

LEASE

THIS LEASE made, for reference purposes, this 28th day of January, 2016, by and between MARSHALL FOUNDATION, an Arizona nonprofit corporation (“Landlord”) and TUCSON UNIFIED SCHOOL DISTRICT (“Tenant”)

1. PREMISES, TERM.

1.1 Premises. Landlord leases to Tenant and Tenant hereby hires of Landlord the premises located at 808 E. University Blvd., City of Tucson, County of Pima, State of Arizona, consisting of approximately 1,087 sq. ft., hereinafter called "premises".

1.2 Term. The Base Lease Term shall be for thirty-six months commencing on July 1, 2016 and terminating on June 30, 2019.

2. **USE.** The Premises shall be used solely as an art studio and workroom for the creation and storage of art projects to be used in the Main Gate Square area.

LANDLORD AND TENANT AGREE THAT TENANT SHALL NOT HAVE THE EXCLUSIVE RIGHT TO SELL ANY ITEM OR RENDER ANY SERVICE UPON ANY PROPERTIES OWNED OR LEASED BY LANDLORD.

3. RENTAL.

3.1 Rent. Tenant shall pay on a monthly basis, due on the first of each month, commencing on the first day of July, 2016, and as invoiced by Landlord, Tenant’s proportionate share of Common Area Charges, Utility Costs, Real Estate Taxes, Insurance Premiums and the Merchants Marketing Fund Fee and any taxes due thereon.

3.2 Security Deposit. INTENTIONALLY DELETED.

3.3 Sales Reports. INTENTIONALLY DELETED

3.4 "Gross Sales and/or Revenue." INTENTIONALLY DELETED.

3.5 Inspection of Records, Audit. INTENTIONALLY DELETED.

3.6 Place of Payment/Notice. All rentals shall be paid and all notices to Landlord shall be given by mailing same to 814 E. University Blvd., Tucson, AZ 85719, or such other place Landlord may designate. Landlord's notice to Tenant may be mailed or delivered to Tenant at the premises.

3.7 Delinquency Charges.

A. In the event Tenant should fail to pay any installment of rent or any other sum due under this Lease within 5 days after such sum is due, Tenant shall pay to Landlord, as additional rent, a late charge equal to five percent (5%) of each installment or sum. Waiver of the late charge with respect to any installment or sum shall not be deemed to constitute a waiver with respect to any subsequent installment or sum so due.

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B. A charge of twenty-five dollars (\$25.00) will be paid by Tenant to Landlord for any check returned unpaid to Landlord by Tenant's bank. Additionally, all subsequent payments due Landlord from Tenant shall be made by certified funds, bank or cashier's check or in cash.

3.8 Adjustment to Cost of Living. INTENTIONALLY DELETED.

4. **MARKETING FUND.** Tenant shall pay its proportionate share of the Merchants' Marketing Fund Fee commencing on July 1, 2016 as set forth on Exhibit A.

5. **CONDUCT OF BUSINESS.** INTENTIONALLY DELETED.

6. **UTILITIES.** Tenant shall pay all charges for fuel, water, gas, electricity, power, refrigeration and other charges whatsoever incurred by Tenant or third persons in the use, occupation and maintenance of the premises and its equipment. Landlord shall not be required to furnish any additional facilities or services of any kind during the Lease term or to replace facilities originally installed by Landlord, except as provided for in paragraph 7 below. If there is no separate water or other utility meter for the premises, charges for such utilities shall be billed to Tenant by Landlord as additional rent, and due on the first of each month, on a basis to be determined by Landlord in its sole discretion.

7. **AIR CONDITIONING UNIT.** The parties hereto acknowledge that the air conditioning unit serving the premises is the property of Landlord. Landlord shall bear the cost and expenses of repair or replacement caused by defects, breakdowns or malfunctions in the **major** components of the air conditioning unit **only**. Major components shall include only the following: the compressor, either or both of the two motors in the unit and either or both of the two coils in the unit. **Notwithstanding the aforesaid, Tenant shall be responsible for cleaning the coils in an ongoing manner. Should Tenant fail to do this, Tenant shall be responsible for the repair and/or replacement of the coils.** In addition to all other sums due by Tenant to Landlord under the provisions of this Lease, Tenant shall pay as additional rent costs and expenses incurred from time to time by Landlord in connection with the service and maintenance of such air conditioning unit (except with respect to the major components as provided for above), including, but not limited to, the cost of any service or maintenance contract obtained by Landlord in connection with such air conditioning unit. Such sum shall be due and payable by Tenant to Landlord within ten (10) days after delivery by Landlord to Tenant of a statement therefor. Except as specifically set forth in this paragraph with respect to costs and expenses for repair and replacement of major components, it is agreed between the parties that no liability of any character shall be imposed upon Landlord because of any problems, defects, breakdowns or malfunctions of said air conditioning units.

Tenant, in the alternative, may, at Tenant's expense, enter into and maintain a service contract with a vendor approved by Landlord for the maintenance of the HVAC system. (the "HVAC Service Contract"). The HVAC Service Contract shall contain such

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provisions as Landlord deems reasonably necessary to assure that the HVAC system will be properly maintained and repaired. Tenant shall be responsible for providing Landlord of proof of service under the HVAC Service Contract at all such times as service is performed. Landlord shall be named as a third party beneficiary of the HVAC Service Contract and the HVAC Service Contract shall provide that Landlord shall be given 30 days written notice before it is terminated for any reason. Service Contractor shall provide Landlord a Certificate of Insurance for \$1 million in liability insurance naming Landlord and Landlord's lender as Additional Insureds.

8. **REPAIRS.** Tenant agrees to keep the improvements, equipment and premises, exclusive of the roof and exterior walls, in good order and repair and in such a condition so as not to create a fire or safety hazard, and to pay when due any and all charges for labor and materials furnished in connection therewith, and will not suffer or permit any liens of any character for labor or materials to attach to said property. Doors and locks shall not be considered a part of exterior walls and the duty to repair and/or replace same shall rest on Tenant.

If Tenant refuses and neglects to so maintain and to begin repairs or replacements within fifteen (15) days after written demand, and to promptly complete such work, Landlord may have the repairs and replacements done. Tenant shall pay all costs incurred thereby and a fee to Landlord to supervise and administer said repairs and replacements in an amount equal to ten percent (10%) of the total costs for said repair and replacement, as additional rent, within fifteen (15) days of demand. This remedy is in addition to any set out in paragraph 17 below.

Tenant shall have no right to paint the exterior of said premises, and shall not erect or maintain any signs on the exterior of said premises without first obtaining the written consent of Landlord. Signs must comply with all governmental codes, regulations or ordinances. Tenant shall have no right to display any goods in front of said premises or maintain any vending machines or sidewalk racks of any character on the outside of said premises, nor shall Tenant give permission for any other entity to do so. Tenant shall renew interior paint as needed.

Landlord agrees it will keep the roof and exterior walls of the building where the premises are located in good order and repair during the Lease term, but it is agreed between the parties that no liability of any character shall be imposed upon the Landlord because of any leaks or defects in said roof and walls until Tenant shall have given Landlord written notice of such leaks and defects, and a reasonable time has been allowed for remedying defects.

Tenant shall be obligated to replace and restore any plate or window glass which may be broken during the term of this Lease.

9. **ALTERATIONS.** Tenant agrees not to make any changes including, but not limited to structural, electrical and plumbing, in the interior of said building without first obtaining the written consent of Landlord to such change. All such changes shall be made at Tenant's sole expense.

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10. **INSPECTION OF PREMISES.** Landlord shall have the right to enter upon the premises at all reasonable hours in order to inspect the same and prevent waste, loss or destruction.

11. **TRASH, RUBBISH.** Tenant shall keep all trash and rubbish in closed containers depositing the same at such place and at such times as Landlord may direct, so as to prevent unsightly trash from being exposed to the public for extended periods of time. Tenant shall also, at its expense, keep free from dirt, rubbish and other obstructions sidewalks, mall areas, and curbs in front, rear and/or adjacent to the premises. Tenant agrees to keep the premises in accordance with all applicable police, sanitation and other regulations now or hereafter imposed by any governmental authority or Landlord's insurer.

