unreasonably withheld other than for any work affecting the structural, electrical or mechanical systems of the Premises or the Project or affecting the exterior of the Premises or the Project. Along with any request for Landlord’s consent and before commencement of any work or delivery of any materials to be used in any work to the Premises or into the Project, Tenant shall furnish Landlord with plans and specifications, names and addresses of contractors, copies of contracts, necessary permits and licenses, and an indemnification in such form and amount as may be reasonably satisfactory to Landlord. Tenant agrees to indemnify, defend and hold Landlord forever harmless from any and all claims and liabilities of any kind and description which may arise out of or be connected in any way with such work. All such work shall be done only by contractors or mechanics reasonably approved by Landlord and at such time and in such manner as Landlord may from time to time reasonably designate. Tenant shall pay the cost of all such work, and also the cost of painting, restoring or repairing the Premises and the Project occasioned by such work. Upon completion of the work, Tenant shall furnish Landlord with contractor’s affidavits and full and final waivers of liens and receipted bills covering all labor and materials expended and used. All such work shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities (including, without limitation, the Act) and shall be constructed in a good and workmanlike and lien-free manner. Tenant shall permit Landlord to inspect construction operations in connection with any such work. Tenant shall not be allowed to make any modifications, improvements, alterations, additions or installations if such action results or would result in a labor dispute or otherwise would materially interfere with Landlord’s operation of the Project. Subject to applicable federal and state law, in the event any work results in a labor dispute, Tenant shall cause such work to be halted immediately, remove the workers, contractors or mechanics responsible for such dispute and replace the same with workers, contractors and mechanics acceptable to Landlord and whose work will not (in the sole and absolute discretion of Landlord) result in a labor dispute.

ARTICLE XI

LANDLORD’S RIGHT OF ACCESS

11.1 Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of inspecting the same or of showing the Premises to prospective purchasers, tenants or lenders.

ARTICLE XII

SIGNS; STORE FRONTS

12.1 Tenant shall not, without Landlord's prior written consent, (i) make any changes to or paint the store front; (ii) install any exterior lighting, decorations, banners or temporary or portable signs; or (iii) affix signs, advertisements, banners, or other material to the inside or outside of store windows nor to any doors, columns or storefront walls. All interior signage must be tastefully and professionally done and in compliance with all applicable law and municipal approvals, and the use of hand scribed signs of any kind is expressly prohibited. Landlord reserves the right to remove unauthorized signage. Tenant signage on the exterior of the building must be submitted to Landlord and the City of Shakopee for approval. Tenant, upon vacation of the Premises, or the removal or alteration of any Tenant signs for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached. Notwithstanding the aforementioned or anywhere contained in this document to the contrary, Tenant shall be permitted to display its standard indoor window signage package subject to Landlord approval. Size of exterior signage must comply with Landlord's allotment, landlord will work with Tenant to maximize this signage. Without limiting the foregoing, Landlord's architects shall designate space for signage on the building, Tenant's signage shall comply with the city code and shall be approved by Landlord, and Tenant shall be solely responsible for the cost of installing and maintaining such signage. If and when the Landlord erects a monument sign for SandVenture, Tenant shall be granted signage rights on such monument sign as reasonably determined by Landlord, but any such signage shall be installed and maintained at Tenant's sole expense.

ARTICLE XIII

UTILITIES

13.1 Tenant shall pay for all electricity, gas, heat, hot and cold water, air conditioning, sewer, telephone or other utility service provided to the Premises whether the same be charged or assessed at flat rates, measured by separate meters or prorated by the utility company. Tenant shall be solely responsible for any SAC/WAC fees or charges.

13.2 Landlord shall not be liable in damages or otherwise, nor shall there be an abatement of rents, nor shall the same constitute an eviction of Tenant, if the furnishing by any supplier of any utility service, telephone service or other service to the Premises shall be interrupted, reduced, curtailed or impaired by fire, accident, riot, strike, act of God, the making of repairs, alterations or improvements, or by any causes beyond Landlord's control.

ARTICLE XIV

INSURANCE

14.1 Tenant shall keep the Project insured for the benefit of Landlord in an amount equivalent to the full replacement value thereof (excluding foundation, grading and excavation costs) against:

- (a) Tenant shall keep the Project insured for the benefit of Landlord in an amount equivalent to at least 100% of the full replacement value thereof (excluding foundation, grading and excavation costs) against loss or damage by fire; and
- (b) such other risk or risks of a similar or dissimilar nature as are now or may in the future be, customarily covered with respect to buildings and improvements similar in construction, general location, use, occupancy and design to the Project, including, but without limiting the generality of the foregoing, windstorms, hail,

explosion, vandalism, malicious mischief, terrorism, civil commotion and such other coverage as may be deemed necessary by Landlord, provided such additional coverage is obtainable and provided such additional coverage is such as is customarily carried with respect to buildings and improvements similar in construction, general location, use, occupancy and design to the Project.

These insurance provisions shall in no way limit or modify any of the obligations of Tenant under any provision of this Lease. Landlord agrees that such policy or policies of insurance shall contain a waiver of subrogation clause as to Tenant, and Landlord waives, releases and discharges Tenant from all claims or demands whatsoever which Landlord may have or acquire arising out of damage to or destruction of the Project or Landlord's business therein occasioned by fire or other cause, which such claim or demand may arise because of the negligence or fault of Tenant and its agents, contractors, servants, employees, licensees, customers, business invitees or otherwise, and Landlord agrees to look to the insurance coverage only in the event of such loss.

14.2 Tenant shall keep all of its machinery, equipment, furniture, fixtures, plate glass, inventory, goods, personal property (including also property under the care, custody or control of Tenant) and business interests which may be located in, upon or about the Premises insured for the benefit of Tenant in an amount equivalent to the full replacement value or insurable value thereof against:

- (a) loss or damage by fire; and
- (b) such other risk or risks of a similar or dissimilar nature as are now, or may in the future be, customarily covered with respect to a tenant's machinery, equipment, furniture, fixtures, inventory, goods, personal property and business located in a building similar in construction, general location, use, occupancy and design to the Project, including, but without limiting the generality of the foregoing, windstorms, hail, explosions, vandalism, theft, malicious mischief, civil commotion and such other coverage as Tenant may deem appropriate or necessary.

