

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE) Resolution No. 12-4386
RESTAURANT PROPERTY AT GLENDOVEER)
GOLF AND TENNIS CENTER SURPLUS) Introduced by Councilor Craddick
PROPERTY, EXEMPTING THE RESTAURANT)
FROM PAYING EXCISE TAX AND
AUTHORIZING THE EXECUTION OF A LEASE
WITH RINGSIDE RESTAURANT

Whereas Metro owns the Glendoveer Golf and Tennis Center that includes a restaurant building and parking area located at 14021 NE Glisan Street, Portland, Oregon 97230; and

Whereas, Metro does not currently use the restaurant building for its operations and has in the past leased the building to Glisan Street Recreation who in turn has subleased the building to Benalray, Inc. dba Ringside East; and

Whereas, Metro has budgeted revenue in anticipation of leasing the restaurant building and parking area and will receive excise tax on the lease payments; and

Whereas, Ringside will provide Metro with a lease payment, is not providing a Metro good or service, and does not anticipate paying Metro excise tax on its gross revenues; and

Whereas, Ringside is considered an integral part of the future success of the operation of the Glendoveer Golf and Tennis Center and will continue to provide services and amenities to golf, tennis and neighborhood patrons through the operation of the Ringside Restaurant; therefore

BE IT RESOLVED, that the Metro Council:

1. Declares the restaurant building and parking area surplus property;
2. Exempts Ringside from Metro excise tax on operators and users of Metro facilities (excise tax will be received on lease payments to Metro); and
3. Authorizes the Chief Operating Officer to enter into a lease agreement with Ringside substantially similar to the lease agreement attached as Exhibit A, or with those changes approved by the Office of Metro Attorney

ADOPTED by the Metro Council this 15th day of November 2012.



Approved as to Form:

Alison Kean Campbell
Alison Kean Campbell, Metro Attorney

Exhibit A

BOMA Lease Agreement

RETAIL LEASE

Between:

Metro, an Oregon municipal corporation
("Landlord")

And

Benaray, Inc., an Oregon corporation, dba Ringside East
("Tenant")

Dated November ____, 2012

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SUMMARY OF FUNDAMENTAL LEASE PROVISIONS

Following is a summary of the basic provisions contained in the Lease. In the event of any conflict between any provision contained in this Summary and a provision contained in the balance of the Lease, the latter shall control.

- A. Name of Landlord: Metro, an Oregon municipal corporation
- B. Address, Facsimile Number, and E-mail for Notices to Landlord: 600 NE Grand Ave.
Portland, OR. 97232
Attn: Lydia Neill
Lydia.neill@oregonmetro.gov
503-975-4522
- C. Address for Rent Payments: 600 NE Grand Ave.
Portland OR. 97232
Attn: Accounts Payable
- D. Name of Tenant and Address of Premises: Benalray, Inc. an Oregon corporation, dba Ringside East
14201 NE Glisan St.
Portland, OR. 97230
Attn: Craig Peterson
craig@ringsidehg.com
503-223-1513
- E. Address, Facsimile Number, and E-mail for Notices to Tenant: Benalray Inc. d.b.a. Ringside East
2165 W Burnside
Portland, OR. 97210
Attn: Craig Peterson
craig@ringsidehg.com
503-223-1513
- F. Trade Name Under Which Tenant Will Operate at Premises: Ringside East or such other name as Tenant determines appropriate from time to time with the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In connection with Landlord's approval rights, Landlord acknowledges that Landlord's primary concern is that any such change in the name of the restaurant shall not reflect negatively on Landlord's operation of Glendoveer Golf Course or the type of operations being conducted at the restaurant.
- G. Business To Be Conducted By Tenant at Premises: Tenant shall operate as a sit down restaurant with table service and liquor and bar service with similar standards of food, beverage and service employed at Ringside East as of the date of this Lease; provided, however, Tenant shall have the right at any time during the term of this Lease, as may be extended, to change and/or modify the menu if Tenant believes in Tenant's business judgment that any such changes or modifications will better address the demographics of the customers served by the



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restaurant. Tenant shall have the exclusive right to operate as a sit down restaurant and bar serving hard liquor, including lottery sales, at the Glendoveer Property.

- H. Approximate Premises Floor Area: Approximately 8,947 square feet. The Premises includes the parking and drive areas outlined in **Exhibit A** attached hereto.
- I. Lease Term: Ten Years (subject to the options to extend and terminate as set forth in **Exhibits C and D** to this Lease).
- J. Commencement Date: The term of this Lease shall commence concurrently with the expiration or sooner of termination of Landlord’s current lease for the Premises with GSR (the “GSR Lease”) but not later than December 30, 2012. Confirmation of the Commencement Date shall be in the form of a Commencement Letter attached hereto as **Exhibit B**.
- K. Base Rent: See Section 2
- L. Percentage Rent Rate: Tenant shall pay as percentage rent to Landlord with respect to a Lease Year an amount equal to: (i) 4% of Tenant’s annual gross sales from the Premises for such Lease Year between \$3,000,000 and \$4,000,000, and (ii) 3% of Tenant’s annual gross sale from the Premises for such Lease Year between \$4,000,000 and \$5,000,000. Tenant shall have no obligation to pay any percentage rent during a Lease Year on any portion of Tenant’s annual gross sales from the Premises in excess of \$5,000,000. Beginning on January 1, 2014 and on each January 1 thereafter, all such dollar amount thresholds shall be increased by 2%.
- M. Tenant's Proportionate Share of:
 Property Taxes: 100% of TL 300 1n2e35a City of Portland, Multnomah County, State of Oregon, which Tenant shall pay directly to the Multnomah County Tax Assessor as set forth in Section 4(b), below.

 Storm Water: 25.42%

 Sewer: Initially, reimburse Landlord for 90% of Landlord’s sewer bill for the Glendoveer Property (provided, Tenant shall have the right during the term of this Lease to seek an adjustment to such percentage if Tenant determines that a different percentage would more equitably reflect Tenant’s use of sewer at the Premises – for example, once a sub meter is installed to measure the water used at the Premises, Tenant’s share of the sewer bill for the Glendoveer Property shall be the approximate percentage of Tenant’s water usage at the Premises as compared to the total water usage for the Glendoveer Property).

 Water: Initially, reimburse Landlord for 90% of Landlord’s sewer bill for the Glendoveer Property; provided, once a separate submeter is installed at the Premises to measure Tenant’s water usage at the Premises, 100% of the water used at the Premises, which



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Tenant shall pay directly to the water company, or if that water company requires that Landlord pay the water bill directly, by way of reimbursement to Landlord. Landlord shall be responsible, at Landlord's cost, for installing such submeter in the Premises.

- Electricity: 100%, which Tenant shall pay directly to the electric company.
- Gas: 100%, which Tenant shall pay directly to the gas company.
- N. Landlord's Broker: N/A
- O. Tenant's Broker: Don Drake of Melvin Mark Brokerage Company
- P. Prepaid Rent N/A
- Q. Security Deposit: \$5,000.00
- R. Landlord's/Tenant's Property: Landlord owns the fixtures, furnishings and equipment existing in the Premises as of the Commencement Date as well as any new fixtures installed on the Premises by Tenant after the Commencement Date (the "Existing Equipment"), and Tenant shall own all: (i) food and beverage inventory, (ii) small wares for the front of the house (such as glass wares, table ware and flat ware), (iii) small wares for the back of the house (such as pots and pans, movable small equipment like plug-in equipment, including, but not limited to, steamers, mixers, toasters, warmers, ovens and similar equipment), (iv) office equipment like computers, copiers, POS & Reservation systems and art work, and (v) all trade fixtures, furnishings, and equipment that Tenant may acquire to replace or supplement the Existing Equipment (collectively, the "Tenant Equipment").

Tenant shall have the right to use the Existing Equipment during the Term and accepts the Existing Equipment in its "AS-IS" condition as of the Commencement Date, with no representations or warranties of any kind. Tenant shall maintain the Existing Equipment to industry-accepted standards, or may replace any such Existing Equipment, at Tenant's election. Tenant shall surrender any remaining Existing Equipment to Landlord upon the expiration or earlier termination of this Lease. Tenant shall notify Landlord if Tenant no longer requires the use of any of the Existing Equipment, or if any item is beyond reasonable repair. Landlord shall have the opportunity to remove such item from the Premises, or shall notify Tenant that Tenant may remove and dispose of the item, at Tenant's election and at Tenant's expense. Landlord shall have no obligation to insure nor repair, maintain or replace the Existing Equipment.

For avoidance of doubt, it is agreed that: (i) "fixtures" shall include any equipment that it built into the Premises such as built in refrigerators and built in coolers, built in dishwashers and exhaust hoods, and (ii) "trade fixtures" shall include equipment that can easily be removed from the Premises such as tables or coolers on rollers, stoves that are not built in and other equipment that is not permanently affixed to the Premises.



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THIS LEASE is entered into this ___ day of November, 2012, between Metro ("Landlord"), and Benalray, Inc. ("Tenant").

Landlord owns property in the City of Portland, County of Multnomah, and State of Oregon commonly known as the Glendoveer Golf Course and Tennis Facility (the "Glendoveer Property"). The Glendoveer Property includes an approximate 8,947 square foot restaurant building (the "Building") and parking lot and other improvements located at 14201 NE Glisan St., in the City of Portland, County of Multnomah, and State of Oregon and more particularly described on the attached **Exhibit A** (the "Premises").

Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord on the terms and conditions set forth in this Lease.

1. TERM

(a) Initial Term

The term of this Lease (the "Term") shall be for a period of ten (10) years, commencing on the Commencement Date and expiring on the last day of the month that is ten (10) years after the Commencement Date. If the first day of the Term shall be a day other than the first day of a calendar month, then the Term shall be deemed extended by the number of days between the Commencement Date of this Lease and the first day of the first calendar month thereafter, so that the Term shall expire at the end of a calendar month. If Landlord, for any reason, does not deliver possession of the Premises on the Commencement Date set forth herein, this Lease shall not be void or voidable except as stated below, nor shall Landlord be liable to Tenant for any loss or damage resulting from such delay. In that event, however, Landlord shall deliver possession of the Premises as soon as reasonably practicable. If Landlord, for any reason not attributable to Tenant, is unable to deliver possession of the Premises on or prior to December 30, 2012, either party may terminate this Lease by written notice to the other given within thirty (30) days following such party's acquiring knowledge of such delay. Landlord shall provide Tenant written notice of its termination of the GSR Lease and provide Tenant a confirming Commencement Letter substantially in the form as set forth in the attached **Exhibit B**.