12. **RULES AND REGULATIONS.** The current Rules and Regulations are attached hereto as Exhibit C. Landlord, from time to time, may adopt additional rules and regulations concerning the Tenant's use and occupancy of the premises. Any rules or regulations adopted after Tenant has entered into this Lease shall be enforceable against Tenant after thirty (30) days' notice to Tenant of the adoption of said new rules and regulations. The rules and regulations so established by Landlord are imposed for cleanliness, good appearance, proper maintenance, good order and reasonable use of the premises and Marshall Foundation properties. Landlord shall not be responsible to Tenant for the nonperformance of any rule or regulation by any other tenant or occupant.

13. **FIXTURES.** Tenant may install and maintain appropriate trade fixtures and equipment for the conduct of its business, providing same do not create a nuisance to other tenants in Marshall Foundation properties. Tenant may remove said trade fixtures on or before the termination of this Lease or any renewal provided Tenant is not in default of any of the terms of this Lease. In removing fixtures, the walls, floors and ceiling shall be left in good condition and all blemishes to the premises caused by attachment and/or detachment of such fixtures shall be fully repaired and repainted by Tenant. Tenant shall supply Landlord with copies of all encumbrances on all trade fixtures and equipment.

14. **LIABILITY FOR DAMAGE/INSURANCE.** Tenant hereby agrees and does indemnify, defend and save Landlord harmless from all costs, loss, expense, claim or liability because of injury or death of person, or damage to or destruction of property resulting from or arising out of Tenant's use, occupancy or possession of the premises. Tenant shall, at Tenant's expense, obtain and keep in force, during the term of this Lease, a policy of Commercial General Liability Insurance naming Landlord, and Landlord's lender as additional named insureds. The limit of liability shall be \$1,000,000 combined single limit for bodily injury and property damage with a \$2,000,000 aggregate limit. This policy should be an "occurrence form" policy. If Tenant shall fail to procure and

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maintain said insurance, Landlord may, but is not required to, procure and maintain the same at the expense of Tenant. If Landlord provides such insurance, the cost plus a service charge of 10% shall be payable as Additional Rent with the Tenant's next rental payment. Landlord will require Tenant to provide evidence of the insurance coverage outlined above naming Tenant as an insured and Landlord and Landlord's lender as an additional named insureds with Tenant providing Landlord with a certificate of insurance so stating prior to Tenant's taking possession of the Premises.

All policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Before the expiration of the then current coverage, Tenant shall supply Landlord with a certificate of insurance for the next insurance period evidencing the required coverage. Failure to so provide shall be grounds for immediate termination.

Tenant shall bear sole responsibility to insure all Tenant's personal property located upon the premises. Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs to or replacements of any leasehold improvements, fixtures or other personal property of Tenant.

15. DAMAGE OR DESTRUCTION. If during the term of this Lease Landlord in its discretion determines that, as a result of fire or other casualty, it is not economically feasible to operate the portion of the building containing the leased Premises, Landlord shall have the right to terminate this Lease. If Landlord does not terminate this Lease, Tenant's rent shall be equitably abated until Landlord causes the reconstruction of the damaged portion of the building to substantially the same condition which existed immediately preceding such destruction.

16. DEMOLITION OF PREMISES. If Landlord determines to demolish the building containing the premises, Landlord shall have the right to cancel Tenant's lease by giving six (6) months written notice of such intent to Tenant. In such event, any prepaid rent shall be repaid to Tenant at the time possession is surrendered to Landlord, provided Tenant is not in default under this Lease.

17. DEFAULT.

17.1 Upon default by Tenant Landlord may reenter the premises and eject all persons therefrom and take possession of any of Tenant's property on the premises pursuant to a landlord's lien. Landlord shall have the option to remove such property and place same elsewhere at the cost of Tenant and Landlord shall in no event be liable for any loss or damage thereto.

17.2 Tenant agrees with Landlord that, upon the nonpayment of the whole or any part of the rent for a period of five (5) days after the time when the same is due, Landlord may reenter and take possession of the premises. This Lease shall serve as notice to Tenant of this remedy; no further written notice of breach by Tenant for non-payment of sums due Landlord need be given.

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17.3 Tenant may be in default if it has not met any of the other obligations under this Lease. Landlord shall give Tenant written notice of such default with fifteen (15) days following mailing of notice in which to cure default, except as set out in paragraph 14 above.

17.4 Landlord shall have the following remedies, in addition to (17.1) and (17.2) above and any other remedies contained herein, against Tenant in default. Landlord may: (A) affirm the existence and continuance of this Lease, taking such action as may be necessary to enforce payment of delinquent rent; (B) enter and make repairs required by the terms of this Lease bringing a civil action to recover from Tenant the costs thereof; (C) at Tenant's expense, remedy any default of Tenant; (D) declare this Lease at an end; (E) file suit for the balance of the rent owing; (F) take such other steps provided by law to enforce the performance of this Lease or to collect money due hereunder or recover damages for such breach. The rights and remedies herein contained and reserved to Landlord shall not be considered as exclusive of any other right or remedy of Landlord but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. Landlord's delay or omission to exercise any right or power arising from any default shall not impair any such right or power and shall not be construed to be a waiver of any such default or any acquiescence thereto. Any acceptance after the due date thereof by Landlord of rent due and owing hereunder shall not be deemed a waiver of timely payment by Tenant as to any future payments.

17.5 Tenant shall bear any attorney's fees, costs and expenses incurred by Landlord due to Tenant's breach of this Lease or for the recovery of possession of the premises. Such attorney's fees, costs and expenses shall include, but not be limited to, those incurred in notifying and serving notice upon Tenant of breach of this Lease; and those incurred in reaching settlement of past due rents and monies owing. In any civil action to enforce this Lease, Landlord shall be entitled to recover all reasonable costs thereof, including reasonable attorney's fees, when Landlord prevails.

17.6 In the event of default by Landlord, Tenant's sole remedy shall be to terminate this Lease.

18. SURRENDER AT END OF TERM. Tenant covenants and agrees with Landlord that, upon termination of this Lease for whatever reason, peaceable possession of said shall be given to Landlord, with said in good, clean and orderly condition with premises appropriately repaired and restored as required of Tenant under the terms of this Lease.

19. ASSIGNMENT AND SUBLETTING. Tenant may not assign or sublet the premises.

20. POSSESSION. Tenant and Landlord recognize that Tenant is and has been in possession of the Premises under a prior lease.

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21. **PRIOR AGREEMENTS.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered, mentioned or regarding this Lease, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

22. **WAIVER.** Waiver by Landlord of any term, covenant or condition contained herein shall not be deemed to be waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent or additional rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such rent.

23. **AMERICANS WITH DISABILITIES ACT (ADA).** As utilized by Tenant, the premises may or may not be subject to the requirements of the Americans With disabilities Act (ADA) which, in certain situations, requires the removal of physical barriers to employees and/or members of the general public who are disabled. It is understood and agreed that Tenant shall bear full responsibility for ADA compliance within the premises including, but not limited to, all entrances to the premises. Landlord shall be responsible for ADA compliance as the Act may pertain to common areas of serving the Premises. Landlord and Tenant agree to indemnify and hold each other harmless for any and all claims arising because of the failure of either to carry out its responsibility under this provision.

24. **BASE RENT AND CONSIDERATION TO LANDLORD.** INTENTIONALLY DELETED.

25. **IMPROVEMENT TO PREMISES BY TENANT:** INTENTIONALLY DELETED

26. **TENANT'S PLAN.** Tenant in the operation of its Art Studio/Workroom in Main Gate Square is working to identify focal points for artistic projects as well as pathways that can benefit from artistic embellishments. These could include walls, fences, planters, street median, electrical transformer, and other surfaces with the aim of bringing public art to Main Gate Square enriching the pedestrian experience and thereby promoting connectivity through the area.

Tenant's program will include public events held in Main Gate Square that will gain the attention of local media and attract publicity to both Main Gate Square and its merchants.