Tenant agrees that such policy or policies of insurance shall contain a waiver of subrogation clause as to Landlord, and Tenant waives, releases and discharges Landlord from all claims or demands whatsoever which Tenant may have or acquire arising out of damage to or destruction of the machinery, equipment, furniture, fixtures, inventory, goods, personal property and business of Tenant occasioned by fire or other cause, whether such claim or demand may arise because of the negligence or fault of Landlord and its agents, contractors, servants, employees, licensees or otherwise, and Tenant agrees to look to the insurance coverage only in the event of such loss.

14.3 Tenant shall procure and maintain throughout the Term, at its sole cost and expense, a policy of commercial general liability insurance, insuring Landlord, Landlord's management agent and Tenant against all claims, demands or actions arising out of or in connection with Tenant's use or occupancy of the Premises, or the condition of the Premises, with a combined single limit of not less than \$2,000,000 for bodily injury including death of anyone person or anyone accident and in respect to property damaged or destroyed, and to be written by insurance companies reasonably satisfactory to Landlord. Tenant shall obtain a written obligation on the part of its insurance company to notify Landlord at least 30 days prior to cancellation of such insurance. Such policies or duly executed binders of insurance shall be delivered to Landlord at least 30 days prior to the expiration of the policy term. The minimum limits of the commercial general liability policy of insurance shall in no way limit or diminish Tenant's liability under Section 14.5. At such time as insurance limits required of tenants in shopping centers in the area in which the Project is located are generally increased to greater amounts, Landlord shall have the right to require such greater limits as may then be customary. Tenant agrees to include in such policy contractual liability coverage

insuring Tenant's indemnification obligations herein. Any such coverage shall be deemed primary to any liability coverage secured by Landlord.

14.4 Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's management agent from and against all losses, damages, costs and expenses resulting from or relating to any injury to person or damage to or loss of property (i) on or about the Premises, (ii) on or about SandVenture Aquatic Park and caused by negligence or misconduct of Tenant, its employees, subtenants, licensees or concessionaires, (iii) arising out of the use of the Premises by Tenant and the conduct of its business therein, or (iv) arising out of any breach or default by Tenant in the performance of its obligations hereunder.

14.5 Landlord and Landlord's agents shall not be liable to Tenant or any other person or entity whomsoever for any injury to person or damage to property caused by the Premises or other portions of the Project becoming out of repair or by defect in or failure of equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, nor shall Landlord be liable to Tenant or any other person or entity whomsoever for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Project or of any other persons or entities whomsoever. All property in the Project or on the Premises belonging to Tenant or its agents, contractors, servants, employees, licensees, customers or business invitees or otherwise located at the Premises shall be at the risk of Tenant only, and Landlord shall not be liable for damage thereto or theft, misappropriation or loss thereof, and Tenant agrees to defend, indemnify and hold harmless Landlord and its agents from and against claims and liability for injuries to such property or theft, misappropriation or loss thereof.

ARTICLE XV

DAMAGE BY FIRE OR OTHER CASUALTY

15.1 If fire or other casualty shall render the whole or any portion of the Premises (other than the Leasehold Improvements) untenable, and if the Premises can reasonably be expected to be repaired within 180 days from the date of such event, then Landlord shall repair and restore the Premises (other than the Leasehold Improvements) to as near their condition prior to the fire or other casualty as is reasonably possible (subject to delays for causes beyond Landlord's reasonable control) and this Lease shall remain in full force and effect, but Base Rent for the period during which the Premises is untenable shall be abated pro rata (based upon the portion of the Premises which is untenable).

15.2 If fire or other casualty shall render the whole or any portion of the Premises untenable and the Premises (other than the Leasehold Improvements) cannot reasonably be expected to be repaired within 180 days from the date of such event, then either party, by notice in writing to the other mailed within 90 days from the date of such damage or destruction, may terminate this Lease effective upon a date within 30 days from the date of such notice.

15.3 In the event that more than 50% of the value of the Project is damaged or destroyed by fire or other casualty, and irrespective of whether such damage or destruction can be repaired within 180 days thereafter, then at Landlord's option, by written notice to Tenant mailed within 90 days from the date of such damage or destruction, Landlord may terminate this Lease effective upon a date within 30 days from the date of such notice to Tenant.

15.4 If this Lease is not terminated following the occurrence of fire or other casualty as provided above, then Landlord shall repair and restore the Premises (other than the Leasehold Improvements) to as near their condition prior to the fire or other casualty as is reasonably possible with all due diligence and

speed (subject to delays for causes beyond Landlord's reasonable control) and Base Rent for the period during which the Premises is untenantable shall be abated pro rata (based upon the portion of the Premises which is untenantable). In no event shall Landlord be obligated to repair or restore any special equipment or improvements installed by Tenant, it being understood that Landlord's restoration obligations shall be limited to restoration of the improvements described in Exhibit B. Landlord's obligation to restore under this Article XV shall in any event be limited to the extent of the insurance proceeds available to Landlord for such restoration, and Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures, equipment and to construct and install leasehold improvements of the same type and character as the Leasehold Improvements. Any such rebuilding and restoration shall be performed in accordance with the construction procedures set forth in Exhibit C, and shall be subject to Article X.

15.5 Notwithstanding the foregoing provisions of this Article XV, Landlord may terminate this Lease with no further liability to Tenant whatsoever in the event that following any fire or other casualty of any part of the Project, any party holding a mortgage, trust deed or similar lien on Landlord's interest in the Project elects to require the application of the insurance proceeds to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

15.6 In the event of a termination of this Lease pursuant to this Article, rent shall be apportioned on a per diem basis and paid to the date of such termination.

ARTICLE XVI

EMINENT DOMAIN

16.1 If the whole of or any substantial part of the Premises is taken by any public authority under the power of eminent domain so as to render the remaining portion of the Premises unsuitable for the purposes intended hereunder, then the Term shall cease as of the day possession shall be taken by such public authority.

16.2 In the event that 25% or more of the building area of the Project or 25% or more of SandVenture Aquatic Park is taken by public authority under the power of eminent domain, then, at the option of Landlord or Tenant, by written notice to the other party, mailed within 60 days from the date possession shall be taken by such public authority, Landlord or Tenant, as the case may be, may terminate this Lease effective upon a date within 30 days from the date of such notice to the other party.

16.3 All damages awarded for any taking under the power of eminent domain shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; provided, however, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord.

