

## 6. MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1 TENANT'S OBLIGATIONS. Subject to the provisions of Sections 6.2 and 6.3 and Articles 9 and 15, Tenant, at Tenant's expense, shall keep the Premises in good order and repair, including maintaining all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises and exclusively serving the Premises, and the storefront, doors, and plate glass of the Premises. At Tenant's request, Landlord shall transfer or assign to Tenant all warranties, express or implied, under any contract or subcontract relating to any improvements or equipment Landlord built or installed within the Premises to serve the Premises exclusively, including, without limitation, the warranty for the HVAC system. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making: (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord or Landlord's agents, employees, or contractors; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant; or (c) any structural or seismic repairs, improvements or alterations to the Premises, the Building, or the Property.

6.2 LANDLORD'S OBLIGATIONS. Except for repairs, maintenance and replacements to the Premises and the Building for which Tenant is responsible under Section 6.1, Landlord shall maintain, repair and make replacements to the Premises, the Building, and the Property (including the Common Areas). Landlord shall, at its sole cost and expense (subject to Tenant's payment obligations, if any, pursuant to Article 12 below), make the repairs and replacements and perform such work that is necessary to maintain the Building and the Property in a condition comparable to other first-class buildings and shopping centers in the Two Rivers, Wisconsin metropolitan area. Such repairs, replacements and maintenance shall include (without limitation): (a) the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like), foundation, exterior walls, interior structural walls, and all structural components of the Premises, the Building, and the Property; (b) the maintenance and repair of all parking areas, sidewalks, Outdoor Seating Area (other than items installed in the Outdoor Seating Area by Tenant), Drive-Through Facility (other than items installed in the Drive-Through Facility by Tenant), landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, lighting, and HVAC systems) and plumbing systems which serve the Building and/or the Property as a whole; and (3) any and all maintenance, repair, and replacement of the Vapor Mitigation System and the Cap. Landlord may allocate the cost of such maintenance and repairs equitably to Tenant, if and to the extent provided in Article 12. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and storefronts (except where maintenance of the same is caused by Landlord's negligence or failure to perform its obligations under this Section). Landlord shall make all repairs under this Section promptly after Landlord learns of the need for such repairs but in any event within thirty (30) days after Tenant notifies Landlord of the need for such repairs. If Landlord fails to make such repairs within thirty (30) days after Tenant's written notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Tenant may, at its option, undertake such repairs and deduct the cost thereof from the installments of Base Rent and Monthly Estimated Rent next falling due. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately after being notified by Tenant, Tenant may immediately undertake such repairs and deduct the cost thereof from the installments of Base Rent and Monthly Estimated Rent next falling due.

12.3 TENANT'S PAYMENT. Commencing on the Rent Commencement Date, for each calendar year of the Term (prorated for any calendar year falling partially within the Term), Tenant shall pay to Landlord as additional rent Tenant's Pro Rata Share of Operating Expenses, Landlord's Insurance and Real Property Taxes (collectively known as "**Annual Additional Rent**"). Prior to the Rent Commencement

Date and at least thirty (30) days prior to the beginning of each calendar year thereafter, Landlord shall furnish to Tenant a written statement setting forth the following: (a) the amount Landlord estimates Landlord will pay for Operating Expenses (broken down into reasonable categories), Real Property Taxes, and Landlord's Insurance for the then upcoming calendar year; (b) Landlord's estimate of Tenant's Annual Additional Rent; and (c) a calculation of one-twelfth (1/12) of Landlord's estimate of Tenant's Annual Additional Rent ("**Monthly Estimated Rent**"). Landlord's estimates of Tenant's Annual Additional Rent shall be reasonably based on the actual amounts paid by Tenant for such expenses during the previous year. Tenant shall pay to Landlord the Monthly Estimated Rent beginning on the Rent Commencement Date and on the first day of every successive calendar month thereafter during the Term. Monthly Estimated Rent for a period of less than one month shall be prorated on a daily basis based on a three hundred sixty-five (365) day year. Notwithstanding any provision of this Lease, Tenant's Pro Rata Share of Operating Expenses from the Rent Commencement Date through the end of the first full calendar year shall not exceed (on an annual basis, prorated for any initial, partial calendar year) Three Dollars (\$3.00) per square foot of Gross Leasable Area in the Premises, Tenant's Pro Rata Share of Landlord's Insurance from the Rent Commencement Date through the end of the first full calendar year shall not exceed (on an annual basis, prorated for any initial, partial calendar year) Fifty Cents (\$0.50) per square foot of Gross Leasable Area in the Premises, and Tenant's Pro Rata Share of Real Property Taxes from the Rent Commencement Date through the end of the first full calendar year shall not exceed (on an annual basis, prorated for any initial, partial calendar year) Four Dollars (\$4.00) per square foot of Gross Leasable Area in the Premises. Notwithstanding anything contained herein to the contrary, the portion of Tenant's Annual Additional Rent attributable to Operating Expenses (excluding, by definition, Landlord's Insurance and Real Property Taxes, and further excluding costs for snow plowing and ice removal) for any calendar year following the first full calendar year of the Term shall not exceed one hundred five percent (105%), on a non-cumulative basis, of the portion of Tenant's Annual Additional Rent attributable to Operating Expenses (excluding, by definition, Landlord's Insurance and Real Property Taxes, and further excluding costs for snow plowing and ice removal) payable by Tenant for the previous calendar year.