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Tenant agrees that prior to the beginning of any project that will be installed/placed in, around or upon the property owned by Landlord, Tenant will present the project to Landlord for review. No project shall be installed/placed in, around or upon the property owned by Landlord without the prior written approval of Landlord. Should Tenant breach this provision, Landlord shall have the right to sue Tenant for removal of any item and return of the property to the condition in which it was prior to Tenant's project.

27. OUTDOOR AREA. Tenant, without incurring any additional rent therefor, shall have the non-exclusive right and privilege, subject to government and municipal approval, during the term of the Lease and any extension or renewal thereof, to use as a creative work area, staging area and display area, portions of the common area of Geronimo Plaza ("outdoor area"). In connection therewith Landlord and Tenant hereby agree as follows;

27.1 The outdoor area located in Geronimo Plaza is an area used by various tenants of Landlord. Due to this, Tenant shall schedule its use of any outside areas through Landlord so as to avoid overlapping uses and enhance all uses of these outdoor areas;

27.2 Any time Tenant uses an outdoor area, Tenant, at its sole cost and expense, shall be responsible for keeping the outdoor area used by Tenant, in a clean and slightly condition, and returning it to the state existing prior to the activity upon completion of Tenant's activity. Tenant's responsibility in this regard shall be in addition to all of its rental and other obligations under the Lease. In the event Tenant fails in Landlord's reasonable opinion to keep and/or return the outdoor area to a clean and slightly condition, then Landlord may, without any obligation to do so and without liability for its failure to do so, do such work as it deems necessary to keep and/or return the outdoor area to such clean and slightly condition, and Tenant shall fully reimburse Landlord for all Landlord's costs and expenses associated therewith promptly upon receipt of a bill therefore;

27.3 No additional alterations, improvements or changes shall be made or constructed in or to the outdoor area, and no furniture, fixtures or equipment shall be placed, used, or installed in said outdoor area, without Landlord's prior written consent. Any and all alterations, improvements, changes, furniture, fixtures, equipment or other such items approved by Landlord shall, at Tenant's sole cost and expense, be kept in good order and repair and/or replaced from time to time as Landlord reasonably determines;

27.4 The outdoor area shall not be considered part of the square footage of the Premises for purposes of any provisions of the Lease requiring the payment of rent or other charges based upon a certain monetary amount per square foot of the Premises, but shall, subject to subsection 27.5 of this paragraph, be considered as part of the Premises relative to all other Lease obligations of Tenant under the Lease, including but not limited to the insurance and indemnity provisions set forth in the Lease; and

27.5 Notwithstanding anything to the contrary contained in the Lease, Landlord and Tenant each shall be responsible for all loss, injury and damage to persons or property resulting from (1) their own negligence or that of their respective employees,

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agents, contractors and invitees within the outdoor area, and (2) the physical condition of the outdoor area to the extent of such party's use thereof. In addition, Landlord and Tenant each agree to include, in their respective commercial general liability insurance, coverage for their respective liability for the outdoor area and further agree to indemnify and hold the other harmless from said liability to the extent such party is responsible for the same

28. COMMON AREA CHARGES, UTILITY COSTS, REAL ESTATE TAXES AND INSURANCE PREMIUMS DURING OPTION TERM (see also Exhibit A attached hereto)

28.1 TENANT'S SHARE. Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of: a) Common Area Charges (defined below in Section 28.4) for each calendar year, and separately (b) Utility Costs (defined below in Section 28.5) for each calendar year, and separately (c) Taxes (defined below in Section 28.6) for each calendar year, and separately (d) Insurance Premiums (defined below in Section 28.7) for each calendar year. Tenant's Proportionate Share is hereby defined as a fraction, the numerator of which is the Rentable Area of Tenant's Premises as shown on Exhibit A and the denominator of which is the Rentable Area of the Project as shown on Exhibit A.

28.2 ANNUAL STATEMENTS. From time to time, Landlord shall, by written notice, specify Landlord's estimate of Tenant's separate obligations (under Section 28.1) for Common Area Charges, for Utility Costs, for Taxes and for Insurance Premiums. Tenant shall pay one-twelfth (1/12) of the estimated annual obligations on the first day of each calendar month. Within ninety (90) days after the end of each calendar year, Landlord shall provide to Tenant a written summary of the actual Common Area Charges for the calendar year (determined on an accrual basis and broken down by principal categories of expense), a separate written summary of Utility Costs for the calendar year (determined on an accrual basis and broken down by principal categories of expense), a separate written summary of actual Taxes for the calendar year, and a separate written summary of actual Insurance Premiums for the calendar year. (Landlord may, at Landlord's sole discretion provide Tenant with such a written statement on a quarterly basis.) The statement also shall set forth Tenant's Proportionate Share of Common Area Charges, actual Utility Costs, Taxes and Insurance Premiums and shall show the amounts paid by Tenant on account. Any difference between Tenant's obligations and the amounts paid by Tenant on account shall be paid, credited or refunded, as the case may be, within fifteen (15) days after the statement is provided. Late delivery of the annual statement of Common Area Charges, Utility Costs, Taxes and Insurance Premiums shall not relieve Tenant of any obligation with respect to payment of Tenant's Proportionate Share of the Common Area Charges, Utility Costs, Taxes and Insurance Premiums.

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28.3 PARTIAL YEAR PRORATION. During the first and last years of the Term, Tenant's responsibility for Common Area Charges, Utility Costs, Taxes and Insurance Premiums shall be adjusted in the proportion that the number of days of that calendar year during which this Lease is in effect bears to three hundred sixty (360). Tenant's obligations under this Article 28 for the payment of Common Area Charges, Utility Costs, Taxes and Insurance Premiums during the Lease Term, including the payment of any deficiency following receipt of the annual statement under Section 28.2, shall survive the expiration or termination of this Lease.

28.4 COMMON AREA CHARGES. Common Area Charges consist of all expenditures for operating, maintaining and repairing the Project, except Utility Costs (as defined in Section 28.5), Taxes (as defined in Section 28.6) and Insurance Premiums (as defined in Section 28.7). Common Area Charges shall include, without limitation, the following: (a) Reasonable portions of salaries, wages and other amounts paid or payable for personnel including the Project manager, superintendent, operation and maintenance staff and other employees of Landlord involved in the maintenance and operation of the Project, including contributions and premiums towards fringe benefits, unemployment and worker's compensation insurance, pension plan contributions and similar premiums and contributions and the total charges of any independent contractors or managers engaged in the repair, care, maintenance, and cleaning of any portion of the Project; (b) Landscaping, including irrigating, trimming, mowing, fertilizing, seeding, replacing plants, and irrigation repair and replacement including lines, valves and timers; (c) Maintaining, operating, repairing and replacing components of equipment serving the Common Area; (d) Maintaining, repairing and replacing all equipment, pipes, ducts and electrical lines which are directly or indirectly associated with providing air conditioning to any area of the Project whether or not such area is Common Area or an area reserved for the exclusive use of any tenant of the Project; (e) Other items of repair, maintenance or replacement of, the Project including, without limitation, roofs, exterior walls, foundations, structure and the sweeping, striping and sealing of parking areas together with all costs and interest thereon at an annual rate equal to the Improvement Interest Rate (as defined below), all amortized over their useful life; (f) The reasonable cost of the rental of any equipment and the cost of supplies used in the maintenance and operation of the Project; (g) Audit fees and the reasonable cost of accounting services incurred in the preparation of statements referred to in this Lease and financial statements, and in the computation of the rents and charges payable by tenants of the Project; (h) Alterations to the Project or the areas used in connection with the operation of the Project for life-safety systems and other capital improvements and replacements together with all costs and interest thereon at an annual rate equal to the Improvement Interest Rate (as defined below), all amortized over their useful life; (i) Such other items as are now or hereafter customarily included in the cost of managing, operating, maintaining, overhauling and repairing the Project and the areas used in connection with the operation of the Project in accordance with now or hereafter accepted accounting or management principles or practices, including but not limited to the cost of removal, disposal and recycling costs associated with all fluorescent bulbs as mandated by

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governmental laws or regulators; and, the administrative cost and expenses for telephone, fax, pagers, answering service, postage, supplies, and the electricity, alarm services and janitorial service for the Project's management office directly attributable to the project; and (j) A fee for the management of the Project equal to fifteen percent (15%) of the Rent (Paragraph 5.3) collected for the Project. Notwithstanding anything to the contrary in this Section 28.4, "Common Area Charges" shall not include: (a) Amounts reimbursed by other sources, such as insurance proceeds, equipment warranties, judgments or settlements; (b) Construction of tenant improvements; (c) Utility Costs; (d) Taxes; (e) Insurance Premiums (f) Leasing commissions; (g) General overhead and administrative expenses of Landlord not directly related to the operation of the Project; and (h) Costs of negotiating or enforcing leases of other tenants. The Improvement Interest Rate shall mean a rate equal to four percent (4%) over the annual prime rate of interest announced publicly by Citibank, N.A. in New York, New York, and in effect at the time when the alteration, replacement or capital improvement was completed.