16.4 In the event of a taking by any public authority under the power of eminent domain and this Lease is not terminated, (i) Landlord shall, at its sole cost and expense, restore the Premises (other than the Leasehold Improvements) to a complete architectural unit (but Landlord's restoration obligations shall be limited to restoration of the improvements described in Exhibit B and shall be limited to the extent of the condemnation award available to Landlord), (ii) Tenant agrees that promptly after completion of such

work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures, equipment and to construct and install leasehold improvements of a character and type substantially similar to the Leasehold Improvements, and such rebuilding and restoration shall be performed in accordance with the construction procedures set forth in Exhibit C and shall be subject to Article X and (iii) Base Rent provided for herein during the period from and after the date of delivery of possession pursuant to such proceedings to the termination of this Lease shall be reduced to a sum equal to the product of Base Rent provided for herein multiplied by a fraction, the numerator of which is the fair market rent of the Premises after such taking and after the same has been restored to a complete architectural unit, and the denominator of which is the fair market rent of the Premises prior to such taking.

16.5 Notwithstanding the foregoing provisions of this Article XVI, Landlord may terminate this Lease with no further liability to Tenant whatsoever in the event that following any taking of any part of the Project by right of eminent domain, or any conveyance in lieu thereof, any party holding a mortgage, trust deed or similar lien on Landlord's interest in the Project elects to require the application of an award or payment for the taking or conveyance in lieu thereof to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

16.6 In the event of a termination of this Lease pursuant to this Article XVI, rent shall be apportioned on a per diem basis and paid to the date of such termination.

ARTICLE XVII

ASSIGNMENT AND SUBLETTING

17.1 Tenant shall not assign or transfer this Lease or any estate or interest therein, or permit any such assignment or transfer, by operation of law or otherwise, including by merger or acquisition, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises, without in each case the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. In determining whether or not to grant its consent to the Tenant's sublet or assignment request, Landlord may consider any reasonable factor. Landlord and Tenant agree that failure to satisfy anyone of the following factors, or any other reasonable factor, will be reasonable grounds for denying Tenant's request:

- (a) the tangible financial net worth of the proposed subtenant/assignee, as evidenced by audited financial statements certified by an independent certified public accountant (or, if such audited statements are unavailable, financial statements certified by the chief financial officer of any such proposed subtenant/assignee), shall be reasonably satisfactory to Landlord;
- (b) use of the Premises by the proposed subtenant/assignee (i) will not violate or create any potential violation of any laws; (ii) will not violate any agreement affecting the Premises, Landlord or the Project, including, without limitation, any so-called exclusive agreements; (iii) will complement the tenant mix at the Project; and (iv) will not constitute a nuisance or disturb or endanger other tenants of the Shopping Center or interfere with their use of their respective premises; and
- (c) satisfactory to Landlord. managerial and operational skills of the proposed subtenant/assignee must be reasonably satisfactory to Landlord.

Consent by Landlord to one or more assignment(s) or subletting(s) shall not operate as a waiver of Landlord's rights as to any subsequent assignments or sublettings. For purposes of this Lease, change of control of Tenant or change of ownership of a majority interest in Tenant shall constitute an assignment of this Lease.

17.2 Tenant shall give Landlord notice of any assignment or sublease proposed to be made by Tenant, including a copy of all documents evidencing the agreement for such sublease or assignment, at least 30 days prior to the proposed effective date for such sublease or assignment.

17.3 Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this Lease shall at all times remain fully liable for the performance of all of Tenant's obligations under this Lease (notwithstanding future assignments, sublettings, and regardless of whether or not Tenant's approval has been obtained for such future assignments or sublettings). The sublessee or assignee shall agree in a form satisfactory to Landlord to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease to the extent of the space sublet or assigned, and Tenant shall deliver to Landlord promptly after execution an executed copy of each such sublease or assignment and an agreement of compliance by each such sublessee or assignee.

17.4 Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provisions of this Article XVII shall be of no effect and void. All rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord, to be forwarded immediately to Landlord without offset or reduction of any kind, and upon election by Landlord such rentals shall be paid directly to Landlord (to be applied as a credit and offset to Tenant's rental obligations). All consideration or rent paid to Tenant for an assignment, sublease or other right to use the Premises which is in excess of the amount required to be paid over to Landlord for the use of the Premises (or pro rata portion of the amount required to be paid to Landlord in the case of a sublease of a portion of the Premises) shall be paid to Landlord by Tenant upon receipt.

17.5 In the event of the transfer and assignment by Landlord of its interest in this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

17.6 Any mortgage, pledge or other encumbrance of Tenant's interest in this lease or in the premises shall be expressly subordinate in all respects to any mortgage previously or hereafter given by Landlord in the Premises, and shall contain such other commercially standard and reasonable provisions as may be requested by Landlord to protect its interest in the Premises.

17.7 Tenant shall pay all costs incurred by Landlord in connection with any proposed assignment or sublease and shall pay any brokerage commission incurred by reason of any such proposed assignment or sublease.

17.8 Notwithstanding anything in the foregoing to the contrary, upon not less than thirty (30) days prior written notice to Landlord but without the necessity of Landlord's consent, Tenant may sublet all or a portion of the Premises or assign this Lease to a subsidiary of Tenant, more than fifty percent (50%) of the voting stock or assets of which is owned directly or indirectly by the direct or remote parent of Tenant, or an entity which acquires more than fifty percent (50%) of the voting stock or assets of Tenant (each, a "Permitted Transfer" to a "Permitted Transferee"), provided that in the case of an Assignment,

such assignee agrees directly with Landlord, by written instrument in form satisfactory to Landlord, to assume and perform all of the obligations of Tenant under this Lease.

ARTICLE XVIII

DEFAULT AND REMEDIES

18.1 Each of the following events shall be deemed to be an “Event of Default” by Tenant under this Lease:

- (a) Tenant shall fail to pay any installment of Base Rent, Additional Rent or any other payment due hereunder, and such failure shall continue for a period of 5 days after Tenant's receipt of written notice (or e-mail) of non-payment from Landlord.
- (b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than as described in subsection (a), and such failure shall continue for 10 days after written notice thereof to Tenant.
- (c) (i) the Premises shall be used for purposes other than the Permitted Use, (ii) Tenant breaches its covenant of continuous operation, (iii) Tenant shall use or display signs other than those approved in accordance with Article XII, (iv) Tenant shall do anything upon or in connection with the Premises or the construction of any part thereof which interferes in any way with, or results in a work stoppage in connection with, construction of any part of the Project or any other tenant's space, (v) this Lease, without the prior written consent of Landlord or except as expressly permitted, shall be assigned, pledged, mortgaged, transferred or sublet in any manner, or (vi) Tenant shall fail to maintain the insurance coverages required by Article XIV.
- (d) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- (e) Tenant or any guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or an order for relief relating to Tenant or any guarantor of Tenant's obligations under this Lease is granted in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease.
- (f) A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

18.2 Upon the occurrence of any Event of Default, Landlord shall have the option to pursue the following remedies (without limitation of any other remedies available to Landlord at law or in equity):

- (a) Terminate this Lease, or terminate Tenant's right to possession of the Premises without terminating this Lease, and in either event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or

arrearage in rental, 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, with or without legal proceedings, by force if necessary, without being liable for prosecution or any claim of damages therefor.