12.4 RECONCILIATION. For each calendar year of the Term, within sixty (60) days after the end of each calendar year, Landlord shall furnish to Tenant, at the notice address provided in Article 25, a statement in reasonable detail and certified as complete and correct by an authorized representative of Landlord, including supportive documentation, setting forth (a) Landlord's actual costs for Operating Expenses, Real Property Taxes, and Landlord's Insurance for that year by category and amount; (b) the amount of Tenant's Annual Additional Rent; and (c) the sum of Tenant's Monthly Estimated Rent payments made during the year. If the amount of Tenant's Annual Additional Rent exceeds the sum of Tenant's Monthly Estimated Rent payments (and a statement has been received during such sixty (60) day period), Tenant shall pay the deficiency to Landlord within forty-five (45) days after Tenant's receipt of such statement, provided that Tenant may suspend payment of any amount which (x) it disputes in good faith, (y) was paid by Landlord in a calendar year other than the year covered by the statement, or (z) it has not been provided with reasonable details as set forth above, until resolution thereof. If the sum of Tenant's Monthly Estimated Rent payments during the year exceeds the amount of Tenant's Annual Additional Rent, Landlord shall pay the excess to Tenant at the time Landlord is required to furnish the statement hereunder, or, if the Term has not expired, may credit the excess toward the payments of Base Rent and Tenant's Monthly Estimated Rent next falling due. Landlord shall be deemed to have waived its right to payment for any amount which is understated or not included in the statement for the year in which the work was performed or the cost was billed to Landlord. Tenant shall not be required to reimburse Landlord for any amounts claimed to be due to Landlord in connection with any reconciliation not produced by Landlord within the time period referenced above. Tenant will have no obligations to pay or reimburse Landlord for any expense included in Annual Additional Rent that was incurred or billed before the date that the then-current Landlord purchased the Property from the previous landlord.

12.5 EXCLUSIONS FROM OPERATING EXPENSES. Notwithstanding anything to the contrary contained in this Lease, Operating Expenses shall not include: (a) the initial costs of any item properly chargeable to a capital account (using generally accepted accounting principles consistently applied) nor the original costs of constructing the Building and the Property; (b) the cost of any capital addition, repair or replacement to the Building or the Property (or reserves therefor); (c) expenses for which Landlord is or will be reimbursed by another source (excluding Tenant's reimbursement for Operating Expenses), including but not limited to repair or replacement of any item covered by warranty; (d) costs incurred to benefit (or as a result of) a specific tenant or items and services selectively supplied to any specific tenant (if any); (e) expenses for the defense of Landlord's title to the Property; (f) structural repairs and replacements; (g) depreciation and amortization of the Building and the Property or financing costs, including interest and principal amortization of debts; (h) charitable, lobbying, special interest or political contributions; (i) costs of improving or renovating space for a tenant, or space vacated by a tenant; (j) any amounts expended by Landlord to comply with any Environmental Laws; (k) costs to correct original or latent defects in the design, construction or equipment of the Building and/or the Building and the Property; (l) any repair, rebuilding or other work necessitated by condemnation, fire, windstorm or other insured casualty or hazard; (m) any expenses incurred: (i) to comply with any governmental laws, regulations and rules or any court order, decree or judgment including, without limitation, the Americans with Disabilities Act; or (ii) as a result of Landlord's alleged violation of or failure to comply with any governmental laws, regulations and rules or any court order, decree or judgment; (n) leasing commissions, advertising expenses and other costs incurred in leasing or procuring new tenants; (o) rental on ground leases or other underlying leases; (p) attorneys' fees, accounting fees and expenditures incurred in connection with tax contests or negotiations, disputes and claims of other tenants or occupants of the Building and the Property (if any) or with other third parties except as specifically provided in this Lease; (q) cost of the initial stock of tools and equipment for operation, repair and maintenance of the Building and the Property; (r) any duplicate expenses or costs; (s) amounts billed (directly or indirectly) for salaries, overhead and expenses for office rent and office supplies; (t) administrative or management fees (in the aggregate) which exceed ten percent (10%) of the other Operating Expenses; and (u) any fines, penalties, interest, liability, liens, assessments, costs, expenses or other fees or amounts imposed upon Landlord or the Property or the Building under any covenants, conditions, restrictions, easements or similar agreements, including without limitation as a result of Landlord's or any other third party's failure to perform any obligations or to pay any amounts due thereunder. Landlord's calculation of administrative and/or management fees shall not be based on any charges related to Common Area utility costs, Landlord's Insurance, and/or Real Property Taxes.

12.6 RECORDS. Landlord shall keep records showing all expenditures incurred as Operating Expenses, Landlord's Insurance and Real Property Taxes for each calendar year for a period of three (3) years following each year, and such records shall be made available for inspection and photocopying by Tenant and/or its agents during ordinary business hours in the city in which the Premises are located.