Common Area Charges for the "Project" as shown on Exhibit B attached hereto shall also include charges for services used by Tenant or from which Tenant derives benefit even though the source of such service or benefit is located outside of the area outlined on Exhibit B as "Project". By way of example only, use of dumpsters or trash compactors which are not now located within the outlined area.

28.5 UTILITIES. "Utility Costs" shall mean the total cost of supplying the Utilities to the Project including taxes thereon. "Utilities" shall mean all gas, electric, heat, light, water, phone, cable television, WI-FI, and the cleaning of Common Areas including valet recycle charges, compactor charges, refuse removal or other utilities used or to be used at the Project. Utility Costs shall include: a) Repairs associated with the delivery and distribution of Utilities and b) The cost of capital improvements, alterations and replacements to Utility systems installed after the base year, together with all associated costs and interest thereon at an annual rate of the Improvement Interest Rate (as defined in Section 28.4), all amortized over their useful life; except that, any such capital costs (and the interest thereon) incurred in connection with improvements, alterations and replacements for Utility conservation systems or devices may be amortized at a yearly rate equal to the cost savings realized during such period as a result of such improvement, alteration and replacement. Notwithstanding anything to the contrary in this Section 28.5, "Utility Costs" shall not include: (a) Amounts reimbursed by other sources; (b) Utilities or other expenses paid directly by tenants to suppliers or paid by tenants to Landlord for separately metered or special services. The calculation of Utility Costs in effect during the base year shall include only the actual cost of gas, electricity, heat, light, phone, cable television, WI-FI, and the cleaning of Common Areas including valet recycle charges, compactor charges, refuse removal, or other utilities supplied to the Project during the base year.

28.6 TAXES. "Taxes" shall mean taxes and assessments upon or with respect to the Project and the areas used in connection with the operation of the Project imposed by federal, state or local governments or governmental assessment districts, but shall not include income, franchise, capital stock, estate or inheritance taxes, but shall include

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gross receipts taxes and other business taxes. If, because of any change in the method of taxation of real estate, any tax or assessment is imposed upon Landlord or upon the owner of the land and/or the Project and/or the areas used in connection with the operation of the Project or upon or with respect to the land and/or the Project and/or the areas used in connection with the operation of the Project or the rents or income therefrom, in substitution for or in lieu of any tax or assessment which would otherwise be a real estate tax or assessment subject matter, such other tax or assessment shall be deemed to be included in Taxes. All costs incurred by Landlord relating to the appeal or protest of real estate taxes, assessments or valuations shall be included in the most current calculation of real property tax costs when incurred and all savings received from such appeals or protests shall be applied to reduce real property tax costs when received.

28.7 INSURANCE PREMIUMS. "Insurance premiums" shall mean the insurance premiums on the Project, including land, buildings and improvements thereon, except for Tenant Improvements, with such insurance including, but not limited to, insurance for fire, extended coverage, liability, property, casualty, rent interruption and any other insurance that Landlord reasonably deems necessary on the Project.

28.8 RECORD KEEPING. The Landlord shall keep complete and accurate records and accounts of all Common Area Charges, Utility Costs, Taxes and Insurance Premiums for a period not to exceed 24 months. Within 24 months of the date Tenant receives a bill pursuant to Section 28.2 Tenant may, upon 30 days advance written notice, request an inspection of the records which support the specific charges questioned by such notice. At no cost to Tenant, Landlord shall, during regular business hours, provide Tenant the opportunity to examine and inspect the records which support the charges billed to Tenant pursuant to Section 28.2; Such inspection shall occur at such place designated by Landlord that does not disrupt or interfere with Landlord's conduct of its business.

Notwithstanding the foregoing, Tenant shall have no right to inspect or audit any of Landlord's books or records if Tenant is in default in the performance of any of its obligations under this Lease. Should Tenant wish to audit any charges which are currently due, Tenant must first pay all such charges which are not under protest before Tenant may request an audit of the books and records which support such charges.

Tenant may request Landlord to make copies of specific documents for Tenant to keep at a charge of \$.25 per sheet copied, said amount to be paid in advance at the time of such request. In the event Tenant requests meetings with Landlord which cumulatively exceed two hours, then Tenant shall pay the reasonable cost of the Landlord's personnel involved in such meetings which shall be not less than \$25 per hour. Payment for such meetings shall be made in advance at the time of such request. Tenant shall forward to Landlord all of Tenant's audit reports upon their completion. If Tenant's audit shall disclose an inaccuracy greater than 5% with respect to the amounts billed to Tenant pursuant to Section 28.2, then Landlord shall refund to Tenant the amounts paid by Tenant to Landlord for copies and the amounts paid by Tenant to Landlord for meetings. In the event of any inaccuracy, Tenant or Landlord, as the case may be, shall pay to the other any amounts due.

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

Tenant shall not exercise this right to inspect or audit more than once in any calendar year.

29. **CONTINGENCIES.** This Lease is contingent upon the following items in addition to any other items set forth elsewhere in this Lease:

a. none

30. **COUNTERPART EXECUTION.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same documents. Signature pages may be detached from the counterparts and attached to a single copy of this Lease to physically form one document.

31. **GENERAL PROVISIONS.**

31.1 **SUBORDINATION.** Tenant's rights under this Lease and this Lease shall be subordinate to any mortgage(s), deed(s) of trust, deed and lien thereof now or hereafter placed upon the premises and any additional or adjoining property or upon any underlying leasehold estate, and to all advances made or hereafter made upon the security thereof. Tenant shall execute such further instruments subordinating this Lease to the lien or liens of the aforementioned instruments, as Landlord shall request.

31.2 **MIX OF TENANTS.** Landlord shall have the sole judgment as to the proper mix of tenants operating businesses within Marshall Foundation properties.

31.3 **CONCESSIONAIRES.** Tenant shall not permit any business to be operated in, on or directly or indirectly from the leased premises by any concessionaire or licensee without Landlord's prior written consent.

31.4 **ABANDONMENT OF PREMISES OR PERSONAL PROPERTY.** Tenant shall not vacate or abandon the premises at any time during the term of the Lease. If Tenant does vacate or abandon the premises or is dispossessed by process of law, any personal property belonging to Tenant and left on the premises shall be deemed abandoned at the option of Landlord and shall become the property of Landlord. For the purposes of this paragraph abandonment means the absence of Tenant from the premises, without notice to Landlord, for at least seven (7) days and rent for the premises is outstanding and unpaid for a five day period.