- (b) Pay any amount required to be paid by Tenant, or perform any obligation to be performed by Tenant, and to do so, enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in so paying or performing Tenant's obligations under this Lease, together with interest on such expenses at the Interest Rate until Tenant makes full payment of all amounts owing to Landlord at the time of said payment.

18.3 If this Lease is terminated by reason of an Event of Default, Tenant shall be liable for and shall pay to Landlord the sum of all rental and other indebtedness accrued to date of such termination, plus, as damages, an amount equal to the present value of the excess, if any, of (1) the total rental and Taxes hereunder for the remaining portion of the Term (had the Term not been terminated prior to the date of expiration stated in Article I) plus the unamortized balance of any rent abatements, brokers' fees and commissions, attorneys' fees and costs, and all reimbursements, construction allowances and other costs incurred by Landlord to improve the Premises, over (2) the fair rental value of the Premises for such period, after deductions of all estimated costs of reletting for said period, discounted at a rate of 6% per annum. It is agreed by the parties that the actual damages which might be sustained by Landlord by reason of Tenant's default hereunder are uncertain and difficult to ascertain, and that the foregoing measure of damages is fair and reasonable.

18.4 If Tenant's right to possession of the Premises is terminated, without termination of the Lease, Tenant shall be liable for and shall pay to Landlord all rental and other required payments accrued to the date of termination of possession, plus all rental and other required payments for and during the remainder of the Term, as such rental and other payments become due, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as described in Section 18.5). In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rental herein reserved. Actions to collect amounts due by Tenant to Landlord may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Term. Notwithstanding any such reletting without termination, Landlord may at any time thereafter terminate this Lease for any prior breach or default.

18.5 In case of any Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to amounts provided to be paid above, broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises, the costs of removing and storing Tenant's or other occupant's property, the costs of cleaning, repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant(s), and all other reasonable expenses incurred by Landlord, including reasonable attorneys' fees.

18.6 In the event of termination of this Lease or repossession of the Premises, Landlord may relet the whole or any portion of the Premises for any period, to any tenant, and for any use and purpose. Anything herein to the contrary notwithstanding, Landlord shall have no duty to mitigate its damages except to the extent required by Minnesota state statute.

18.7 All obligations of Landlord hereunder will be construed as covenants and not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the Project and not thereafter. The term "Landlord" shall mean only the owner from time to time of the Project, and in

the event of the transfer by such owner of its interest in the Project, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord hereunder. Notwithstanding any other provision of this Lease, Landlord shall not have any personal liability hereunder, and for any claim against Landlord, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Project. In no event shall any deficiency judgment or any money judgment of any kind be sought or obtained against any Landlord, except to be satisfied from Landlord's interest in the Project as set forth above. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against Landlord for damages by reason of any refusal, withholding or delaying by Landlord of any consent or approval, and in such event, Tenant's only remedies shall be an action for specific performance or injunction to enforce any such requirement for consent or approval.

18.8 In the event that Landlord shall have taken possession of the Premises, Landlord shall have the right to use all the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, prior to any foreclosure thereon by Landlord or repossession thereof by a landlord thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises elected by Landlord, and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage, together with interest thereon at the Interest Rate. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof, without the necessity of making any investigation or inquiry as to the basis upon which Claimant purports to act, and Tenant agrees to indemnify, defend and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property. Tenant stipulates and agrees that the rights set forth in this subsection are commercially reasonable.

ARTICLE XIX

BANKRUPTCY OR INSOLVENCY

19.1 Bankruptcy Event shall be deemed in material breach of Tenant's obligations hereunder and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law in connection with any Bankruptcy Event.

19.2 No default of this Lease by Tenant, either prior to or subsequent to the happening of any Bankruptcy Event, shall be deemed to have been waived unless expressly done so in writing by Landlord.

19.3 Subject to applicable federal and state law, included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment of this Lease in connection with any Bankruptcy Event are the following: (i) the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; (ii) the deposit of an additional sum equal to 3 months of Base Rent and Additional Rent to be held as security; (iii) the use of the Premises as set forth in Article VIII of this Lease with the quality, quantity and/or lines of merchandise of any goods or services required to be offered for sale unchanged with a covenant of continuous operation by Tenant or its successor; (iv) the reorganized debtor or assignee of such debtor in possession or Tenant's trustee demonstrates in writing that it has retailing experience in shopping centers of comparable size and financial ability to operate a retail establishment out of the Premises in the manner contemplated in this Lease and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; (v) the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and (vi) the Premises, at all times, remains a single store and no

physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

ARTICLE XX

SURRENDER OF PREMISES

20.1 On the last day of the Term, or on the sooner termination thereof, Tenant shall peaceably surrender the Premises in good condition and repair consistent with Tenant's duty to make repairs as herein provided, subject to reasonable wear and tear, and damage by fire or other casualty excepted. On or before the last day of the Term, or the date of sooner termination thereof, Tenant shall, at its sole cost and expense, remove all of its property and trade fixtures and equipment from the Premises, and all property not removed shall be deemed abandoned. Tenant hereby appoints Landlord its agent to remove all property of Tenant not so removed from the Premises upon termination of this Lease and to cause its transportation and storage for Tenant's benefit, all at the sole cost and risk of Tenant, and Landlord shall not be liable for damage, theft, misappropriation or loss thereof, nor shall Landlord be liable in any manner in respect thereto. All modifications, improvements, alterations, additions and fixtures, other than Tenant's trade fixtures and equipment, which have been made or installed by either Landlord or Tenant upon the Premises, shall remain the property of Landlord and shall be surrendered with the Premises as a part thereof. If the Premises shall not be surrendered promptly at the end of the Term or sooner termination thereof, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding tenants founded on such delay and any attorneys' fees resulting therefrom. Tenant shall promptly surrender all keys for the Premises to Landlord at the place then fixed for the payment of Base Rent and shall inform Landlord of combinations on any vaults, locks and safes left on the Premises.