(b) Option to Extend Term

See **Exhibit C**.

(c) Option to Terminate Lease

See **Exhibit D**.

2. RENT

Beginning on the Commencement Date and continuing during the entire Term, Tenant shall pay to Landlord as rent for each "Lease Year" "Base Rent" as defined in this Section and "Percentage Rent" as defined in this Section. The term "Lease Year" shall mean the period from the Commencement Date through December 31, 2013, from January 1 through December 31 for each subsequent full calendar year during the Term, and from January 1 to the end of the Term for the final Lease Year. Except as otherwise expressly provided herein, all Rent shall be paid when due without notice, offset, or deduction for any reason.

(a) Base Rent

The initial monthly Base Rent during the Term ("Base Rent") shall be \$5,000.00 per month for the first Lease Year. At the beginning of each Lease Year after the first Lease Year, the monthly Base Rent shall increase by 2% of the Base Rent of the prior Lease Year. Base Rent shall be paid in advance on or before the first (1st) day of each calendar month during the Term. If the first (1st) month of the Term shall be a partial month, Base Rent shall be prorated on a daily basis, based on the actual number of days in such month, and the amount due for such partial month shall be paid on or before the first (1st) day of the first (1st) full calendar month following the Commencement Date.

(b) Percentage Rent

Tenant shall pay Percentage Rent to Landlord as described in the schedule of Percentage Rent set forth in Section L of the Summary of Fundamental Lease Provisions with respect to each Lease Year during



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the Term; provided, however, if the first Lease Year has more than 12 calendar months, the amount of Tenant's Gross Sales threshold shall be equitably adjusted or increased to reflect that the measuring period is longer than 12 calendar months. Percentage Rent, when applicable, shall be paid annually in the arrears or before February 15th of each Lease Year with respect to the Percentage Rent, if any, due for the immediately preceding Lease Year.

(c) Statement of Gross Sales

On or before February 15th following the end of each Lease Year during the Term, Tenant shall deliver to Landlord a complete and correct statement showing in reasonable detail all Gross Sales for such prior Lease Year, which statement shall be audited, if available, but otherwise signed by an officer or authorized agent of Tenant certifying it to be true and accurate. Simultaneously with the delivery of such statement of Gross Sales for such Lease Year, Tenant shall pay to Landlord the Percentage Rent, if any, required to be paid hereunder. Within fifteen (15) days after Tenant's income tax returns are filed, the preparer of Tenant's income tax return shall furnish Landlord with a signed statement certifying the amount of Gross Sales report in Tenant's income tax returns attributable to the Premises.

(d) Records of Gross Sales

Tenant shall keep complete and proper books of account and other records pertaining to Gross Sales on a monthly basis. The books and records shall be kept or made available at a location reasonably accessible to Landlord, who may inspect all such books and records at all reasonable times to verify Tenant's Gross Sales. Tenant shall utilize point of sales systems to record all Gross Sales. Within two (2) years after each statement of Gross Sales for a Lease Year is due, whether or not it has been submitted or whether or not Landlord has accepted a deficiency payment or refunded an excess, Landlord may request an audit of Tenant's Gross Sales by an independent certified public accountant chosen by Tenant from a list of not fewer than three (3) submitted by Landlord in connection with the request. If Tenant does not make the choice within fifteen (15) days, Landlord may do so. The auditor shall have access to all Tenant's books and records and shall take such steps as the auditor deems necessary to complete the audit. The auditor's report shall be final and binding upon Landlord and Tenant and payments required to make adjustments in Percentage Rent to conform to the report shall be made within ten (10) business days after receipt of the report. If the Gross Sales for any Lease Year audited shall be found by the auditor to be understated by more than three percent (3%), Tenant shall immediately pay Landlord the cost of such audit; otherwise, the cost of such audit shall be paid by Landlord.

(e) Definition of Gross Sales

The term "Gross Sales" shall include all money and things of value received by, or paid to, Tenant or to others for Tenant's use and benefit, and all credit extended by Tenant in connection with the business conducted by it on the Premises and including sales of goods or services by any concessionaire, subtenant, or licensee and sales through vending devices; provided, however, with respect to any lottery sales, Gross Sales shall include only the net proceeds retained by Tenant with respect to such lottery sales. Gross Sales shall exclude the following: (a) the selling price of all merchandise returned by customers where the sale was originally included in Gross Sales and accepted for full credit or the amount of discounts and allowances made thereon; (b) cash refunds made to customers in the ordinary course of business, where the sale was originally included in Gross Sales; (c) separately stated interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price; (d) receipts from public telephones; (e) sales taxes, so-called luxury taxes, value added or consumers' excise taxes, gross receipts taxes and other similar or dissimilar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services and collected from customers; (f) sales of fixtures, equipment or property which are not stock in trade; (g) proceeds from the issuance of gift certificates, gift cards, or like vouchers, until such time as the same shall have been redeemed at the Premises; (h) proceeds of insurance received by Tenant; (i) proceeds of bulk and/or inter-company transfers of food and/or inventory so long as such transfer is made solely for the convenient operation of Tenant's business and not for the purpose of depriving Landlord of a sale that would be included in Gross Sales; (j) proceeds from the sale of used furniture, fixtures or restaurant

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equipment; (k) any amounts received as tips, service charges or gratuities except the amount of such tips reported by Tenant to the IRS; (l) coupon or other sales in which the menu item is rung up but no dollars are actually received; (m) value of food and beverages furnished to employees of Tenant and discounted portion of receipts from sales made to employees of Tenant; (n) promotional discounts; (o) quality control sales; (p) bad debts (including walk outs and credit card returns) that were originally included in Gross Sales; (q) value of donations and charitable contributions, and (r) income, earnings and other returns on investments. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from Gross Sales in any event whatever.

(f) No Partnership Created

Landlord is not by virtue of this Section 2 a partner or joint venturer with Tenant in connection with the business carried on under this Lease, and shall have no obligation with respect to Tenant's debts or other liabilities.

(g) General

All references to "Rent" or "Rental" in this Lease shall mean Base Rent, Percentage Rent, Additional Rent, and all other payments required of Tenant under this Lease, unless otherwise expressly specified, and all payments required by Tenant under this Lease shall be deemed "Rent."

(h) Place of Payment

Tenant shall pay Rent and other amounts required to be paid by Tenant hereunder to Landlord at the address for Landlord set forth on the Summary of Fundamental Provisions of this Lease, or at such other place as Landlord may from time to time designate in writing.

3. SECURITY DEPOSIT

Upon the later of execution of this Lease and Tenant's receipt of Landlord's notice of termination of the GSR Lease and Tenant's receipt of the Commencement Letter, Tenant shall pay to Landlord a sum equal to the amount set forth in Section Q of the Summary of Fundamental Lease Provisions. Landlord shall be entitled to apply the Security Deposit to pay the cost of repairing any damage caused by Tenant, or performing any obligation which Tenant fails to perform within the time required by this Lease, but such application by Landlord shall not waive Landlord's other remedies nor be the exclusive remedy for Tenant's default. Such security deposit shall be returned to Tenant within thirty (30) days after the expiration of this Lease, provided Tenant has fully and faithfully carried out all of Tenant's obligations hereunder, including the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Lease. However, Landlord, at its option, may apply such sum on account of the payment of the last month's Base Rent or other unpaid Tenant obligations, in which latter event, Tenant shall replace any such sum applied by Landlord immediately upon notice from Landlord of such requirement. Such sum may be commingled with other funds of Landlord and shall not bear interest. In the event of a sale of the Glendoveer Property, Landlord shall have the right to transfer the security deposit to the purchaser to be held under the terms of this Lease, and Landlord shall thereupon be released from all liability for the return of the security deposit. Tenant agrees to look solely to the new landlord for the return of the security deposit.

4. ADDITIONAL RENT

(a) Property Taxes

In addition to Base Rent, Tenant shall pay 100% of all real property taxes and assessments levied, assessed, or imposed during the Term upon the Premises as set forth in Section M in the Summary of Fundamental Lease Provisions ("Taxes"). Tenant shall pay these Taxes directly to the Multnomah County Tax Assessor when due. If the property tax bill for the Premises is not in Tenant's name, Landlord shall forward a copy of such property tax bill to Tenant promptly upon Landlord's receipt thereof. If, during the Term, the voters of the state in which the Premises are located or the state legislature enacts a real property tax limitation, then any substitute taxes, in any name or form, that may be adopted to replace or supplement real property taxes, shall be added to Taxes for purposes of this Section 4(a). Should there be in effect during the Term any law, statute, or ordinance that levies, assesses, or imposes any tax (other than federal or state income tax) upon rents, Tenant shall pay such taxes as may be



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attributable to the Rents under this Lease or shall reimburse Landlord for any such taxes paid by Landlord within ten (10) business days after Landlord bills Tenant for the same. Notwithstanding the foregoing, Tenant shall have the right during the Term to contest Taxes and shall be entitled if applicable to any rebate or reduction as a result of such action. Landlord agrees to cooperate, at no cost to Landlord, with Tenant in the contesting of any such Taxes but nothing herein shall relieve Tenant from paying for Taxes associated with the Premises.

(b) Payment of Taxes

If Landlord elects to pay any of Taxes directly and pass along such expenses to Tenant, Landlord shall notify Tenant of Tenant's required estimated monthly payments of Taxes. Beginning on the first day of the month following such notice, and continuing throughout the Term, Tenant shall make such monthly payments on or before the first (1st) day of each calendar month. Landlord may, from time to time, by written notice to Tenant, change the estimated monthly amount to be paid. No interest or earnings shall be payable by Landlord to Tenant on any amount paid under this Section 4, and Landlord may commingle such payments with other funds of Landlord. Landlord shall, within ninety (90) days after the close of each calendar year or as soon thereafter as is practicable, deliver to Tenant a written statement setting forth the actual Taxes for the prior year together with a computation of the charge or credit to Tenant of any difference between the actual cost and the estimated cost paid by Tenant for such period; and any such difference shall be applied to amounts subsequently due from Tenant to Landlord, or if no such sums are or will be owed, then such sums shall be paid or reimbursed, as applicable, within ten (10) business days after Landlord gives Tenant notice thereof. If Tenant has any objections to the annual statement made by Landlord, such objections shall be made in writing given to Landlord within thirty (30) days after the statement is submitted to Tenant. If no objection is made within such time period, the annual statement shall be conclusive and binding on Tenant. If Tenant desires to review any of Landlord's records pertaining to Taxes, Tenant may do so after reasonable prior notice given to Landlord, but no more often than once during any calendar year. Such review shall take place where such records are kept, and shall be conducted by a certified public accountant chosen by Tenant subject to Landlord's prior written approval, which shall not be unreasonably withheld. Tenant shall pay all costs of such review including without limitation reimbursement for time incurred by Landlord's representatives and photocopy charges.