31.5 **REFURBISHING OF PREMISES.** INTENTIONALLY DELETED

31.6 **RELOCATION.** Landlord, upon at least sixty (60) days prior notice to Tenant, may require Tenant to relocate to other premises of substantially equal size in the Building which shall, upon delivery, be substituted for the Premises under this Lease. The amount of the Base Rent and Tenant's share of Common Area Charges, Utility Costs, Real Estate Taxes and Insurance Premiums shall be adjusted based upon the Rentable Area of the substitute premises. Landlord, at Landlord's expense, shall cause the substitute premises to be improved prior to delivery in a manner similar to the original Premises. Upon request, Tenant shall cooperate in the preparation or approval of plans and specifications for the improvements. Landlord shall bear all reasonable out-of-pocket costs incurred in connection with the relocation for changes in signs, changes in

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

stationery, reinstallation of telephone equipment, moving of furniture and personal property, and similar matters. Should Tenant refuse to permit Landlord to move Tenant to such new space, Landlord, in such event, shall have the right to terminate this Lease by giving written notice to that effect to Tenant in which event this Lease shall terminate effective ninety (90) days from the date of original notification by Landlord of Landlord's desire that Tenant be relocated. If Landlord moves Tenant to such new space, this Lease and shall remain in full force and effect and be deemed applicable to such new space, and such new space shall thereafter be deemed to be the "Premises".

THIS IS A LEGAL DOCUMENT-READ BEFORE SIGNING

"LANDLORD"

MARSHALL FOUNDATION, an Arizona nonprofit corporation

BY: _____

ITS: _____

BY: _____

ITS: _____

"TENANT"

TUCSON UNIFIED SCHOOL DISTRICT

BY: _____

ITS: _____

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

**MARSHALL FOUNDATION RETAIL LEASE
GERONIMO PLAZA**

EXHIBIT A

(Page 1 of 5)

Premises Address:

Street: 808 E. University Blvd.,

Suite: na
Tucson AZ 85719

Rentable Area of Premises: 1087 Sq. Ft.
Approximately

Rentable Area of Project: 29,151 Sq. Ft.
Approximately

Merchant Marketing Fund (Annually)
Seventy-five cents (\$.75) per Sq. Ft.
of rentable Area of Premises

Tenant's Proportionate Share of
Common Area Charges, Utility
Costs, Real Estate Taxes and
Insurance Premiums four percent
(4%)

Use of Premises: The Premises shall be used solely as an art studio and workroom for the creation and storage of art projects to be used in the Main Gate Square area.

Prohibited Uses: Tenant shall use the Premises solely for the use granted under this Lease. By way of information to Tenant the following areas of use are specifically prohibited. The listing of these prohibited uses is **not** a consent for Tenant to expand its above set forth use without the prior written consent of Landlord.

Specifically prohibited uses: Tenant shall not: sell freshly ground or whole coffee beans; espresso or espresso-based coffee drinks; gourmet or brand-identified brewed coffee (this restriction also applies to kiosks and carts but shall not prohibit the sale of brewed coffee that is not gourmet or brand identified)(additionally, full service sit-down restaurants serving a complete dinner menu may sell brewed coffee or hot espresso-based drinks for on-premises consumption only); operate a Greek restaurant; operate a tanning salon; operate an Irish themed restaurant and pub; operate a business whose income from the sale of tattoo art and services of tattooing constitute over 51% of the business's gross annual sales; operate a business whose primary business is the sale of sushi and teppan (for this provision "primary business" is defined as being 55% of gross sales); operate a business whose primary business is the operation of a coffee house (for this provision

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Landlord Landlord
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Tenant

Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit A
Page 2

“primary business” is defined as being more than 55% of gross sales); operate a business whose primary business is the sale candy (for this provision “primary business” shall be where the sale of candy is more than 30% of income); operate a business whose primary business is the sale of tea and related accessories (for this provision “primary business” is defined as being 55% of gross sales); sell Chicken Tikka Kabobs and/or Chicken Tikka Masala; operate a business whose primary business is the sale of mac and cheese type items, (for this provision “primary business” shall be where the sale of mac and cheese type items is more than 45% of income of the business’s gross annual sales); operate a restaurant whose primary business is selling barbeque, (for this provision “primary business” shall be defined as forty percent of such a tenant’s gross income); operate a business whose primary business is the sale, repair and service of bicycles, (for this provision “primary business” shall be defined as where more than 30% of income is derived from the sale of bicycles); operate a business whose primary business is the sale of macarons, (for this provision “primary business” shall be defined as where no more than twenty-five percent (25%) of income is derived from the sale of macarons).

Additionally, Tenant shall not operate a retail drug store, a pharmacy mail order facility, a pharmacy prescription department, cigarette or smoke shop, a discount, 99 cents store or “dollar” store which sells general merchandise (a “Dollar Store”), a greeting cards store, a vitamin store, a convenience store, or for the sale of any of the following: (I) the sale of beer, wine or other alcoholic beverages for off-premises consumption, (II) greeting cards and/or party goods, (III) photo printing or processing (including, without limitation, one-hour or less photo processing), (IV) health and beauty aids, or (V) vitamins and health supplements. Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred’s, Dollar Store, Dollar General, or Family Dollar.

Notwithstanding the aforesaid, if given the right by Landlord, (1) a tenant may devote no more than a total of the lesser of five percent (5%) of its retail selling space (based on total linear shelf space) or fifty (50) square feet of shelf space, to the sale or display of the items listed in clauses (II), (III) and (IV) of the preceding paragraph (2) the restrictions set forth in clauses (I) through (V) of the preceding paragraph shall not apply to the operation of a hotel gift shop occupying 2,000 square feet or less; (3) the restriction set forth in clause (I) of the preceding paragraph shall not apply to a restaurant which sells high-end wines and specialty beer for off-premises consumption provided such restaurant’s primary business is the operation of a restaurant with sit-down dining and full wait service; (4) the restriction set forth in clause (I) of the preceding paragraph shall not apply to a specialty wine/beer store occupying 2,000 square feet of space or less provided such specialty store sells only wine and specialty beer (it being understood that

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Landlord Landlord
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Tenant

**Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit A
Page 3**

in no event shall any other tenant be allowed to sell commercially available domestic or import beers or any spirits for off-premises consumption; (5) the restrictions set forth in clauses (I) through (V) of preceding paragraph shall not apply to a high-end specialty grocery store similar in nature to a Whole Foods, Wild Oats or Trader Joe's provided such grocery store occupies in excess of 9,100 square feet of space; and (6) the restrictions set forth in clauses (II) through (IV) of the preceding paragraph shall not apply to the operation of a book store.

Base Term:

Period: 36 Months

Possession Date: See Article 20 of the Lease

Lease Term Commencement Date: July 1, 2016.

Rent Commencement Date: July 1, 2016

Ending Date: June 30, 2019

Adjustment Month: The month which is the 13th month after the Lease Term Commencement and annually thereafter

Comparison Month: The month which is three months prior to the month in which the Lease Term commenced.

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Landlord Landlord
MARSHALL FOUNDATION

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**Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit A
Page 4**

Rent: See Article 3 of this Lease.

Base Rent:

Monthly Base Rent	\$NA	Per Month
Monthly Expenses		(adjusted annually based on actual)
		<i>[Common Area Maintenance- \$426.83 per month]</i>
		<i>[Common Area Utilities- \$92.60 per month]</i>
		<i>[Real Estate Taxes –\$26.41 per month]</i>
		<i>[Insurance Premiums –\$34.80 per month]</i>
	*\$580.64	Per Month for Tenant’s Proportionate Share of Common Area Charges, Common Area Utility Costs, Real Estate Taxes and Insurance Premiums
Monthly Merchants Marketing Fund	\$67.94	Per Month for Marketing Fund with increases as specified in Lease
Rent Tax	\$16.21	Tenant’s obligation to pay tax is specified in Lease
TOTAL:	\$664.79	Per Month Estimated Only (which may change): Tenant’s obligation specified in Lease
Security Deposit:	\$-0-	

Monthly Rent: \$664.79

Annual Rent: \$7,977.48

* Tenant’s CAM as set forth above is less than in the previous year as expenses have been less. During the term of this Lease, the CAM shall be capped at \$580.64. (See Sub-article 28.1 re CAM Cap)

Contact Information:

Landlord: MARSHALL FOUNDATION 520-622-8613

Tenant: TUCSON UNIFIED SCHOOL DISTRICT 520-225-4949

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

**Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit A
Page 5**

“LANDLORD”