20.2 In the event Tenant remains in possession of the Premises after expiration or sooner termination of this Lease, Tenant shall be deemed to be occupying the Premises without claim of right, and Tenant shall pay Landlord for all costs arising out of loss or liability resulting from delay by Tenant in so surrendering the Premises as above provided and shall pay a charge for each day of occupancy in an amount equal to 150% of the Base Rent and Additional Rent (on a daily basis) payable hereunder immediately prior to the expiration or termination of the term hereof.

ARTICLE XXI

HAZARDOUS SUBSTANCES

21.1 Tenant shall not allow any Hazardous Substance to be located on the Premises and shall not conduct or authorize the use, generation, transportation, storage, treatment or disposal at the Premises or the Project of any Hazardous Substance other than in quantities incidental to the conduct of the Permitted Use and in compliance with Environmental Laws; provided, however, nothing herein contained shall permit Tenant to allow any so-called "acutely hazardous," "ultra-hazardous," "imminently hazardous chemical substance or mixture" or comparable Hazardous Substance to be located on or about the Premises or the Project.

21.2 If the presence, release, threat of release, placement on or in the Premises or the generation, transportation, storage, treatment or disposal at the Premises of any Hazardous Substance as a result of Tenant's use or occupancy of the Premises (i) gives rise to liability (including, but not limited to, a response action, remedial action or removal action) under Environmental Laws; (ii) causes a significant public health effect; or (iii) pollutes or threatens to pollute the environment, Tenant shall promptly take any and all

remedial and removal action necessary to clean up the Premises and/or the Project and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

21.3 Tenant shall indemnify, defend and hold harmless Landlord from and against all damages, costs, losses, expenses (including, without limitation, actual attorneys' fees and engineering fees) arising from or attributable to (i) the existence of any Hazardous Substance at the Premises and/or the Project as a result of Tenant's use and occupancy of the Premises and (ii) any breach by Tenant of any of its covenants contained in this Article XXI.

ARTICLE XXII

SUBORDINATION AND ATTORNMENT

22.1 Tenant agrees that this Lease shall be subject and subordinate to any ground lease, sale-leaseback instrument, mortgage, deed of trust, deed to secure debt or other lien presently existing or hereafter created upon the Premises or the Project, and to any amendments, modifications, renewals and extensions thereof, but Tenant agrees that any holder of a ground lease, sale-leaseback instrument, mortgage, deed of trust, deed to secure debt or other lien shall have the right at any time to subordinate such ground lease, mortgage, deed of trust, deed to secure debt or other lien to this Lease. Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to any party which succeeds to Landlord's interest in the Project as Landlord may request, provided Landlord provides Tenant with a commercially reasonable non-disturbance agreement from any party demanding such subordination or attornment. This Lease shall be subject to all easements, restrictions and covenants presently existing or hereafter created upon the Project.

ARTICLE XXIII

NOTICES

23.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Article I above, or at such other addresses as they may have hereafter specified by written notice. Attorneys for Landlord and Tenant are authorized to give notices for and on behalf of such parties. Payments to be made hereunder shall be deemed received only upon actual receipt by the payee.

ARTICLE XXIV

EXCLUSIVE USE

24.1 Tenant shall be the exclusive food vendor for SandVenture events and rental space.

ARTICLE XXV

RENEWAL OPTION

25.1 Provided Tenant is open for business and not in default under this Lease and has not assigned or sublet the Premises to another tenant, the Tenant shall have the right to renew the Term for an additional period of five {5} years upon the same terms, covenants and conditions as provided in this Lease. Tenant must exercise its right to renew by notifying Landlord in writing of its election to exercise the right to renew the Term at least six {6} months prior to the expiration of the original term or this right to renew shall be deemed to be waived by Tenant.

ARTICLE XXVI

MISCELLANEOUS

26.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

26.2 All obligations of each party constituting Tenant hereunder shall be the joint and several obligations of each such party.

26.3 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

26.4 One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Acceptance of Base Rent or Additional Rent by Landlord after any Event of Default by Tenant shall not be a waiver of such Event of Default; and acceptance of a lesser amount than is due from Tenant shall in all cases constitute a payment on account, and not an accord and satisfaction, notwithstanding any statement to the contrary on any check or other notation. No receipt of money by Landlord from Tenant or any other person after termination of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the Term or affect any such notice, demand or suit, or imply consent for any action for which Landlord's consent is required, unless specifically agreed to in writing by Landlord. Any amounts received by Landlord may be allocated to any specific amounts due from Tenant to Landlord as Landlord determines.

26.5 Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord, including, without limitation, delays in the issuance of permits and approvals. At any time when there is outstanding a mortgage, deed of trust, deed to secure debt or similar security instrument covering Landlord's interest in the Premises, Tenant may not exercise any remedies for default by Landlord hereunder unless and until the holder of the indebtedness secured by such mortgage, deed of trust or similar

security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

26.6 Tenant may peacefully hold and enjoy the Premises, free from disturbance by Landlord or parties claiming under Landlord, subject to the other terms hereof, provided that Tenant pays the Base Rent, Additional Rent and other sums herein required to be paid by Tenant and performs all of Tenant's covenants and agreements herein contained.

26.7 Each party represents and warrants that it has caused or incurred no claim for brokerage commissions or finder's fees in connection with the execution of this Lease other than tenants broker of Kraus Anderson whose fee shall be paid by Landlord, and each party shall defend, indemnify and hold the other harmless against and from all liabilities arising from any such claims caused or incurred by it.

26.8 Tenant agrees that it will from time to time, upon request by Landlord, execute and deliver to Landlord and to any other parties designated by Landlord, within 5 business days after demand therefor, an estoppel certificate in Landlord's form certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), (ii) the amount of rent and the date to which rent is paid, (iii) that there are no defaults hereunder (or specifying any claimed defaults), and (iv) such other matters Landlord shall request.

26.9 The laws of the state of Minnesota shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

26.10 The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives. This provision shall not operate to permit any transfer of Tenant's interest hereunder which is not otherwise permitted by this Lease.