5. INSURANCE; INDEMNITY**(a) Tenant Casualty Insurance**

During the Term, Tenant shall maintain in full force a policy or policies of standard multi-peril insurance covering the Building and other improvements situated on the Premises for the perils of fire, lightning, windstorm, and other perils commonly covered in such policies in the amount of \$2,500,000 with respect to the Building and in the amount of \$1,000,000 with respect to the Existing Equipment and Tenant's Equipment collectively. Landlord shall be named as a loss payee on such insurance with respect to the Building and with respect to the Existing Equipment.

(b) Tenant's Liability Insurance

Tenant shall at its own expense during the Term carry in full force and effect (i) the most recently approved ISO commercial general liability insurance policy, or its equivalent, written on an occurrence basis, with limits not less than One Million Dollars (\$1,000,000) per occurrence. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, and premises. Tenant's coverage will be primary as respects Landlord; (ii) a business automobile liability insurance covering owned, non-owned, and hired vehicles with a limit of not less than One Million Dollars (\$1,000,000); (iii) workers' compensation insurance meeting Oregon statutory requirements including employer's liability with limits not less than One Million Dollars (\$1,000,000) per accident or disease; (iv) liquor liability insurance with a limit of One Million Dollars (\$1,000,000) per claim; and (v) Two Million Dollars (\$2,000,000) excess or umbrella insurance bringing the total per claim limit for auto, commercial general liability, and liquor liability insurance to Three Million Dollars (\$3,000,000). Landlord, its elected officials, departments, employees, and agents shall be named as additional insureds on the commercial general liability, automobile, liquor and excess policies. Tenant shall provide to Landlord thirty (30) days notice of any material change or policy cancellation. On or before the Commencement Date, Tenant shall furnish

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Landlord with a certificate of insurance complying with the requirements of this Section 5. Tenant shall provide updated certificates of insurance annually. Tenant shall place all insurance with an insurer suitable to Landlord. Unless otherwise authorized in writing, a reasonably suitable insurance carrier will be licensed in the state of Oregon and maintain an AM Best (or equivalent) rating for Financial Strength of A- (or higher) and a Financial Size Category of VII (or higher) for the Term.

(c) Tenant's Indemnity

Tenant shall indemnify, defend, and save harmless Landlord from any and all liability, damage, expenses, attorneys' fees, causes of actions, suits, claims, or judgments, arising out of or connected with (i) the use, occupancy, management or control by Tenant or Tenant's agents, invitees, employees or contractors of the Premises, and (ii) any failure of Tenant to comply with the terms of this Lease; provided, however, that Tenant shall not be liable for claims to the extent caused by the negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors. Tenant shall, at its own cost and expense, defend any and all suits that may be brought against Landlord either alone or in conjunction with others upon any such above-mentioned cause or claim, and shall satisfy, pay, and discharge any and all settlements paid by or judgments that may be entered against Landlord, regardless of whether a lawsuit is actually filed.

6. USE OF PREMISES

The Premises shall be used for the purposes set forth in Section G of the Summary of Fundamental Lease Provisions and for no other purpose without Landlord's written consent, which may be withheld in Landlord's sole discretion. In connection with the use of Premises, Tenant shall, at Tenant's sole cost and expense, except as specifically provided otherwise herein:

(a) Conform to all applicable laws, statutes, rules, ordinances, orders, regulations, and requirements of any public authority ("Laws") affecting Tenant's restaurant use of the Premises and correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's restaurant use of the Premises, unless such failure is due to Landlord's default in the performance of the agreements set forth in this Lease to be kept and performed by Landlord. Without limiting the generality of the foregoing, Tenant, unless otherwise set forth in this Lease, shall comply with the Americans with Disabilities Act as it applies to Tenant's restaurant use of the Premises for which Tenant has responsibility under such Act and all obligations pertaining to asbestos as required by the Occupational Safety and Health Administration (OSHA) applicable to the Premises and to Tenant's employees. In no event shall Tenant have any obligation to make any capital improvements to the Premises hereunder;

(b) Refrain from any activity that would be unreasonably offensive to Landlord, to other tenants in any buildings situated on the Glendoveer Property, or to owners or users of the adjoining premises, or that would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any unreasonable noise or odor given Tenant's permitted use to escape or be emitted from the Premises nor permit the use of flashing (strobe) lights nor permit the sale or display of offensive materials as reasonably determined by Landlord;

(c) Refrain from loading the floors, electrical systems, plumbing systems, or heating, ventilating and air conditioning systems ("HVAC"), beyond the point considered safe by a competent engineer or architect selected by Landlord and refrain from using electrical, water, sewer, HVAC, and plumbing systems in any harmful way. If Landlord employs an engineer, architect, electrical, or other consultant to determine whether Tenant's use of the Premises is in violation of this Section 6(c), Tenant shall pay the reasonable costs incurred in connection with that employment. Tenant shall use grease traps, or other drain protection devices as needed to avoid such harmful use;

(d) Not permit any pets or other animals in the Premises except for Seeing Eye dogs or other service animals;



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(e) Except for Tenant's existing signage in place at the Commencement Date which Landlord hereby approves, refrain from making any marks on or attaching any sign, insignia, antenna, window covering, aerial, or other device to the exterior or interior walls, windows, or roof of the Building or on the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld, condition or delayed. Notwithstanding the foregoing, Landlord may elect to replace Tenant's existing signage, at Landlord's sole cost, subject to Tenant's approval of the new signs, not to be unreasonably withheld, conditioned, or delayed. With regard to any new signage proposed by Tenant, Landlord need not consent to any sign that fails to conform to the design concept of the buildings situated on the Glendoveer Property, and all policies and procedures as established by Landlord. Prior to installing any signs, Tenant shall submit detailed color drawings to Landlord for approval indicating the location, size, layout, design, and color of proposed sign, including all lettering and graphics. Electrical service to all signs shall be at Tenant's sole expense. Any existing free standing or monument signs at the Commencement Date of the Lease are allowed, and any new or future signs are subject to the provisions first set forth above. Notwithstanding Landlord's consent to any signs, Tenant shall (i) comply with all Laws and obtain any necessary permits and governmental approvals related to such signs at its own cost and expense, and (ii) within thirty (30) days after Lease expiration or earlier termination, remove all such signs and repair any damage to the Premises caused thereby, at Tenant's own cost and expense;

(f) Comply with any reasonable rules respecting the use of the Premises, which may be promulgated by Landlord from time to time and communicated to Tenant in writing, provided that such rules do not materially increase Tenant's operating costs or materially increase Tenant's obligations under this Lease;

(g) Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading and unloading using large trucks, to the Building by 7:00-11:00 am and 2:00 to 4:00 pm each day;

(h) Comply with any no smoking (and other health related) policies and procedures established by any Law;

(i) Recognize that it is in the interest of both Tenant and Landlord to have regulated hours of business, Tenant shall keep the Premises open for business and cause Tenant's business to be conducted therein during those days and hours as is customary for businesses of like character in the city or county in which the Premises are situated, but in any event 5 days a week for lunch and 7 days a week for dinner except for nationally recognized and legal holidays at hours and days deemed appropriate by Tenant for the time of year and customer demand (and closures from time to time for remodeling not to exceed forty-five (45) days);

(j) Not permit the use of any part of the Premises for a second-hand store, an auction, distress, fire sale, bankruptcy, or going-out-of-business sale or the like;

(k) Not commit or suffer any harm to the Premises, including without limitation, the improvements thereon or any part thereof; and Tenant shall keep the Premises in a neat, clean, sanitary, and orderly condition;

(l) Refrain from any use of any area on the Glendoveer Property that is outside the Premises, unless such use is specifically permitted in this Lease or otherwise in writing by Landlord in advance;

(m) Not generate, release, store, or deposit on the Premises any environmentally hazardous or toxic substances, materials, wastes, pollutants, oils, or contaminants, as defined or regulated by any federal, state, or local law or regulation or any other Law (collectively, "Hazardous Substances"), except that Tenant may have and use small quantities of Hazardous Substances on the Premises as required in the ordinary course of Tenant's business. Tenant shall indemnify, defend, and hold harmless Landlord

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from and against any and all claims, losses, damages, response costs, and expenses of any nature whatsoever (including without limitation attorneys', experts', and paralegals' fees) arising out of or in any way related to the generation, release, storage, or deposit of Hazardous Substances on the Premises or on Landlord's property by Tenant in violation of applicable laws;

(n) Not allow or permit any conduct or omission at the Premises, or anywhere on Landlord's property, that will promote or allow the production or growth of mold, spores, fungus, or any other similar organism, and shall indemnify and hold Landlord harmless from any claim, demand, cost, and expense (including attorney fees) arising from or caused by Tenant's failure to strictly comply with its obligations under this provision; and

(o) Comply with the requirements of all operation and easement agreements and all other agreements and requirements of record on the Property to the extent that Tenant has been provided copies of such agreements and requirements of record on the Property prior to the date Tenant executes this Lease.

7. TENANT IMPROVEMENTS AND ALTERATIONS

Subject to Landlord's obligations set forth in Exhibit E (the "Work Agreement"), Tenant accepts the Premises AS IS in their condition as of the Commencement Date. Tenant shall make no improvements or alterations to the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, no Landlord approval shall be required for minor non-structural alterations but Tenant shall notify Landlord prior to commencing such minor, non-structural alterations. If any improvements or alterations to the Premises by Tenant or any other work on the Premises by Tenant causes the need to comply with any Laws on the Premises, including without limitation, the Americans with Disabilities Act or regulations pertaining to earthquake codes, Tenant shall pay the cost thereof, as well, with Landlord responsible for any areas outside the Premises. Prior to the commencement of any work by Tenant that requires a building permit, Tenant shall first submit the following to Landlord and obtain Landlord's written consent to all of the following, which consent shall not be unreasonably withheld, conditioned or delayed: Tenant's plans and specifications; Tenant's estimated costs; and the names of all of Tenant's contractors and subcontractors. All work performed by Tenant shall be done in strict compliance with all applicable building, fire, sanitary, and safety codes, and other Laws, and Tenant shall secure all necessary permits for the same. Tenant shall keep the Premises free from all liens in connection with any such work (or bond over the same). Landlord or Landlord's agents shall have the right at all reasonable times to inspect the quality and progress of such work, and Tenant shall notify and keep Landlord updated regarding the schedule for such work. All improvements, alterations, and any other work performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed, except for Tenant's trade fixtures, and may not be removed at the expiration of this Lease unless the applicable Landlord's consent specifically provides otherwise. Notwithstanding Landlord's consent to improvements or alterations by Tenant, all such improvements, alterations, or other work to be performed by Tenant shall be at the sole cost and expense of Tenant. If Tenant elects to remodel the Premises during any 5 year increment of the Term or any extended term, Tenant with thirty (30) days prior written notice to Landlord shall be entitled to close the restaurant once during such 5 year period for such remodel. Provided Tenant timely delivers the required notice to Landlord, Tenant shall be entitled to an abatement of rent (for up to a 45 day period) one time during any 5 year increment, for such period of time that the restaurant is actually closed for remodeling by Tenant.