MARSHALL FOUNDATION, an Arizona nonprofit corporation

BY: _____

ITS: _____

BY: _____

ITS: _____

“TENANT”

TUCSON UNIFIED SCHOOL DISTRICT

BY: _____

ITS: _____

Notice Address:

MARSHALL FOUNDATION
814 E. University Blvd.
Tucson, AZ 85719

Notice & Billing Address:

TUCSON UNIFIED SCHOOL DISTRICT
606 S. Plumer Ave.
Tucson, AZ 85719

Preparation of this Lease by Landlord or Landlord’s agent and submission of the same to Tenant shall not be deemed to be an offer to Lease. This Lease shall become binding upon Landlord and Tenant only when fully executed by Landlord and Tenant.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

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Landlord Landlord
MARSHALL FOUNDATION

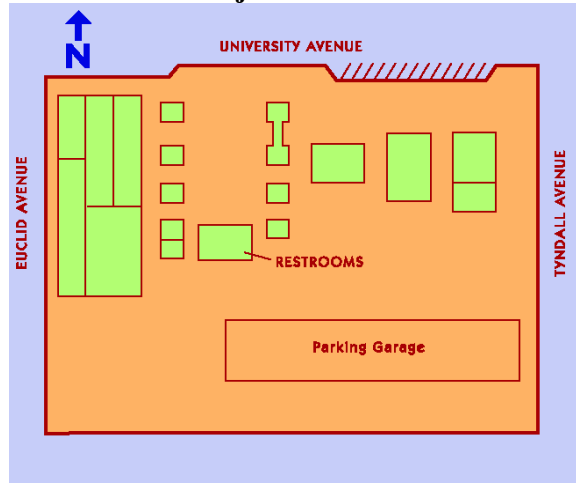
Tenant

**MARSHALL FOUNDATION RETAIL LEASE
GERONIMO PLAZA
EXHIBIT B**

(Page 1 of 6)

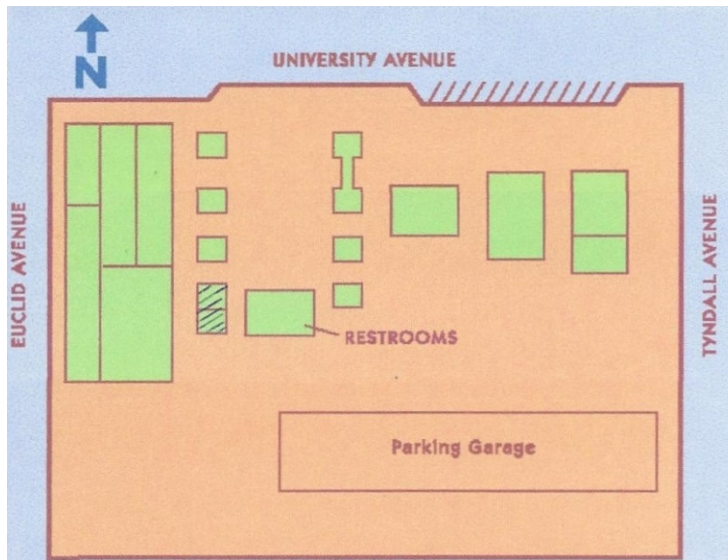
ARTICLE I

Project Site Plan



Project -- The Premises

The Premises shall be located in the Building in the general location shown on the layout below. The exact size, placement, and configuration of the Premises will be governed by Exhibit B.



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Landlord Landlord
MARSHALL FOUNDATION

Tenant

ARTICLE II

LANDLORD'S WORK

Tenant has been in possession of the Premises and no Landlord's work is being done.

ARTICLE III

**Future Tenant Improvements
Improvement Procedures for the Premises**

Landlord and Tenant agree that the following procedures will govern any future construction within the Premises by Tenant. Tenant's Work shall be completed in accordance with all applicable governing codes, in a good and workmanlike manner, utilizing first quality new materials. The term "provide" as used herein means furnish and install.

1. Tenant's Plans and Specifications for the Premises.

1.1 Condition of Premises. Tenant accepts the Premises in an "as is" condition.

1.2 Preparation of Working Drawings and Specifications and Permits.

- (a) If any changes are proposed, Tenant shall submit a Space Plan to Landlord within twenty (20) days after the execution of this Lease. After Tenant and Landlord agree on Tenant's space plan (the Space Plan), Tenant shall submit the Space Plan to the Tenant's Architect so that Tenant's Architect may prepare specifications and to-scale working drawings for the acquisition of permits and the construction of the Premises in conformance with the Space Plan (the Architectural Construction Documents). If Landlord fails to approve or provide comments relating to such Space Plan within ten (10) business days of Landlord's receipt of the Space Plan, the Space Plan will be deemed approved by Landlord. Landlord has previously provided Tenant with the Improvement Standards (as defined below) and with any other design criteria or requirements relating to the exterior of the Premises. Landlord may not disapprove Tenant's Space Plan to

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Landlord Landlord
MARSHALL FOUNDATION

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Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit B
Page 3

the extent that the Premises are in conformance with the Improvement Standards and any such design criteria.

- (b) Tenant shall transmit the Architectural Construction Documents to Tenant's Contractor with instructions to prepare a firm price contract (the Firm Price Contract) to construct the improvements pursuant to the Architectural Construction Documents. Tenant may only use a licensed, bonded and insured commercial contractor to build the improvements to the Premises that has been approved by Landlord in writing within ten (10) business days of Tenant's submittal of the same to Landlord. If Landlord fails to respond within such ten (10) day period, the contractor submitted by Tenant shall be deemed approved. Landlord shall be provided a copy of the Firm Price Contract.
- (c) Tenant's Contractor and all construction work (the Work) must comply with all laws, ordinances, codes, standards or rules and regulations of any federal, state or local governmental agency having jurisdiction thereof, as well as Landlord's building standard requirements [Exhibit B, Article IV, Improvement Standards], and all such Work shall be subject to Landlord's approval. Landlord shall not be responsible to Tenant to provide quality control for Tenant, and Landlord's approval is for Landlord's benefit only. Under no circumstances shall Tenant have a claim against Landlord for Landlord's failure to observe or report deficiencies in the Work being undertaken by Tenant or on Tenant's behalf by Tenant's Contractor.
- (d) Tenant shall keep the Premises and the improvements thereof all free and clear of all liens arising out of any claims by reason of any Work performed, materials furnished or obligations incurred by or at the insistence of Tenant, and indemnify and save Landlord harmless and Premises and the buildings harmless of all such liens or claims of liens and all attorney's fees and other costs and expenses incurred by reason thereof.
- (e) The Tenant shall, prior to commencement of any Work by Tenant and/or Tenant's Contractor at their sole cost and expense provide Landlord with a policy or policies of Public Liability insurance naming Landlord as an additional insured, insuring against any loss, injury, death or damage to persons or property, including the Premises and the buildings, arising

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit B
Page 4

out of such Work, with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and Five Hundred Thousand Dollars (\$500,000) per occurrence for property damage. Such liability insurance shall specifically include the obligation under the Indemnity Agreement contained in Article 8.5 of the Lease and subject to Article 8.1 of this Lease.

All insurance policies shall be issued by companies and in a form satisfactory to Landlord and shall expressly provide that the insurance company shall notify Landlord in writing at least thirty (30) days prior to any alterations or cancellation thereof. Such policy, or duplicate of certificate or other appropriate evidence thereof, shall be delivered to Landlord prior to commencement of the Work. Tenant agrees that, if Tenant and/or Tenant's Contractor does not procure all such insurance and keep the same in force and effect, Landlord, at Landlord's option and subject to the rights of reimbursement as set forth in Article 8.1 of the Lease, may obtain such insurance and pay the premium therefore. Under no circumstances will Landlord be obligated to procure insurance on behalf of Tenant or Tenant's Contractor.

- (f) Upon the completion of the Work Tenant shall provide Landlord with unconditional lien waivers and occupancy certificates/letters of completion from the appropriate government agencies. All lien waivers must include the language that the funds were received for work done on or about the Premises and applied as payment for said work.
- (g) Tenant or Tenant's agents shall be responsible for obtaining all governmental permits required of Tenant for Tenant's tenant improvements and the operation of Tenant's business, including, but not limited to permits from the City of Tucson and the Pima County Health Department, if applicable (i.e. for restaurants, hair salons-by way of example only and not a complete listing.)