26.11 This Lease is an offer by Tenant, subject to nonacceptance by Landlord, and this Lease shall not be valid or binding on Landlord unless and until this Lease has been accepted by Landlord in writing and a fully executed copy is delivered to both parties hereto.

26.12 This Lease contains the sole agreement between the parties and supersedes, merges, combines and completely integrates any prior understandings or written or oral agreements between the parties respecting the subject matter. No other representations, promises or oral agreements have been made.

26.13 All rights and remedies of Landlord under this Lease or that may be provided by law may be executed by Landlord in its own name, individually, or in the name of its agent, and all legal proceedings for the enforcement of any such rights or remedies, including those set forth in Article XVIII, may be commenced and prosecuted to final judgment and execution by Landlord in its own name or in the name of its agent.

26.14 Tenant shall permit Landlord (or its designees) to erect, use, maintain, replace and repair pipes, cables, conduits, plumbing, vents and telephone, electric and other wires or other items, in, to and through the Premises, as and to the extent that Landlord may now or hereafter deem necessary or appropriate for the proper operation and maintenance of the Project.

26.15 All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term, including, without

limitation, all payment obligations with respect to SandVenture Aquatic Park costs and expenses and Taxes and all obligations concerning the condition of the Premises.

26.16 Tenant shall furnish to Landlord promptly upon demand a corporate resolution, proof of due authorization of partners or other appropriate documentation reasonably requested by Landlord evidencing the due authorization of Tenant to enter into this Lease.

26.17 Time is of the essence in this Lease.

26.18 Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either Landlord or Tenant against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim for injury or damage.

26.19 The following Exhibits are attached to this Lease:

- A. Definitions.
- B. Landlord's Work
- B-1. Site Plan and
- C. Construction Procedures

[Signature page follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

City of Shakopee, Minnesota

By:_____

Its:_____

TENANT:

Tommy's Old Fashioned Malt Shop, LLC

By:_____

Brett Geselle

Its: Manager

EXHIBIT A

Definitions

“Act” means the Americans with Disabilities Act, as amended from time to time, and the rules and regulations promulgated thereunder.

“Additional Rent” means all charges, sums or amounts (other than Base Rent) permitted to be imposed against Tenant as set forth in this Lease.

“Bankruptcy Event” means any Event of Default of the type described in clauses (d), (e) or (f) of Section 18.1 of the Lease.

“Commencement Date” means the date of full execution and delivery of this Lease.

“Delivery Date” means the date Landlord delivers the Premises to Tenant with Landlord’s Work substantially completed and ready for Tenant’s Leasehold Improvements.

“Event of Default” means the occurrence of any of the events specified in Section 18.1 of the Lease.

“Hazardous Substance” means any matter giving rise to liability under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, U.S.C. Section 9601 et seq. (including the so-called “Superfund” amendments thereto), any other applicable federal, state or local statute, law, ordinance, rule or regulation governing or pertaining to any hazardous substances, hazardous wastes, chemicals or other materials, including, without limitation, asbestos, polychlorinated biphenyls, radon, petroleum and any derivative thereof or any common law theory based on nuisance or strict liability (all of the foregoing statutes, laws, ordinances, rules, regulations and common law theories being sometimes hereinafter collectively referred to as “Environmental Laws”).

“Hours of Operation” mean, at a minimum, (a) during the period when SandVenture is in operation, every day 11:00 a.m. to 8:00 p.m., at a minimum, (b) during Winter Season (from November 1 until March 30), Thursday through Sunday 11:00 a.m. to 8:00 p.m., and (c) times other than when SandVenture is in operation or Winter Season, Tuesday through Sunday, 11:00 a.m. to 8:00 p.m., all subject to modification by mutual agreement in writing by Landlord and Tenant.

“Interest Rate” means an annual rate of interest equal to the lesser of 12% or the maximum rate of interest permitted by applicable law.

“Landlord’s Address” is City of Shakopee, Minnesota
 485 Gorman Street
 Shakopee MN 55379
 Attn: William Reynolds

“Landlord’s Work” means Landlord’s construction and installation of the improvements described in Exhibit B.

“Leasehold Improvements” means the interior improvements to the Premises to be installed and paid for by Tenant, including without limitation, any internal demising walls or other improvements not included in Landlord’s Work.

“Lease Year” shall mean, in case of the first Lease Year, that period from the Rent Commencement Date to the first succeeding December 31; thereafter, “Lease Year” shall mean each successive twelve (12)

calendar month period following the expiration of the first Lease Year, except that in the event of the termination of this Lease on any day other than on December 31, then the last Lease Year shall be the period from the end of the preceding Lease Year to such date of termination.

“Permitted Use” shall mean use as an old-fashioned malt shop and wine and beer sales and directly related uses and no other uses. Speakers on Tenant’s patio shall be permitted. Tenant shall submit a menu and pricing to Landlord for Landlord’s reasonable approval no less frequently than annually and no modifications to such menu and pricing shall be made except by mutual agreement of Landlord and Tenant.

“Premises” shall refer to that certain area consisting of approximately 4,000 square feet of retail and storage area , as generally depicted on the site plan at Exhibit B-1 attached hereto, which shall be attached to SandVenture Aquatic Park.

“Project” means the property commonly known as SandVenture Aquatic Park, and all buildings (including without limitation all footings, foundations, systems and fixtures therefor), and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed or placed upon such property, together with such additions, deletions and other changes as Landlord may from time to time designate for the Project.

“Rent Commencement Date” means the earlier of (a) the date that is sixty (60) days after the Delivery Date, and (b) the date Tenant opens for business in the Premises.

“Taxes” shall mean all taxes and assessments against the land, buildings or improvements comprising the Project that are levied or assessed by any lawful authority during each calendar year, including without limitation all personal property taxes of Landlord relating to Landlord’s personal property located on the Project and used or useful in connection with the operation and maintenance thereof (including, without limitation, any taxes on furniture, fixtures, and equipment), and all other governmental charges, general and special, ordinary and extraordinary, foreseen as well as unforeseen, of any kind and nature whatsoever, or other tax, however described, which is levied or assessed by the United States of America or the state in which the Project is located or any city, municipality or political subdivision thereof, against Landlord or all or any part of the Project and payable during the respective Lease Year (such taxes and assessments being hereinafter called “Taxes”). Taxes shall include, without limitation, any tax or excise on rents, gross receipts tax, transaction privilege tax or other tax, however described, which is levied or assessed by the United States of America, the State in which the Project is located or any city, municipality or political subdivision thereof, against Landlord in respect to the Base Rent, Additional Rent or other charges reserved under this Lease or as a result of Landlord’s receipt of such rents or other charges accruing under this Lease; provided, however, Tenant shall have no obligation to pay net income or corporate franchise taxes of Landlord. Taxes for any partial calendar year during the Term shall be prorated, based upon the portion of such calendar year which is within the Term.