8. REPAIRS AND MAINTENANCE

(a) Landlord's Responsibilities

The following shall be the responsibility of Landlord, at Landlord's sole cost without reimbursement by Tenant except as expressly set forth in this Section 8(a):



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i. Structural repairs and maintenance and repairs necessitated by structural disrepair or defects, including, without limitation, window casement failures due to age or window thermaseal failure.

ii. Repair, replacement and maintenance of the exterior walls, roof, gutters, downspouts, and foundation of the Building. This shall include maintenance of the operating condition of exterior doors, but shall not include maintenance of the exterior windows or replacement of glass (except as set forth in 8(a)(i), above), nor maintenance of the storefront, which are Tenant's responsibility.

iii. Repair of interior walls, ceilings, doors, windows (interior and exterior), floors, and floor coverings when such repairs are made necessary because of failure of Landlord to keep the structure in repair as above provided in this Section 8(a).

iv. Replacement of the HVAC units on an as needed basis and/or any repairs to individual units in excess of \$250 per unit per calendar year.

v. 50% of the cost of replacement or repair of any existing electrical (including electrical panels) and plumbing behind the walls, above the ceiling or below the floors, including, without limitation, plumbing and drain lines.

vi. All structural surface and subsurface repairs and seal coating of the parking areas, pedestrian walk ways and drive aisles located on the Glendoveer Property, including, without limitation, repairs or replacement of sidewalks and curbing.

vii. On a commercially reasonable schedule, all maintenance, repair and replacement of irrigation, plant materials and lawns located on the Glendoveer Property.

viii. All underground plumbing/sewer/storm water systems serving the Premises from the street to the Building, including any required grease traps or interceptors located outside of the Building.

ix. All other repairs, maintenance, and replacements to the Building that Tenant is not expressly required to make under Section (b), below 8(a), to the extent such items are capital improvements, in which event Tenant shall repay Landlord the cost of such improvements with a five percent (5%) interest factor by way of increased Rent (on a straight line basis) over the remainder of the initial Term or any Extended Term (as defined in Exhibit C) of the Lease.

(b) Tenant's Responsibilities

Subject to Landlord's responsibilities set forth in Section 8(a) above, the following shall be the responsibility of Tenant at its sole cost without reimbursement from Landlord:

i. The interior of the Building including any interior decorating;

ii. Subject to Section 12, below, any repairs and replacements necessitated by the negligence of Tenant, its agents, and invitees;

iii. Washing windows on the Building, inside and out;

iv. Maintenance of the existing HVAC units twice a year (or additional, if needed) (and repairs but capped at \$250 for repair per unit per calendar year), sprinkler systems, if any;



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v. Maintenance and repair of the interior walls and floor coverings (both hard surfaces and carpeting);

vi. Any repairs or alterations required under Tenant's obligation to comply with all applicable Laws as set forth in this Lease;

vii. All other repairs, maintenance, and replacements to the Building which Landlord is not expressly required to make under Section 8(a), above;

viii. The replacement of all glass that may be broken or cracked during the Term with glass of as good or better quality than that in use at the commencement of the Term, and the storefront. All Tenant's work shall be in full compliance with then current building code and other governmental requirements;

ix. Tenant shall contract with a qualified pest extermination company for regular extermination services to keep the Premises free of pests, vermin, and rodents; and

x. On a commercially reasonable schedule, snow removal, sweeping and striping of the parking areas included in the Premises.

(c) Inspections

Upon reasonable prior written notice or by email, Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair or as required by Landlord's insurer. Whether or not such inspection is made, the duty of Landlord to make repairs as outlined above in any area in Tenant's possession and control shall not mature until a reasonable time after Landlord has received from Tenant written notice of the necessity of repairs, except in the event emergency repairs may be required and in such event Tenant shall attempt to give Landlord immediate notice considering the circumstances.

(d) Landlord's Work

All repairs, replacements, alterations, or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Tenant. Tenant shall have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's performance of repairs and maintenance pursuant to this Section 8, except as expressly set forth in this Section 8(d), as follows: If such work or Landlord's Work as set forth in **Exhibit E** occurs in a manner that Tenant is unable to conduct business for longer than two (2) days (as determined by Tenant in its business judgment), Tenant shall be entitled to a day for day rent abatement for each day Tenant is unable to conduct business in the Premises. Landlord shall have no liability for failure to perform required maintenance and repair, unless written notice of such maintenance or repair is given by Tenant and Landlord fails to commence efforts to remedy the problem in a reasonable time and manner. Landlord shall have the right to erect scaffolding and other apparatus necessary for the purpose of making repairs or alterations to the Premises. Work may be done during normal business hours provided that Landlord shall endeavor to minimize any impact to Tenant's business. Subject to Landlord's compliance with the provisions of this Section 8(d), Tenant shall have no claim against Landlord for any interruption or reduction of services or interference with Tenant's occupancy caused by Landlord's maintenance and repair, and no such interruption or reduction shall be construed as a constructive or other eviction of Tenant.

9. LIENS; TENANT'S TAXES

Tenant shall keep the Premises free from all liens, including mechanic's liens, arising from any act or omission of Tenant or those claiming under Tenant; provided, Tenant shall have the right to bond over any such liens. Landlord shall have the right to post and maintain on the Premises or the Building such notices of non-responsibility as are provided for under the lien laws of the state in which the Premises are located. Tenant shall be responsible for and shall pay when due all taxes assessed during the Term



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against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.

10. UTILITIES AND SERVICES

Tenant shall pay promptly for its proportionate share as set forth in Section M in the Summary of Fundamental Lease Provisions of this Lease for all water, gas and electrical services, including heat and light, garbage collection, recycling, and all other facilities and utility services used by Tenant or provided to the Premises during the Term. To the extent Tenant is not paying such utilities directly to such utility provider, Landlord shall invoice Tenant for Tenant's proportionate share every six (6) months, which invoice shall include copies of the bills for such services applicable to the Glendoveer Property. Tenant shall pay to Landlord the amount set forth on Landlord's invoice within thirty (30) days of receipt. As of the Commencement Date, Tenant is responsible for its proportionate share of only those costs set forth in Section M in the Summary of Fundamental Lease Provisions. If the heating and air-conditioning systems or any other utility service is not on separate meters, Tenant shall pay its proportionate share of such charges as provided in the Summary of Fundamental Lease Provisions of this Lease and Section 4, above. Tenant shall arrange for regular and prompt pickup of trash and garbage, and shall store such trash and garbage in only those areas designated by Landlord. Landlord shall not be liable or responsible for any interruption of utility service to the Premises and any such interruption shall not entitle Tenant to any abatement of rent, unless such interruption is caused solely by the negligence or willful misconduct of Landlord or Landlord's agents, employees, or contractors.

11. ICE, SNOW, AND DEBRIS

Tenant shall keep the walks (excluding the sidewalk fronting NE Glisan Street) in front of the Building and on the Premises free and clear of ice, snow, rubbish, debris, and obstructions when the Premises are open for business. Tenant's obligations under this Section 11 shall be performed at Tenant's cost and expense. Landlord reserves the right to cause the removal of ice, snow, debris and obstruction from the area in front of the Premises and Tenant shall pay the cost thereof within ten (10) business days after billing therefor.

12. WAIVER OF SUBROGATION

Neither party shall be liable to the other for any loss or damage, above the insured's deductible (which deductible shall not exceed \$1,000), caused by fire or any of the risks enumerated in the standard multi-peril insurance policy required of Tenant in this Lease, including sprinkler leakage insurance if the Building has sprinklers, to the extent that any such insurance actually pays any such loss or damage. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants, or employees.

13. INJURY TO TENANT'S PROPERTY

Landlord shall not be liable for any injury to the goods, stock, merchandise, or any other property of Tenant or to any person in or upon the Premises or to the leasehold improvements in the Premises resulting from fire or collapse of the Building or any portion thereof or any other cause, including but not limited to damage by water or gas, or by reason of any electrical apparatus in or about the Premises. Tenant shall carry adequate insurance coverage at its sole cost and expense to cover the risks described in this section.

14. DAMAGE OR DESTRUCTION

(a) Partial Destruction

If the Premises shall be partially damaged by fire or other cause, and Section 14(b) below does not apply, the damages to the Premises shall be repaired by Landlord, and all Base Rent until such repair shall be made shall be apportioned according to the part of the Premises that is usable by Tenant, except when such damage occurs because of the fault of Tenant, Tenant's agents, employees, contractors, or invitees. The repairs shall be accomplished with all reasonable dispatch. Landlord shall bear the cost of such



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repairs using the proceed of insurance policy obtained by Tenant pursuant to the terms and provisions of this Lease.

(b) Substantial Damage

If the Building is fifty percent (50%) or more destroyed (based on the insurance value of the Building) during the Term by any cause, Landlord or Tenant may elect to terminate the Lease as of the date of damage or destruction by notice given to the other in writing not more than sixty (60) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. In the absence of an election to terminate, Landlord shall proceed to restore the Building, if damaged, to substantially the same form as prior to the damage or destruction, so as to provide Tenant usable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Landlord. From the date of damage until the Building is restored or repaired, Base Rent shall be abated or apportioned according to the part of the Building usable by Tenant.

(c) Restoration

If the Building is to be restored by Landlord as above provided in this Section 14, Tenant, at its expense, shall be responsible for the repair and restoration of all items that were initially installed at the expense of Tenant (whether the work was done by Landlord or Tenant) or for which an allowance was given by Landlord to Tenant, together with Tenant's stock in trade, trade fixtures, furnishings, and equipment; and Tenant shall commence the installation of the same promptly upon delivery to it of possession of the Building and Tenant shall diligently prosecute such installation to completion. Landlord shall not be required to replace any of the Existing Equipment.