2. Construction and Completion of the Premises.

- 2.1 **Streetcar Permit.** Prior to the commencement of any construction, a Streetcar Permit is required to be obtained by any contractor using lifts and/or boom trucks near the existing streetcar lines.

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

- 2.2 **Changes in the Scope of Work.** Should Tenant desire to modify the scope of the Work at any time after the Architectural Construction Documents are transmitted to the Tenant's Contractor by Tenant, all proposed changes must be submitted in writing to Landlord for its review and approval. Changes in the scope of the Work together with any resultant time delay and costs (and method of payment therefore) must be agreed to in writing by Tenant and Landlord before Landlord shall approve a Change.
- 2.3 **Changes in Writing Only.** The Landlord and Tenant agree that under no circumstances will verbal communications be valid or binding upon either of the parties. The parties further agree that only the Landlord has the authority to approve Changes on Landlord's behalf and that such authority shall not be conveyed to any individual or agent, except by a written instrument signed by Landlord.
- 2.4 **Terms and Notations.** It is understood that the words Owner and Landlord shall be interchangeable and, as used in the Exhibit B and the Architectural Construction Documents, shall refer to the Landlord herein. It is understood that the following notations on any document related to Tenant's Work shall designate work which is to be done at Tenant's sole cost and expense -- Tenant Extra, Tenant Extra Work, NIC, Not in Contract, and Tenant's Cost.
3. **Rental Commencement Date.** Rent Commencement Date shall be as set forth on Exhibit A.
4. **As-Built Drawings.** Upon completion of the construction by Tenant of Tenant's Work, Tenant shall deliver to Landlord to scale, as-built drawings which show all Work done by Tenant in the Premises.

ARTICLE IV

Minimum Improvement Standards

1. **Submission of Written Plan.** Tenant **must** present Landlord with specific written proposals for **all** work to be done by Tenant to the interior and exterior of the Premises. This includes both initial tenant improvements as addressed above and **all** subsequent modifications or improvements.

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

**Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit B
Page 6**

2. **Historic Review Board.** The buildings making up Geronimo Plaza are historic buildings and as such all exterior changes require the review and approval by the Historic Review Board. After obtaining Landlord's written consent to Tenant's plans for changes to the exterior of the Premises, Tenant must submit the same to the Historic Review Board for its review and approval. Landlord will assist Tenant in this process.
3. **Interior Changes.** Due to the age of these buildings **all** modifications, improvements, etc. to the inside of the Premises **must** be approved by the Landlord. Each Premises must be considered on a case by case basis. Landlord will consult with Tenant to assist Tenant in making changes to the interior.

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

**MARSHALL FOUNDATION RETAIL LEASE
GERONIMO PLAZA**

EXHIBIT C

(Page 1 of 5)

Rules and Regulations

Tenant agrees to abide by all the requirements set forth herein.

1. The word "Project" as used herein means the Project of which the Premises are a part.
2. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Project without the written consent of Landlord first had and obtained and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice with notice to and at the expense of Tenant.
3. All approved signs or lettering on doors shall be affixed at the expense of Tenant by a person approved by Landlord in accordance with Exhibit D, "Sign Criteria".
4. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.
5. The sidewalks, road, passage, loading zones, exits and entrances shall not be obstructed by Tenant, Tenant's employees, agents, contractor or invitees. The Landlord shall in all cases retain the right to control and prevent access to the Project by all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom the Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. Notwithstanding the above, Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of any of the rules and regulations of the Project.
6. The driveways, alleyways, fire lanes and loading zones must be kept free of parked

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

vehicles.

Marshall Foundation Retail Lease

Geronimo Plaza

Exhibit C

Page 2

7. Deliveries:
 - a) No deliveries (with the exception of deliveries made by UPS, DHL, Federal Express and similar delivery services) shall be made between the hours of 11:30 AM and 1:00 PM, Monday through Friday;
 - b) The designated loading zones are located as follows:
 - 1) On the southeast corner of University Blvd and Euclid Ave;
 - 2) Midblock on the south side of University Blvd. between Park Ave. and Tyndall Ave.
 - 3) On the southeast and west corners of University Blvd and Tyndall Ave; and
 - 4) In the Tyndall Alleyway north of University Blvd.
 - c) Tenant will inform all persons or companies making deliveries to Tenant that it is **unlawful** to unload from the middle of University Blvd unless parked in a designated loading zone as listed above.
8. In the event Tenant wishes to hold a special event upon the sidewalk area adjacent to the Premises, Tenant shall seek written permission from Landlord and Tenant shall be responsible for procuring all necessary permits, insurance and such other items deemed necessary by Landlord with consideration being given as to the type of event for which permission is requested. Landlord may, in its sole discretion, withhold permission.
9. Tenant shall not alter any lock or install any new or additional locks or any bolts on any door of the Premises without approval of Landlord.
10. Tenant shall see that the doors of the Premises are closed and securely locked before leaving the Premises and should observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave, so as to prevent waste or damage.
11. Each Tenant, upon the termination of its tenancy, shall deliver to the Landlord the keys of offices which shall have been furnished the Tenant and, in the event of loss of any keys so furnished, shall pay the Landlord therefore.
12. Tenant, when moving into or out of the Premises should make prior arrangements with Landlord so as not to interfere with the business of other tenants.

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Landlord Landlord
MARSHALL FOUNDATION

Tenant

Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit C
Page 3

13. The requirements of Tenant will be attended to only upon application at the Office of Landlord as so designated. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from the Landlord, and no employee will admit any person (Tenant or otherwise) to any space without specific instructions from the Landlord.
14. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness of the Project.
15. In the disposal of trash, Tenant shall:
 - a) place the trash **in the appropriate receptacle**, not in any recycle dumpster or street receptacle, keeping the trash disposal area in a clean and sightly condition.
 - b) break down all cardboard containers and **place in the appropriate recycling bin or compactor**.
 - c) see that Tenant and all its employees dispose of cigarette butts in ash urns.
 - d) be responsible for cleaning up trash in the common areas that is generated by its customers including, but not limited to, toothpicks, cups, napkins, wrappers, straws and fortune slips.
 - e) Landlord reserves the right to charge Tenant for any cleanup work necessitated by Tenant's failure to comply with the above provisions. Tenant shall pay such charges within (5) business days of presentation by Landlord to Tenant of a bill for such cleanup
16. Upon written consent of Landlord, Tenant may be given a non-exclusive right and privilege, continuing for such time as Landlord determines, to use as customer seating and/or eating area a portion of the common area or sidewalk, to be determined by Landlord and set forth in the writing. Should such non-exclusive right and privilege be given by Landlord, Tenant, in such use, shall not in any way obstruct sidewalk traffic and shall at all times during said permitted period and at its sole cost and expense, be responsible for continuously keeping said area in a clean and sightly condition. In the event Tenant fails in Landlord's reasonable opinion to so keep the area in a clean and sightly condition, then Landlord may (a) without any obligation to do so and without liability for its failure to do so, enter said area for purposes of keeping said area in such condition, and Tenant shall fully reimburse Landlord for all Landlord's costs and expenses associated therewith within five (5) business days of receipt of a bill therefore; or (b) notify Tenant that the right and privilege has been

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Landlord Landlord
MARSHALL FOUNDATION

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Marshall Foundation Retail Lease
Geronimo Plaza
Exhibit C
Page 4

withdrawn by Landlord. Landlord reserves the right to approve the aesthetics of the area in granting any such right to Tenant, including, but not limited to, the selection of furniture, and use and selection of umbrellas. Prior to Tenant using the area set forth by Landlord, Tenant shall provide Landlord with a certificate of insurance establishing coverage for Tenant's use hereunder and listing Landlord as an additional insured. Additionally, all tables, furniture, trash receptacles and other items of a similar nature shall not be placed by Tenant in the common areas without the prior written approval of Landlord. Landlord's approval shall not prevent Landlord from requiring Tenant to remove such items for any reason, including, but not limited to, access concerns, special events, maintenance, unsightliness.