“Tenant’s Address” is 14075 Geselle Drive
 Shakopee MN 55379
 Attention: Brett Geselle, Manager

“Tenant’s Work” means the construction and installation by Tenant of the Leasehold Improvements, including, but not limited to all kitchen equipment and all final finish of the restaurant.

“Term” shall mean that period commencing on the Rent Commencement Date and ending sixty{60} months following the first day of the calendar month immediately following the month containing the Rent Commencement Date (unless the Rent Commencement Date is the first day of a calendar month, in which

event the Term shall end sixty {60} months following the Rent Commencement Date. Notwithstanding the foregoing, from and after the date of full execution and delivery of this Lease, this Lease shall be in full force and effect, and Tenant shall keep, perform and observe all the terms, covenants, conditions, agreements, indemnities and other promises to be kept, performed and observed by Tenant (other than payment of Base Rent and Additional Rent) prior to the Rent Commencement Date.

EXHIBIT B

Landlord's Work

Landlord's Work shall include and be limited to the following items with respect to the Premises:

- A. SHELL. Landlord shall construct the basic vanilla shell structure of the building per the plans and drawings attached hereto as Exhibit B-1, as previously approved by Tenant.
- B. HVAC. Landlord shall install an adequate HVAC system to supply cooling, heating and ventilation air to the Premises, including make-up air systems, but not a hood system, which shall be Tenant's sole responsibility.
- C. ELECTRICAL/ PLUMBING. Landlord shall bring plumbing and 400 amp electrical service to the Premises, not distributed.
- D. DEMISING WALL. Landlord shall install demising wall to deck including a vapor barrier and caulking of all demising wall penetrations.
- E. WALLS. All exterior walls shall be sheet rocked, taped and ready to paint.
- F. FLOORS. Landlord shall provide smooth, unfinished concrete floors throughout.
- G. CEILINGS. Ceilings shall be open to metal deck with exposed bar joists, duct work and conduit, and ready to paint.
- H. SPRINKER SYSTEM. Landlord shall provide a sprinkler system for the Tenant's space and distribution piping and heads based upon an open space layout.
- I. DOORS. Landlord to provide front and rear doors to the Premises.

EXHIBIT B-1

Site Plan and Project Drawings

(See attached)

EXHIBIT C

Construction Procedures

ARTICLE 1.00 GENERAL DESIGN AND CONSTRUCTION CRITERIA

- 1.01 Tenant is responsible for letting contracts relating to the construction and installation of the Leasehold Improvements, supervision and completion of Tenant's Work and payment therefor, procurement of all permits and permissions related to Tenant's Work, compliance with the requirements of all authorities having jurisdiction and with conditions contained herein, and payment of all fees and charges incurred in connection therewith. Prior to commencing Tenant's Work, Tenant shall furnish to Landlord, for Landlord's prior approval, names and addresses of all contractors and subcontractors who shall perform Tenant's Work, copies of all contracts and subcontracts, copies of all necessary permits, licenses and approvals, and plans and specifications for the Leasehold Improvements.

ARTICLE 2.00 TENANT'S DRAWINGS

- 2.01 On or before _____, 202_, Tenant shall prepare and furnish to Landlord, at Tenant's cost and expense, in compliance with applicable laws, statutes, ordinances and codes, a complete set of interior store finish working drawings ("Tenant's Drawings") and plans and specifications for Tenant's Improvements.
- 2.02 After Tenant submits Tenant's Drawings to Landlord, Landlord shall have ten (10) days to approve or disapprove Tenant's Drawings, and in the event Landlord does not approve the same, Landlord shall advise Tenant of Landlord's comments to Tenant's Drawings. In the event Landlord disapproves Tenant's Drawings, Tenant shall incorporate Landlord's comments into Tenant's Drawings within ten (10) days from receipt thereof and resubmit the same to Landlord, who shall have ten (10) days to approve or disapprove the revised Tenant's Drawings. In the event Landlord does not approve the same, the procedures set forth herein shall be followed until such time as Landlord has approved the revised Tenant's Drawings.
- 2.03 In the event Tenant desires or is required to modify or change Tenant's Drawings after the same have been approved in the manner provided above, Tenant shall submit such modifications or changes to Landlord for review and consideration and the procedures governing approval of Tenant's Drawings shall apply to any such modifications or changes.

ARTICLE 3.00 TENANT'S WORK

- 3.01 At its own expense, Tenant shall construct the Leasehold Improvements in accordance with the approved Tenant's Drawings.
- 3.02 No construction work shall be undertaken or commenced by Tenant until:
- 26.9.1 all necessary building permits and required insurance coverages have been secured and certificates of insurance delivered to Landlord, and
- 26.9.2 proper provision has been made by Tenant for payment in full of the cost of the work.
- 3.03 Tenant shall proceed with its work expeditiously, continuously, and efficiently, and shall complete the same 120 days following the Delivery Date.

- 3.04 Tenant shall ensure that all materials, skill and workmanship in Tenant's Work shall be of uniformly high quality, not less than building standard, and in accordance with the best standards of practice and any governing codes or regulations. All work performed by Tenant shall be in compliance with applicable building and zoning laws, ordinances, regulations and any covenants, conditions or restrictions affecting the Project, and in accordance with good engineering and architectural practice. Further, Tenant shall be responsible for obtaining any required certificate of occupancy for the Premises.
- 3.05 Tenant Improvement Allowance: Upon completion of Tenant's Work and Tenant opening for business and Tenant providing full lien waivers for such work, Landlord shall provide Tenant with an Allowance of up to One Hundred Thousand and no/100 Dollars (\$100,000.00) to compensate Tenant for its buildout and fixturing costs, which amount shall be allowed as a credit against Base Rent as provided in Section 3.1 of this Lease.