15. EMINENT DOMAIN**(a) Partial Taking**

If a portion of the Premises is condemned and neither Section 15(b) nor Section 15(c) apply, the Lease shall continue in effect. Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to the condition as comparable as reasonably practicable to that existing at the time of condemnation. Base Rent shall be abated to the extent that the Premises are un-tenantable during the period of alteration and repair. After the date on which title vests in the condemning authority, Base Rent shall be reduced commensurately with the reduction in the objective value of the Premises as an economic unit on account of the partial taking. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation. Tenant shall be free to make a claim for its damages so long as such claim does not interfere with or reduce Landlord's claim or award.

(b) Substantial Taking of the Property

If a condemning authority takes any substantial part of the Glendoveer Property, the Lease shall, at the option of Tenant, terminate as of the date title vests in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation. Tenant shall be free to make a claim for its damages so long as such claim does not interfere with or reduce Landlord's claim or award.

(c) Substantial Taking of Premises

If a condemning authority takes all the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for Tenant's use, Tenant shall have the option to terminate the Lease upon written notice to Landlord given within sixty (60) days of Tenant's receipt of notice of the taking. In such event, the Lease shall terminate as of the date title vests in the condemning authority. Landlord shall be entitled to all the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation. Tenant shall be free to make a separate claim for its moving expenses and lost trade fixtures so long as such claim does not interfere with or reduce Landlord's claim or award.

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(d) Definition

Sale of all or any part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purpose of the Lease as a taking by condemnation.

16. BANKRUPTCY

Subject to Section 17, the Lease shall not be assigned or transferred voluntarily or involuntarily by operation of law. It may, at the option of Landlord, be terminated, if Tenant be adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or files or is a party to the filing of a petition in bankruptcy, or commits an act of bankruptcy, or in case a receiver or trustee is appointed to take charge of any of the assets of Tenant or sublessees or assignees in or on the Premises, and such receiver or trustee is not removed within thirty (30) days after the date of his appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Tenant or any sublessees or assignee hereunder, unless such property or reasonable replacement therefor be installed on the Premises. To the extent permitted by law, this Lease or any sublease hereunder shall not be considered as an asset of a debtor-in-possession, or an asset in bankruptcy, insolvency, receivership, or other judicial proceedings. This Lease shall be considered a lease of real property in a shopping center within the meaning of Section 365(b)(3) of the U.S. Bankruptcy Code.

17. DEFAULT

The following shall be events of default:

(a) Failure of Tenant to pay any Rent when due, or failure of Tenant to pay any other charge required under this Lease, within ten (10) business days after written notice that such Rent or other charge is past due. Notwithstanding the foregoing, Landlord shall not be obligated to give Tenant such written notice after Tenant's second (2nd) failure to pay Rent when due in any 12-month period, and at Landlord's option, the third (3rd) such failure to pay Rent when due in any 12-month period shall be an automatic event of default, without notice or opportunity to cure.

(b) Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than the failures described in Section 17a) above) within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the thirty (30)-day period, this provision shall be complied with if Tenant begins correction of the default within the thirty (30)-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. If Tenant's breach is material, Landlord shall not be obligated to give written notice for the same type of material default more than three times in any 12-month period; at Landlord's option, a failure to perform a material obligation of this Lease after the third (3rd) notice in any 12-month period shall be an automatic event of default, without notice or any opportunity to cure.

(c) The abandonment of the Premises by Tenant or the failure of Tenant for thirty (30) days or more to occupy the Premises for one or more of the designated purposes of this Lease, unless such failure is excused under other provisions of this Lease.

(d) The bankruptcy or insolvency of Tenant or the occurrence of other acts specified in Section 16 of this Lease that give Landlord the option to terminate.

(e) The assignment or subletting or purported assignment or subletting of Tenant's interest under this Lease in violation of Section 20.

18. REMEDIES ON DEFAULT

In the event of a default, Landlord may, at Landlord's option, exercise any one or more of the rights and remedies available to a landlord in the state in which the Premises are located to redress such default,



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consecutively or concurrently (but subject to Landlord’s obligation to mitigate its damages), including the following:

(a) Landlord may elect to terminate Tenant’s right to possession of the Premises or any portion thereof by written notice to Tenant. Following such notice, Landlord may re-enter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Landlord shall have the right to retain the personal property belonging to Tenant that is on the Premises at the time of re-entry, or the right to such other security interest therein as the law may permit, to secure all sums due or that become due to Landlord under this Lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise as provided by law.

(b) Following re-entry by Landlord, Landlord may re-let the Premises for a term longer or shorter than the Term and upon any reasonable terms, including the granting of rent concessions to the new tenant. Landlord may alter, refurbish, or otherwise change the character or use of the Premises in connection with such re-letting. Landlord shall not be required to re-let for any use or purpose that Landlord may reasonably consider injurious to its property or to any tenant Landlord may reasonably consider objectionable. No such re-letting by Landlord following a default by Tenant shall be construed as an acceptance of the surrender of the Premises. If rent received upon such re-letting exceeds the Rent received under this Lease, Tenant shall have no claim to the excess.

(c) Landlord shall have the right to recover from Tenant the following damages:

i. All unpaid or other charges for the period prior to re-entry, plus interest at the greater of ten percent (10%) per annum or a rate equal to five (5) percentage points in excess of the discount rate, including any surcharge on the discount rate, on ninety (90)-day commercial paper declared by the Federal Reserve Bank in the Federal Reserve District in which Portland, Oregon, is located on the date the charge was due (the “Interest Rate”).

ii. An amount equal to the Rent lost during any period during which the Premises are not relet, if Landlord uses reasonable efforts to re-let the Premises. If Landlord lists the Premises with a real estate broker experienced in leasing commercial property in the metropolitan area in which the Premises are located, such listing shall constitute the taking of reasonable efforts to relet the Premises.

iii. All costs incurred in re-letting or attempting to relet the Premises, including but without limitation, the cost of clean-up and repair in preparation for a new tenant, including any improvements to the Premises and the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions and advertising expenses.

iv. The difference between the Rent reserved under this Lease and the amount actually received by Landlord after re-letting, as such amounts accrue.

v. Reasonable attorney fees and legal expenses incurred in connection with the default, whether or not any litigation is commenced.

(d) Landlord may sue periodically to recover damages as they accrue throughout the Term and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Landlord may obtain a decree of specific performance requiring Tenant to pay the damages stated in Section 18c) above as they accrue. Alternatively, Landlord may elect in any one action to recover accrued damages, plus damages attributable to the remaining Term equal to the



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difference between the Rent under this Lease and the reasonable rental value of the Premises for the remainder of the Term.

(e) In the event Tenant remains in possession following default and Landlord does not elect to re-enter, Landlord may recover all back Rent and other charges, and shall have the right to cure any nonmonetary default and recover the cost of such cure from Tenant, plus interest from the date of expenditure at the Interest Rate. In addition, Landlord shall be entitled to recover attorney fees reasonably incurred in connection with the default, whether or not litigation is commenced. Landlord may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

(f) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another remedy.

19. SURRENDER AT EXPIRATION

(a) Condition of Premises

Upon expiration of the Term or earlier termination, Tenant shall deliver all keys to Landlord and surrender the Premises in good condition and broom clean. Improvements, alterations, wiring, cables, or conduit constructed by or for Tenant shall not be removed or restored to the original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 19 shall be subject to the provisions of Section 14 relating to damages or destruction.

(b) Fixtures

i. All fixtures affixed to the Premises during the Term shall become the property of Landlord. Decorations, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, drapes, blinds, and trade fixtures and equipment shall remain the property of Tenant if placed on the Premises by Tenant.

ii. Tenant shall remove its furnishings, furniture, and trade fixtures and shall repair any damage resulting from the removal. If Tenant fails to do so, this shall be an abandonment of the property, and following ten (10) days' written notice, Landlord may remove or dispose of it in any manner without liability. Tenant shall be liable to Landlord for the reasonable cost of removal and transportation to storage, with interest on all such expenses from the date of expenditure at the Interest Rate.

iii. The time for removal of any property or fixtures that Tenant is required to remove from the Premises upon termination shall be as follows:

(1) On or before the date the Lease terminates because of expiration of the Term or because of a default under Section 17.

(2) Within ten (10) days after written notice from Landlord requiring such removal.

(c) Holdover

If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all the provisions of this Lease, except the provision for the Term, and except the Base Rent provided herein shall be 150% of the Base Rent being paid by Tenant prior to the holdover during the period of the month-to-month tenancy. Failure of Tenant to

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remove furniture, furnishings or trade fixtures or to repair any damage caused by such removal that Tenant is required to remove and repair under this Lease shall constitute a failure to vacate to which this Section 19(c) shall apply if the property not removed or repaired will interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose, including preparation for a new tenant.

20. ASSIGNMENT AND SUBLETTING**(a) Landlord's Consent**

Tenant shall not, either voluntarily or by operation of law, sell, assign, or transfer this Lease or sublet the Premises or any part thereof, or assign any right to use the Premises or any part thereof (each a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed and any attempt to do so without such prior written consent shall be void and, at Landlord's option, shall terminate this Lease. Notwithstanding anything to the contrary in this Section 20, Tenant shall be allowed to Transfer to Peterson family members without consent, if such members provide evidence reasonably acceptable to Landlord that they are able to obtain proper licensing for operation of the bar and restaurant. Any such Transfer to family members shall not be effective until the transferee has expressly assumed and agreed in writing to be bound by and directly responsible for all Tenant's obligations hereunder. If Tenant requests Landlord's consent to any Transfer, other than to Peterson family members, Tenant shall promptly provide Landlord with a copy of the proposed agreement between Tenant and its proposed transferee and with all such other information concerning the business and financial affairs of such proposed transferee as Landlord may request. It shall be reasonable for Landlord to withhold its consent unless the proposed transferee: (i) is reasonably satisfactory to Landlord as to credit, managerial experience, net worth, character, and business or professional standing; (ii) will not have a negative effect, in Landlord's reasonable discretion, on the image of the Glendoveer Property; (iii) is unlikely, in Landlord's reasonable discretion, to materially diminish the Percentage Rent payable under this Lease; (iv) will occupy the Premises solely for the use authorized under this Lease; and (v) expressly assumes and agrees in writing to be bound by and directly responsible for all Tenant's obligations hereunder. Landlord's consent to any such Transfer shall in no event release Tenant from its liabilities or obligations hereunder during the initial Term of this Lease, nor relieve Tenant from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of rent from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or a consent to any Transfer. No modification, amendment, assignment, or sublease shall release Tenant, any assignee, or any guarantor of its liabilities or obligations under this Lease; provided, however, Tenant shall be released of all obligations under this Lease from and after the next occurring date after such assignment that Tenant has a termination right under Exhibit D to this Lease.

