



**PERCENTAGE RENT
STANDARD LEASE ADDENDUM**

Date: _____

By and Between

Lessor: _____

Lessee: _____

Property Address: _____

(street address, city, state, zip)

Paragraph _____

(a) **Percentage Rent.** In addition to the payment of Base Rent, as provided in the Lease, Lessee shall pay to Lessor monthly, as "Percentage Rent," on or before the 10th day of each month during the Term and on or before the 10th day of the month following the expiration or earlier termination of the Term, the amount, if any, by which the "Percentage Rent Rate," as set forth in Paragraph 1.6 of the Lease, multiplied by the amount of all Gross Sales (as defined herein) resulting from business conducted in, on or from the Premises for the preceding month of the Term exceeds the Base Rent paid by Lessee with respect to such preceding month. Percentage Rent for each month of the Term shall be due and payable as provided herein, without prior notice or demand. If the Term does not begin on the first day of a month or end on the last day of a month, then Percentage Rent for the partial month(s) at the beginning and/or end of the Term shall be based upon the Gross Sales for such partial month(s).

(b) **Gross Sales.** The term "Gross Sales" shall mean all revenue of Lessee and of all licensees, concessionaires and sublessees of Lessee and any others and all other receipts or receivables whatsoever from all business and other activities conducted in, upon or from the Premises and whether such sales or other receipts be evidenced by check, cash, credit, open account, charge account, exchange or otherwise, and shall include, but not be limited to, amounts received from the sale of goods, wares and merchandise (including gift and merchandise certificates) and for services performed on or at the Premises, together with the amount of all orders taken from the Premises or elsewhere, and whether such sales be made by means of merchandise or other vending devices in the Premises. Goods and merchandise shall include, but shall not be limited to, food, food stuffs and other items sold in a restaurant. Gross Sales shall not include sales of merchandise for which cash has been refunded, to the extent of the sales price therefor so refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been previously included in Gross Sales; and there shall be deducted from Gross Sales the price of merchandise returned by customers for exchange, provided that such returned merchandise shall have been previously included in Gross Sales and provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales. Gross Sales shall not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein and paid by Lessee to such governmental authority. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of whether or not, or of the time when, Lessee shall receive payment (whether full or partial) therefor.

(c) **Books and Records.** For the purposes of ascertaining the amounts payable from time to time under this Lease as Percentage Rent or otherwise, Lessee agrees to prepare and keep at the Premises or at Lessee's principal office in the County where the Premises are located for a period of not less than 36 months following the end of each calendar year, complete books and records for such calendar year which shall show inventories and receipts of merchandise at the Premises, all sales and charges, and daily receipts from all sales and other transactions on or from the Premises by Lessee and any other persons conducting any business upon or from the Premises (including but not limited to Gross Sales, as defined above). Lessee and all other persons conducting business upon or from the Premises shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a sealed cumulative total. Lessee further agrees to keep at the Premises or at Lessee's principal office in the County where the Premises are located for at least 36 months following the end of each calendar year sales tax returns with respect to such calendar year and all pertinent original sales records.

(d) **Statements of Lessee's Gross Sales.** Lessee shall submit to Lessor on or before the 10th day of each month during the Term and on or before the 10th day following the expiration or earlier termination of the Term, at the place then fixed for the payment of Rent, a written statement signed by Lessee and certified by it to be true and correct, showing in reasonably accurate detail satisfactory in scope to Lessor, the amount of Gross Sales during the preceding month. Such statements shall be in form and style and containing such details as Lessor may reasonably require. If Lessee fails to accurately certify the amount of Gross Sales, Lessee shall pay to Lessor as penalty for such under-reported Gross Sales an amount equal to 10% of such under-reported sales.

INITIALS

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(e) **Lessor's Audit Rights.** The acceptance by Lessor of payments of Percentage Rent shall be without prejudice to Lessor's right to examine, audit, copy and make extracts of Lessee's books and records to be maintained pursuant to subparagraph (c) above or to Lessor's rights pertaining to audits of Lessee's Gross Sales. At its option, Lessor may, within 36 months from the end of each calendar year, cause a complete audit to be made of Lessee's Gross Sales for such calendar year. Lessee shall promptly pay to Lessor the additional Percentage Rent shown by such audit to be due from Lessee. If such audit shall disclose Gross Sales of 2% or more in excess of the Gross Sales theretofore reported by Lessee for the period in question, Lessee shall promptly pay to Lessor the cost of such audit. Moreover, if any substantial or willful inaccuracies are found in the reporting of Gross Sales by Lessee, then, in addition to any and all other rights and remedies of Lessor, Lessor shall have the right to terminate this Lease by written notice thereof to Lessee.

(f) **Radius Restriction.** During the Term, neither Lessee, nor any entity owned by or controlled directly or indirectly by or under common control with Lessee, nor any officer, director, shareholder, partner or member holding more than 10% of the shares or interests, as the case may be, of Lessee, directly or indirectly, shall own, operate or have any financial interest in any business similar to or in competition with the business of Lessee required to be conducted at the Premises if the other business is opened after the date of this Lease and is located within 3 miles of the Premises. Without limiting Lessor's remedies for any breach of an obligation provided for in this paragraph, Lessor may include the Gross Sales (as the term "Gross Sales" is defined in this Lease) of such other business(es) (and of any similar business operated or controlled by any family member or relative of Lessee or of any officer, director, shareholder, partner or member of Lessee) in the Gross Sales of the Premises for the purpose of computing Percentage Rent. The provisions of subparagraph (c) above shall also be applicable to such other businesses.

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