ARTICLE 4.00 TENANT'S ACCESS FOR COMPLETION OF WORK

- 4.01 Subject to compliance with applicable laws referred to in Article 3.00, Tenant and its architects, designers, engineers, contractors and workmen employed by Tenant shall have access to and non-exclusive use of the Premises to perform Tenant's Work and such other work approved by Landlord as Tenant may desire. Any such work shall be done by contractors selected by Tenant and approved by Landlord, as aforesaid, provided that there shall be no conflict caused thereby with any union or other contract to which Landlord or Landlord's general contractor may be a party. If Tenant's contractor or subcontractors or trades or workmen cause such conflict, Tenant shall forthwith remove them from the Project. Landlord shall have no responsibility or liability whatsoever with respect to any work or attendant materials left or installed in the Project, and shall be reimbursed by Tenant for any additional costs and expenses of Landlord caused thereby, or resulting directly or indirectly from any delays caused to Landlord or to Landlord's general contractor. Tenant acknowledges that Landlord may be completing work at the Premises or elsewhere in the Project simultaneously with Tenant completing Tenant's Work, and agrees to comply with any reasonable procedures undertaken by Landlord to facilitate such joint work.
- 4.02 Tenant shall at all times keep the Premises and adjacent areas free from accumulations of waste material or rubbish caused by its suppliers, contractors or workmen. Landlord may require clean-up on a daily basis and reserves the right to do clean-up at the expense of Tenant if Landlord's reasonable requirements in this regard are not complied with. At the completion of the work, Tenant's contractor shall forthwith remove all rubbish and all tools, equipment and surplus materials from and about the Premises and shall leave the Premises clean to the satisfaction of Landlord. This final clean-up shall include the cleaning of light fixtures, windows, entries and public space affected by the work.
- 4.03 Any damage caused by Tenant's contractor or sub-trades to any work of Tenant's prime contractor to any property of Landlord or other tenants shall be repaired forthwith to the satisfaction of Landlord by Tenant at Tenant's expense.

ARTICLE 5.00 INSURANCE; PAYMENT DOCUMENTATION

- 5.01 Prior to commencement of Tenant's Work, Tenant shall obtain, at its sole expense, and maintain during the performance of Tenant's Work, the following insurance coverages:
- (i) Workers' compensation insurance covering all persons directly employed by Tenant in connection with Tenant's Work and with respect to which death or injury claims could be asserted against Tenant, Landlord, the Project or any interest therein, with limits not less than as required by applicable laws and regulations, together with employer's liability coverage with limits of not less than \$250,000.00 per occurrence;

- (ii) Commercial general liability insurance with limits of not less than \$1,000,000.00 with respect to injury or death to anyone person, \$2,000,000.00 with respect to anyone occurrence, and \$500,000.00 with respect to property damage arising out of anyone occurrence, which policy(ies) shall (a) name as additional insureds Landlord, its management agent and such other persons as Landlord may designate; (b) be written by insurance companies licensed to do business in the state where the Premises is located and reasonably acceptable to Landlord; (c) provide that such policy(ies) may not be canceled by the insurer without giving Landlord at least thirty (30) days prior written notice; (d) protect and insure Landlord and its management agent on account of any loss or damage arising from injury or death to persons or damage or destruction to property caused by or related to or occurring on (A) the Premises, (B) any act or omission of Tenant, or its respective agents, employees, licensees, invitees or contractors on any portion of the Project, including the Premises, and (C) any breach of Tenant's indemnity obligations hereunder; and (e) include contractual liability coverage insuring the indemnity obligations provided for herein; and
- (iii) All Risk Builders Risk And Casualty Liability insurance in the full amount of the cost of Tenant's Work.

Further, Tenant shall cause Landlord to be named as an additional insured on the "errors and omissions" policy maintained by each of Tenant's architect and engineer written in limits of not less than \$1,000,000.00 on a per occurrence basis.

Tenant shall defend, indemnify and hold harmless Landlord and its management agent from and against any and all losses, damages, costs (including, without limitation, attorneys' fees and court costs), liabilities, causes of action and settlements arising from or related to or in connection with any work performed by or on behalf of Tenant, including injury to persons or damage to property. Anything herein to the contrary notwithstanding, the obligations of Landlord under this Lease (including, without limitation, Landlord's covenant to perform Landlord's Work), and any covenant, representation, warranty or undertaking made by Landlord in this Lease, shall be deemed to exclude any matter to the extent attributable in whole or in part to (i) architectural, design and/or engineering defects contained in tenant's drawings or non-compliance of the same with applicable building codes and rules and regulations of governmental authorities having jurisdiction thereof and other applicable laws, (ii) errors and/or omissions and/or negligent acts of Tenant's architect and/or engineer and (iii) Tenant's Work or the Leasehold Improvements.

- 5.02 Tenant shall furnish Landlord with sworn owner's and contractor's statements, contractor's affidavits and partial and [mal waivers of lien, in such form and content as Landlord may require, in order to establish that the cost of all labor, services and materials furnished in connection with Tenant's Work has been paid in full and to keep the Premises and Project free from all liens and claims.

ARTICLE 6.00 MECHANIC'S LIEN

- 6.01 Tenant shall not suffer or permit any mechanic's lien or other lien to be filed against the Project, or any portion thereof including the Premises, by reason of Tenant's Work. If any such mechanic's lien or other lien shall at any time be filed against the Project, or any portion thereof including the Premises, Tenant shall cause the same to be discharged of record within 30 days after the date of filing the same. If Tenant shall fail to discharge such mechanic's lien or liens or other lien within such period, then, in addition to any other right or remedy of Landlord, after five days prior written notice to Tenant, Landlord may, but shall not be obligated to, discharge the same by paying to the claimant the amount claimed to be due or by procuring the discharge of such lien as to the Project in such manner as is now or may in the future be provided by present or future law for the discharge of such lien as a lien against

the Project, or any portion thereof, including the Premises. Any amount paid by Landlord, or the value of any deposit so made by Landlord, together with all costs, fees and expenses in connection therewith (including reasonable attorney's fees of Landlord), together with interest thereon at the Interest Rate, shall be repaid by Tenant to Landlord on demand by Landlord and if unpaid may be treated as Additional Rent. Tenant shall indemnify and defend Landlord against and save Landlord and the Project, or any portion thereof, including the Premises, harmless from all losses, costs, damages, expenses, liabilities, suits, penalties, claims, demands and obligations, including, without limitation, reasonable attorney's fees resulting from the assertion, filing, foreclosure or other legal proceedings with respect to any such mechanic's lien or other lien.