(b) Payment to Landlord and Termination of Lease

i. Landlord may, as a condition to its consideration of any request for consent to a proposed Transfer, impose a fee in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) to cover Landlord's administrative expenses and Tenant shall also be responsible to promptly pay all Landlord's reasonable legal fees in connection therewith (not to exceed One Thousand Dollars (\$1,000.00)). Such fee shall be (i) payable by Tenant upon demand, and (ii) retained by Landlord, regardless of whether such consent is granted.

ii. If Tenant is a corporation, an unincorporated association, a partnership, a limited partnership, or a limited liability company, the transfer, assignment or hypothecation of any stock or interest in such entity in the aggregate in excess of twenty-five percent (25%) to non-family Peterson members shall be deemed a Transfer of this Lease within the meaning and provisions of this Section 20.

© 2011 PORTLAND ASSOCIATION OF BUILDING OWNERS AND MANAGERS**(c) Advance Notice to Landlord of any Proposed Transfer**

Tenant shall provide Landlord with at least twelve (12) months prior notice of Tenant's intent to Transfer this Lease; provided, however, that if Tenant receives unplanned or unsolicited offers to assume this Lease, Tenant shall notify Landlord as soon as practical. Tenant shall apprise Landlord of the types of restaurants or owners that would be anticipated to be interested in the Premises and keep Landlord informed as potential Transferees are identified. Landlord shall keep any such intent to Transfer the Lease and any information Tenant shares with Landlord in connection therewith confidential, to the extent permitted by law.

21. SUBORDINATION

Tenant's interest hereunder shall be subject and subordinate to all mortgages, trust deeds, and other financing and security instruments in place upon the Commencement Date or placed on the Premises by Landlord from time to time (hereafter "Mortgage"), except that no assignment or transfer of Landlord's rights hereunder to a lending institution as collateral security in connection with a Mortgage shall affect Tenant's right to possession, use, and occupancy of the Premises so long as Tenant shall not be in default under any of the terms and conditions of this Lease. The provisions of this Section 21 shall be self-operating. Nevertheless, Tenant agrees to execute, acknowledge and deliver to Landlord within ten (10) business days after Landlord's written request, an instrument in recordable form that expressly subordinates Tenant's interest hereunder to the interests of the holder of any Mortgage, and that includes any other reasonable provisions requested by the holder or prospective holder of any Mortgage. At Landlord's request, Tenant shall furnish Landlord current balance sheets, operating statements, and other financial statements in the form as reasonably requested by Landlord or by the holder or prospective holder of any Mortgage, certified by Tenant as accurate and current. Tenant agrees to sign an authorization for Landlord to conduct a check of Tenant's credit as requested by Landlord from time to time. Notwithstanding anything to the contrary contained in this Lease, this Lease shall not be subordinate to any future mortgage(s), trustees under a deed of trust, or to ground lease(s), if any, until with respect to any such mortgage(s), deed of trust and/or ground lease(s) there shall have been delivered to Tenant a non-disturbance agreement in which it is agreed that Tenant's possession of the Premises will not be disturbed so long as Tenant is not in default under this Lease beyond any period given to cure such default.

22. TRANSFER OF THE PROPERTY

If the Property is sold or otherwise transferred by Landlord or any successor to Landlord, Tenant shall attorn to the purchaser or transferee and recognize it as the landlord under this Lease, and, provided the purchaser or transferee assumes all obligations under this Lease thereafter accruing, the transferor shall have no further liability hereunder.

23. ESTOPPEL CERTIFICATE

Tenant shall from time to time, upon not less than twenty (20) days' prior notice, submit to Landlord, or to any person designated by Landlord, a statement in writing, in the form submitted to Tenant by Landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of Tenant no uncured default exists hereunder (or if such uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that Tenant has no claims against Landlord and no defenses or offsets to rental except for the continuing obligations under this Lease (or if Tenant has any such claims, defenses, or offsets, specifying the same), and any other information concerning this Lease as Landlord reasonably requests.

24. PERFORMANCE BY LANDLORD OR TENANT

Neither Landlord nor Tenant shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms, covenants, and conditions of this Lease if the same shall be due to any labor dispute, strike, lockout, civil commotion, or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, through acts of God, or other cause beyond the reasonable control of such party,

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providing such cause is not due to the willful act or neglect of such party. The terms of this Section 24 shall not apply to nor excuse any failure of Tenant to pay Rent when due.

25. LANDLORD’S RIGHT TO CURE DEFAULT

If Tenant shall fail to perform any of the covenants or obligations to be performed by Tenant, Landlord, in addition to all other remedies provided herein, shall have the option (but not the obligation) to cure such failure to perform after fifteen (15) days’ written notice to Tenant. All Landlord’s expenditures incurred to correct the failure to perform shall be reimbursed by Tenant upon demand with interest from the date of expenditure at an interest rate of 10% per annum. Landlord’s right to cure Tenant’s failure to perform is for the sole protection of Landlord and the existence of this right shall not release Tenant from the obligation to perform all the covenants herein provided to be performed by Tenant, or deprive Landlord of any other right Landlord may have by reason of default of this Lease by Tenant.

26. INSPECTION

Landlord, Landlord’s agents, and representatives, shall have the right to enter upon the Premises at any time in the event of emergency and, in other events, at reasonable times after reasonable prior verbal notice for the purpose of inspecting the same, for the purpose of making repairs or improvements to the Premises or the Building, for showing the Premises during the final ninety (90) days of the Term, or for any other lawful purpose.

27. FOR SALE AND FOR RENT SIGNS

Landlord shall not place any “for sale” or “for rent” or “for lease” on the Premises.

28. ATTORNEY FEES

In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained to interpret or enforce any provision of this Lease or with respect to any dispute relating to this Lease, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorneys’, paralegals’, accountants’, and other experts’ fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

29. NOTICES

Any notice required or permitted under this Lease shall be in writing and shall be deemed given when actually delivered or when deposited in the United States mail as certified or registered mail, return receipt requested, addressed to the addresses set forth in the Summary of Fundamental Provisions of this Lease or to such other address as may be specified from time to time by either of the parties in the manner above provided for the giving of notice. Notice may also be given by facsimile or telecopy transmission and shall be effective upon the date shown in a transmittal record when sent to the party at the facsimile or telecopy number set out in the Summary of Fundamental Provisions of this Lease or such other number as provided by either party, as long as a copy of any such notice is deposited in the United States mail to such party at the above-mentioned address on the same date the electronic transmission is sent.

30. BROKERS

Tenant covenants, warrants, and represents that it has not engaged any broker, agent, or finder who would be entitled to any commission or fee in connection with the negotiation and execution of this Lease, except as set forth in the Summary of Fundamental Lease Provisions attached hereto. Tenant agrees to indemnify and hold harmless Landlord against and from any claims for any brokerage commissions and all costs, expenses, and liabilities in connection therewith, including attorney fees and expenses, arising out of any charge or claim for a commission or fee by any broker, agent, or finder on the basis of any agreements made or alleged to have been made by or on behalf of Tenant, except for brokers listed on the Summary of Fundamental Lease Provisions. The provisions of this Section 30 shall not apply to any



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brokers with whom Landlord has an express written brokerage agreement. Landlord shall be responsible for payment of any such brokers.

31. LATE CHARGES

Tenant acknowledges that late payment by Tenant to Landlord of any Rent or other charge due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent or other charge is not received by Landlord within ten (10) business days after written notice that such charge is past due, Tenant shall pay to Landlord a late charge equal to five percent (5.0%) of the overdue amount. This late charge shall be due with no notice to Tenant, after the second failure by Tenant to pay Rent when due in any 12-month period. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

32. NO PERSONAL LIABILITY

The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the interest of Landlord in the Building and the Property, and neither Landlord nor any of its owners, principals, employees, or agents shall be liable for any deficiency.

33. MISCELLANEOUS PROVISIONS

(a) This Lease does not grant any rights of access to light or air over any part of the Glendoveer Property.

(b) Time is of the essence of this Lease.

(c) The acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default.

(d) Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to require strict performance of the same provision in the future or of any other provision of this Lease.

(e) This Lease contains the entire agreement of the parties and supersedes all prior written and oral agreements and representations and there are no implied covenants or other agreements between the parties, except as expressly set forth in this Lease.

(f) Neither Landlord nor Tenant is relying on any representations except as expressly set forth in this Lease.

(g) The parties acknowledge and agree that any calculations of square footage in the Premises and in the Building are approximations. Except as provided herein, no recalculation of square footage shall affect the obligations of Tenant under this Lease, including without limitation, the amount of Base Rent or other Rent payable by Tenant under this Lease.

(h) This Lease shall not be amended or modified except by agreement in writing, signed by the parties hereto.



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(i) Subject to the limitations on the assignment or transfer of Tenant’s interest in this Lease, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

(j) No remedy herein conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative.

(k) In interpreting or construing this Lease, it is understood that Tenant may be more than one person, that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations, partnerships, limited liability companies, and individuals.

(l) Section headings are for convenience and shall not affect any of the provisions of this Lease.

(m) If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(n) All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

34. QUIET ENJOYMENT

Landlord warrants that as long as Tenant complies with all terms of this Lease, it shall be entitled to possession of the Premises free from any eviction or disturbance by Landlord or parties claiming through Landlord. Neither Landlord nor its managing agent shall have any liability to Tenant for loss or damages arising out of the acts, including criminal acts, of other tenants of the Building or third parties, and no such acts shall constitute an eviction, construction or otherwise.

35. ANTI-TERRORISM LAW

(a) Tenant represents and warrants to Landlord as follows:

i. Neither Tenant, its constituents, or affiliates, nor any of their respective agents (collectively, the “Tenant Parties”) is in violation of any law relating to terrorism or money laundering, including, but not limited to, Executive Order No. 13224 on Terrorist Financing, the U.S. Bank Secrecy Act, as amended by the Patriot Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act and all regulations promulgated thereunder, all as amended from time to time (collectively, “Anti-Terrorism Law”).

ii. No action, proceeding, investigation, charge, claim, report, or notice has been filed, commenced, or threatened against any of the Tenant Parties alleging any violation of any Anti-Terrorism Law.

iii. None of the Tenant Parties has, after due inquiry, knowledge of any fact, event, circumstance, situation or condition that could reasonably be expected to result in any action, proceeding, investigation, charge, claim, report, notice, or penalty being filed, commenced, threatened, or imposed against any of them relating to any violation of or failure to comply with any Anti-Terrorism Law.



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iv. None of the Tenant Parties is a "Prohibited Person." A Prohibited Person means any of the following:

(1) A person or entity that is "specially designated" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control or that is owned, controlled by, or acting for or on behalf of any such person or entity;

(2) A person or entity with whom Landlord is prohibited from dealing by any Anti-Terrorism Law:

(3) A person or entity that commits, threatens, or conspires to commit or supports "terrorism," as defined in any Anti-Terrorism Law.

v. None of the Parties:

(1) Conducts any business or transactions or makes or receives any contribution of funds, goods, or services in violation of any Anti-Terrorism Law:

(2) Engages in or conspires to engage in any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions of any Anti-Terrorism Law.

(b) **Tenant covenants that it shall not:**

i. Conduct any business or transaction or make or receive any contribution of funds, goods, or services in violation of any Anti-Terrorism Law;

ii. Engage in or conspire to engage in any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions of any Anti-Terrorism Law.

iii. Tenant agrees promptly to deliver to Landlord (but in any event within ten (10) business days of Landlord's written request) any certification or other evidence requested from time to time by Landlord, in its reasonable discretion, confirming Tenant's compliance with the foregoing.

36. FINANCIAL STATEMENTS

Within fifteen (15) days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements. Tenant will discuss its financial statements with Landlord and will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Landlord will not disclose any aspect of Tenant's financial statements except to (a) Landlord's lenders or prospective purchasers of the Building who have executed a sales contract with Landlord, (b) in litigation between Landlord and Tenant, and (c) if required by any court order.

37. WAIVER OF JURY TRIAL

To the maximum extent permitted by law, Landlord and Tenant each waive their right to trial by jury in any litigation arising out of or with respect to this Lease.

38. EXHIBITS AND ADDITIONAL PROVISIONS

Exhibits attached hereto are referred to in this Lease and by this reference incorporated herein. Additional provisions, if any, are set forth in Riders attached hereto and by this reference incorporated herein.



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39. ADDITIONAL PROVISIONS:

PARKING: Tenant shall have the exclusive right to the parking area depicted on **Exhibit A** as the "Exclusive Restaurant Parking," and Tenant shall have the shared right to the parking area depicted on **Exhibit A** as the "Shared Public Parking". Tenant shall have the right to post signs at the entries of the Exclusive Restaurant Parking stating that such parking is for restaurant use only, subject to Landlord's approval of such signage under Section 6.e). Further, during any peak golf times or during golf events, Tenant shall have the right to cordon off the Exclusive Restaurant Parking between the hours of 6:00 am through the dinner hour daily for its customers only. At such time Landlord undertakes any significant repairs to the parking lot or if Landlord's removal of hazards associated with the parking lot reduces the number of spaces available for Tenant's use, Landlord shall allow Tenant to utilize such additional parking spaces in the Glendoveer parking lot as the parties mutually agree at the time same occurs.

EXCLUSIVE USE: Tenant's use of the Building as a sit down restaurant and bar, with table service, serving hard liquor, including lottery sales, shall be exclusive to Tenant under this Lease and such exclusivity shall prohibit any such uses at any other location within the Glendoveer Property. Landlord agrees that the Golf and Tennis operator(s) in the Glendoveer Property shall limit food operations to sandwiches, hot dogs and pre-packaged fresh or frozen food and snacks and beverage operations to water, beer, wine and soft drinks. The exclusive use provisions of this Paragraph shall automatically become null and void if: (i) Tenant defaults under this Lease beyond any applicable cure period, (ii) Tenant, directly or indirectly, transfers or assigns its rights under this Lease in whole or in part or sublets all or any portion of the Premises without Landlord's prior written consent, provided that such consent is required under this Lease, or (iii) the Premises ceases to be used primarily as a sit down restaurant and bar with table service. Notwithstanding the foregoing, Landlord shall not be deemed to have breached the covenants contained in this Paragraph if any occupant of the Glendoveer Property violates Tenant's exclusive use, in violation of a restriction imposed by Landlord upon such occupant, and Landlord, upon receipt of notice from Tenant, diligently and in good faith attempts to prevent such violation to Tenant's exclusive use by all actions reasonably available, including without limitation, institution and prosecution of a lawsuit seeking to enjoin such violation (but Landlord shall have no obligation to bring any appeals regardless of any unfavorable determination in any such action brought by Landlord).

SHED: Tenant shall have a license for the continued use of the shed identified on Exhibit A attached hereto for storage of items related to servicing tournaments, subject to the terms and conditions of this Lease, except the payment of Rent; provided, however, if Landlord determines a need to remove the shed in the future Landlord shall find Tenant an alternative for such storage. Tenant's insurance required by this Lease shall cover the shed and any alternative location used solely by Tenant.

40. REPRESENTATIONS; PREPARATION

THIS LEASE, ATTACHMENTS , AND AMENDMENTS WERE PREPARED AT THE DIRECTION OF LANDLORD AND TENANT, AND BOTH LANDLORD AND TENANT HAVE BEEN ADVISED AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT COUNSEL TO REVIEW THIS LEASE, ATTACHMENTS, AND AMENDMENTS. THE RULE OF CONSTRUCTION THAT A WRITTEN AGREEMENT IS CONSTRUED AGAINST THE PARTY PREPARING OR DRAFTING SUCH AGREEMENT SHALL SPECIFICALLY NOT BE APPLICABLE TO THE INTERPRETATION OR ENFORCEMENT OF THIS LEASE, ATTACHMENTS, AND AMENDMENTS. NO REPRESENTATION OR RECOMMENDATION IS MADE BY BOMA PORTLAND OR THE REAL ESTATE BROKERS INVOLVED IN THIS TRANSACTION CONCERNING THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES ARISING FROM THIS LEASE.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease in duplicate as of the day and year first above written, any corporate signature being by authority of the Board of Directors of the corporation.



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Metro

Benalray, Inc., dba Ringside East

By _____
Its _____

By _____
Craig Peterson, Its Secretary

600 NE Grand Ave.
Portland, OR. 97232
Att: Lydia Neill
Lydia.neill@oregonmetro.gov
503-975-4522

2165 W Burnside
Portland, OR. 97210
Att: Craig Peterson
craig@ringsidehg.com
503-223-1513

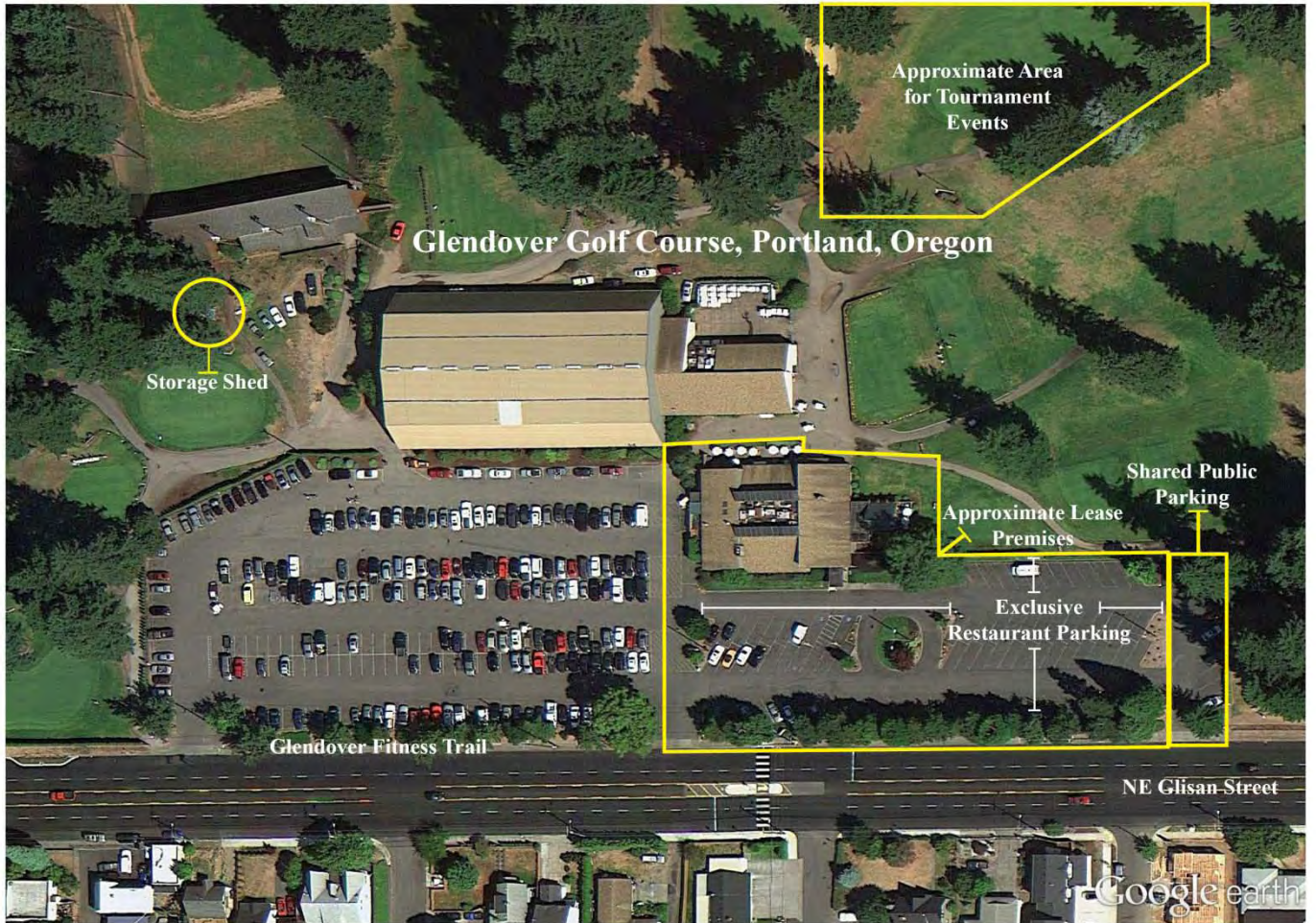
Exhibits.

The following Exhibit is attached hereto and incorporated as a part of this Lease:

- Exhibit "A" - Premises
- Exhibit "B" - Commencement Letter
- Exhibit "C" - Option to Extend
- Exhibit "D" - Termination Clause
- Exhibit "E" - Work Agreement



EXHIBIT A
PREMISES



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EXHIBIT B
COMMENCEMENT LETTER

Date

Benalray, Inc.
Att: Craig Peterson
2165 W Burnside
Portland, OR. 97210
craig@ringsidehg.com

Dear Craig,
Reference is made to the lease dated _____, 2012 by and between Metro, Landlord and Benalray, Inc., dba Ringside East, Tenant.

LEASE COMMENCEMENT: The Lease commencement date is _____.

RENT COMMENCEMENT: Per lease terms Section _____, rent commences _____.

In the event that the Commencement Date is other than the first of the month, the rent for the partial month shall be prorated at the rate for the first twelve months of the Lease Term, and shall be due and payable on the Commencement Date.

The Lease expiration date is _____.

All other terms and conditions of said Lease shall remain the same. Thank you.

Sincerely,

LANDLORD:

Metro

By: _____

Its: _____

Date: _____



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EXHIBIT C

OPTION TO EXTEND

1. Right to Extend

Provided that (a) this Lease has not previously been terminated in accordance with its terms, and (b) Tenant has not failed to comply with the terms of this Lease or not cured such failure within any applicable notice or grace period, then the initial term of this Lease may be extended by Tenant, at its option, for three (3) additional five (5) year terms (each an "Extended Term"), subject to and upon the same terms and conditions as contained in this Lease, except that (i) no additional options to extend the Term beyond that expressly set forth in this Exhibit C shall be provided, and (ii) Base Rent and Percentage Rent shall be determined as set forth in this Exhibit C, Section 2 below. Tenant may exercise each option by delivering written notice of its election to Landlord at least two hundred seventy (270) days before the expiration of the then current term. Failure to exercise an option for an Extended Term shall nullify it and all future options for all subsequent Extended Terms.

2. Determination of Rent

If Tenant validly exercises an option, then during such Extended Term, Base Rent shall be adjusted in the same manner as set forth in the Lease by increasing two (2%) percent annually. During each Extended Term and with respect to the Percentage Rent provision, the breakpoint after which Percentage Rent is payable shall also increase by two percent (2%) annually.



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EXHIBIT D

EARLY TERMINATION OPTION

Provided that (a) Tenant is not in default of this Lease or not cured such failure within any applicable notice or grace period, and (b) Tenant has not assigned its interest in this Lease or subleased any portion of the Premises to any party other than Peterson family members, then Tenant shall have the option to terminate this Lease for any reason on a "Termination Option Date," defined as follows: the last day of either the 30th, 60th, or 90th month of the Term, or if any option to extend the Term is exercised, on the last day of the month that is 30 months after the commencement of such Extended Term.

If Tenant (i) gives at least nine (9) months prior written notice to Landlord of its intent to exercise its termination option, which notice shall set forth the anticipated Termination Option Date; (ii) continues to pay Base Rent, any Additional Rent, and any Percentage Rent due under the Lease prior to the anticipated Termination Option Date; and (iii) delivers to Landlord on or before the anticipated Termination Option Date the termination fee described below, then the Lease will terminate on the Termination Option Date set forth in Tenant's notice. Tenant shall also reimburse Landlord for any Property Taxes invoiced prior to the Termination Option Date.

The termination fee shall equal Tenant's most recent Percentage Rent payment for the prior Lease Year prorated based on the number of months elapsed in the Lease Year in which the Termination Option Date falls. For example, if the Termination Option Date is on June 30th of a Lease Year, then the termination fee would equal one-half of the Percentage Rent payment made, if any, for the prior Lease Year. If the Termination Option Date falls on December 31st, the termination fee shall equal the prior Lease Year's full Percentage Rent payment, if any. The termination fee shall also include any additional sums required pursuant to any windows installed in accordance with Exhibit E to this Lease.



EXHIBIT E
WORK AGREEMENT

IMPROVEMENTS PROVIDED BY LANDLORD.

Landlord shall provide the following improvements in the Premises ("Landlord's Work") and shall obtain, at Landlord's cost, the permits therefor:

A) Parking Lot

Prior to Lease execution, Tenant and Landlord mutually agreed on a plan in writing with appropriate exhibits to eliminate hazards in the Exclusive Restaurant Parking. Landlord on or prior to three (3) months following the Commencement Date shall have completed the elimination of such hazards substantially in accordance with such plan.

B) Roof

Within nine (9) months after the Commencement Date, Landlord shall remove the existing solar panels from the roof of the Building, restore the impacted area to water tight condition, and replace the existing roof with a new roof of a color that is mutually acceptable to Landlord and Tenant.

C) Paint Exterior

Within nine (9) months after the Commencement Date and mutual acceptance by both parties of the paint color, Landlord shall paint the exterior of the Building.

D) ADA

Within twelve (12) months after the Commencement Date, Landlord shall make any ADA required modifications to the bathrooms, entries/exits to and from the Building, and any site or parking lot required ADA improvements

New Windows. If Tenant desires to put new windows in the south facing wall of the Building, Tenant shall submit its proposal to Landlord in accordance with Section 7 of this Lease. If acceptable to Landlord and provided that Landlord and Tenant have agreed upon a cost for the work, Landlord shall install the windows. Tenant shall repay Landlord the cost for the new windows with a five percent (5%) interest factor by way of increased Rent (on a straight line basis) over the initial Term of this Lease. If Tenant terminates this Lease prior to the expiration of the initial Term of this Lease pursuant to Tenant's early termination option, then on or prior to the Termination Option Date, Tenant shall pay Landlord as a termination fee an amount equal to the then un-repaid portion of the cost of the windows and interest accrued on that cost through the Termination Option Date.



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 12-4386, FOR THE PURPOSE OF DECLARING PROPERTY AT GLENDOVEER GOLF AND TENNIS CENTER SURPLUS PROPERTY, EXEMPTING THE TENNANT FROM PAYING EXCISE TAX AND AUTHORIZING THE EXECUTION OF A LEASE WITH RINGSIDE RESTAURANT.

Date: October 17, 2012

Prepared by: Lydia Neill, Project Manager
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BACKGROUND

Metro acquired Glendoveer Golf Course and fitness trail located at the corner of NE Glisan Street and NE 148th Avenue from Multnomah County in 1994 in a property transfer. The Ringside East Restaurant (Restaurant, dba Benalray) that is located at 14021 NE Glisan Street Portland, Oregon on the Glendoveer Golf and Tennis Center property.

The Restaurant is currently managed under a sub-lease arrangement with Metro's current golf course operator, Glisan Street Recreation (GSR). Both the GSR contract and the sublease agreement with the Restaurant will expire on December 31, 2012.

The Restaurant is a 9,000 square foot building and includes a 120 stall parking lot that was constructed in 1978. This Restaurant is an eastside institution that serves lunch and dinner and has been an integral part of the golf course property for many years. The Restaurant serves the surrounding neighborhood, the east side business community and golfers, tennis player and walkers. Many civic groups, including the Rotary also use the Restaurant as a meeting place.

Staff and the Restaurant have negotiated a ten year lease with three possible five year extensions for a total of 25 years. This lease agreement is independent of the Golf and Tennis Operator contract being negotiated with CourseCo. CourseCo has been chosen to operate the Glendoveer Golf and Tennis Center and although is under a separate contract with Metro they will be required to work cooperatively.

To set the terms of the lease and assist in negotiations, Metro completed a market study by Commercial Realty Advisors (CRA). CRA is a local commercial broker that specializes in leasing and sale of restaurant properties. Metro also met with the City of Portland property management staff that has negotiated lease terms for commercial properties located on City of Portland property.

Ringside is intended to be the exclusive tournament food and beverage provider and will work in conjunction with CourseCo, who has been chosen as the concession operator of the golf, tennis and driving range facilities to provide food service for tournaments and large events. CourseCo will market, book and conduct the tournament business at Glendoveer Golf Course. This arrangement under a separate letter of agreement has been negotiated for 2013 to allow the transition of the golf/tennis operations to occur with the new operator. The efficiency of this arrangement will be evaluated in the fall of 2013 and may continue into the future.

ANALYSIS/INFORMATION

1. **Known Opposition**

None

2. **Legal Antecedents** Metro Code section 2.04.026 requires Metro Council approval of any contract to lease real property owned by Metro.

ORS Chapter 279.826 allows public agencies to lease real or personal property not needed by for public use.

Metro Code section 7.01.020 requires users of Metro facilities to pay excise tax.

3. **Anticipated Effects** The continuation of the Restaurant operation as the Ringside is an important part of successfully operating the Glendoveer Golf and Tennis Center. The Ringside has been very successful at this location and staff considers them an anchor tenant for this property. The Restaurant provides a range of lunch and dinner items for local business clientele, golfers, tennis players, walkers and neighbors. The Restaurant's ability to provide high quality food and beverage service for tournament play and other events in conjunction with the golf operation provides a competitive advantage to the golf course and is an important part of the overall business model for Glendoveer. The Restaurant is known for high quality steaks and outstanding service.

As part of this lease agreement the coffee shop operation located on the north side of the building will be eliminated after September 30, 2013. This function will be transferred to the golf/tennis operator (CourseCo) and will be provided out of the clubhouse to provide more consistent service to tennis players and golfers. The restaurant plans to convert the coffee shop space for private dining.

Rent:

The anticipated rent is \$5,000 per month for the first lease year which is average for the size space in this location. In addition to the monthly rent, Metro will receive 4% of gross sales between \$3,000,000 and \$4,000,000 and will be paid on a yearly basis. For gross sales between \$4,000,000 and \$5,000,000 Metro will receive 3% of annual gross sales. The lease has an inflationary increase of 2% per year.

Effective Date and Terms:

The lease calls for 10 year term and three possible five year extensions. The lease will become effective when the property lease for the golf/tennis facility ceases or no later than January 1, 2013.

Signage:

Metro will review and approve all signage.

Utilities, Taxes and Insurance:

The Restaurant is responsible for property taxes, all utilities associated with the use, personal property taxes and insurance.

Excise Taxes:

Excise taxes will be paid on lease payment from the Restaurant to Metro.

Improvements:

Metro will be conducting tenant improvements to the Restaurant building as a condition of the lease to address deferred maintenance issues. Improvements will include: dry rot repair, roof replacement, HVAC replacement (as warranted), exterior painting, seal coating and striping the parking lot and re-

landscaping around the building. The Restaurant may elect to add new windows to the front of the building in the future and the cost of the window improvements will be amortized over the term of the lease.

Lease Instrument:

The lease attached in Exhibit A of Resolution 12-4386 is a modified BOMA document.

Surplus Property:

In accordance with State Law, the Metro Council must find that the Restaurant is not needed for public use in order to execute the lease.

4. **Budget Impacts.** Lease income will generate at a minimum of \$60,000 per year. If gross revenues exceed base numbers (2012) there is additional potential for a greater upside financially to Metro. An excise payment of \$ ____ will be paid annually on all lease payments from the revenues received.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution 12-4386.