17. There will be no smoking by Tenant or its employees outside of those smoking areas designated by Landlord.
18. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Project by reason of noise, odors and/or vibrations which would interfere in any way with other tenants.
19. Tenant shall not use or keep in the Premises or the Project any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied or approved by Landlord.
20. The bathrooms, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein; the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, agents, contractor or invitees, shall have caused it.
21. Landlord will direct electricians as to where and how telephone wires and cables are to be introduced. No boring or cutting for wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.
22. Tenant shall not overload the floor of the Premises in any way deface the Premises or any part thereof. No Tenant shall lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner

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except as approved by the Landlord. The expense of repairing any damage resulting from violation of this rule or removal of any floor covering shall be borne by the Tenant by whom, or by whose contractor, employees, agents or invitees, the damage shall have been caused.

23. Tenant shall provide chair pads for all desk chairs of the swivel base type that are used on carpeted areas.
24. No vending machine or machines of any description shall be installed, maintained or operated upon the Project without the written consent of Landlord.
25. Tenant shall not disturb, solicit or canvass any occupant of the Project, and shall cooperate to prevent same.
26. Without the written consent of Landlord, Tenant shall not use the name of the Project in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
27. The Landlord reserves the right at any time to rescind any one or more of these rules and regulations, or to make such other and further reasonable rules and regulations as in the Landlord's judgment may from time to time be necessary for the safety, care and cleanliness of the Project, and for the preservation of order therein.
28. Tenant, its employees, agents, contractors and subcontractors shall not disturb other tenants or cause or permit loud noises, such as, by way of example and not limited to, saw cutting, jack hammering, loud music, generators, drilling and drywall nailing, during business hours.
29. Tenant, Tenant's contractor and subcontractors shall not go on to the roof of the Premises or Project nor cut or puncture any roof without first coordinating such actions with Landlord and Landlord's roofer so as to avoid roof warranty problems (see 4.1 of the Lease).

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EXHIBIT D

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Sign Criteria

I. INTRODUCTION

The intent of this Sign Criteria is to establish and maintain guidelines consistent with the signage policies of the Landlord and the City of Tucson. Further, the purpose is to assure a standard conformity for the design, size and materials for signage for tenant identification. **The Project is within or adjacent to an historic district so sign specifications must adhere to all regulations, rules, etc. by any governmental or quasi-governmental agency having jurisdiction thereover as well as the Project's sign criteria. Page 4 of this Exhibit D sets forth the sign recommendations of the West University Historic District as they exist at time of execution of this Lease. Should there be any conflict between these recommendations and the first three pages of Exhibit D, the recommendations shall prevail.** Any sign placed on the Project without all appropriate permissions is subject to removal by Landlord and/or the agency(ies) having jurisdiction thereover. All signs must be approved by Landlord prior to Tenant seeking approval from the City or Tucson or such other entity having jurisdiction.

Tenant shall, at its own expense, provide and maintain its own identification sign in accordance with specifications noted herein. Tenant is encouraged to work with the sign vendors approved by Landlord

II. GENERAL REQUIREMENTS

- A. Tenant's sign shall be designed and installed in accordance with this Sign Criteria and consistent with the Sign Code of the City of Tucson adopted by the Mayor and Council on February 4, 1980, and as amended from time to time, and the recommendations of the West University Historic District, also as amended from time to time.
- B. Landlord's written approval of Design Drawings and Working Shop Drawings is required prior to the preparation and installation of Tenant signage. All signage submittals must state the name of sign company.
- C. Sign permits must be obtained by Tenant prior to installation of signage when required by City sign codes. This is Tenant's responsibility and not the

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responsibility of Landlord.

- D. Signs installed without written approval of the Landlord or the appropriate City permit will be subject to removal and proper reinstallation at Tenant's expense.
- E. Tenant shall repair any damage caused during installation or removal of signage.
- F. No labels shall be permitted on the exposed surface of signs, except those required by local ordinance.
- G. Flashing, moving or audible signs are not permitted.
- H. No portable signs or so-called "A" frame signs are to be displayed on site.
- I. No secondary exterior signs are to be placed on building wall elevations.
- J. No freestanding and/or pylon type exterior signs will be permitted.
- K. Off site signs are NOT permitted.
- L. Business signs shall be limited to one sign per street frontage per premises. Businesses having frontage on more than two streets will be allowed a maximum of three signs.
- M. Maximum area of any sign shall be in accordance with municipal regulations and is to be based upon street frontage of the Premises (In some cases a variance may be granted for a larger sign.)
- N. Signs shall be illuminated from dusk until 11 P.M. or later.

III. TENANT IDENTIFICATION SIGN (RETAIL ONLY)

Retail wall signage will be reviewed by the Landlord in its absolute discretion on an individual case-by-case basis due to varying existing signage in the Project. All items included in this Sign Criteria apply to this section also.

IV. RETAIL (AND TEMPORARY SPACE USERS)

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Professionally designed banners will be permitted for seasonal, holiday, special events and special sale days if pre-approved in writing by Landlord. Tenant will submit in writing to Landlord the following: drawing, including dimensions of banner, wording and dates of proposed display. Landlord hereby informs Tenant that the City sign code requires that banners be permitted and that there are regulations governing banners. Tenant will create and place banner at its own risk. The City of Tucson or such other entity having jurisdiction thereover may require that the banner be removed. Landlord is not responsible for hanging or removal of banner, vandalism or theft of banners.

V. TENANT SIGN SUBMISSIONS

- A. Tenant shall submit all working shop drawings, including drawings for banners, to the Landlord or his appointed representative for written approval by Landlord.
- B. All submissions to include two (2) blue prints with the exception of banners where two (2) image documents will suffice. An approved copy will be returned and one (1) copy shall be retained by Landlord for its records.
- C. Shop Drawings must include:
 - 1. Full and complete dimensions.
 - 2. Letter style, sizes and color.

VI. APPROVALS

No sign shall be installed without first securing the necessary permits from the City of Tucson and any other entity having jurisdiction thereover. Artwork and sign location are to be approved in writing by Landlord or its appointed agent prior to installation. Landlord reserves the right in its absolute discretion to reject any sign which in Landlord's opinion is not compatible with the Project or does not comply with the intent and spirit of this Sign Criteria.

VII. INSTALLATION

Installation of signs shall not interfere with the normal course of business for the Project and should be coordinated, in advance, with Landlord. Signs shall be installed within ninety (90) days

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of Tenant's opening for business. Tenant shall use due diligence to comply with all applicable requirements in order to meet this deadline.

HISTORIC DISTRICT REVIEW IS REQUIRED

Recommendation of the West University Historic District Advisory Board April 23, 1927

Subject: HOR 87-16 Geronimo Hotel and Lodge

These recommendations supercede any previous recommendation by the Advisory Board regarding Geronimo signage.

- I. Lodge Complex
 - A. One four square foot wall sign per unit of rental space. Signs shall be uniform shaped rectangles with rounded corners. Signs shall be located on either side of archways/entryways, at a uniform height of between six and nine feet above sidewalk grade of the courtyard. Signs for tenants without arched entryways should be located on blank wall space within the same horizontal band.
 - B. One freestanding directory sign shall be permitted for the retail portion of the complex. Sign shall be located between the columns supporting the "Geronimo Lodge" sign on University Boulevard. Sign may use both sides of a sign board supported between the columns and externally lit. Total size, height, and design of the sign shall be determined by the Advisory Board.
 - C. The two northernmost or end lodges of the complex may use awnings similar to those applied to the Hotel building, identical in color to those of the Hotel, and containing their signage on the awning in white letters following the formula of four square feet per rental unit, per street frontage. If this option is employed, both northernmost lodges must follow this pattern of signage and exclude the wall plaque signage otherwise allowed.
 - D. An address sign for the complex should be incorporated into the directory sign between the columns supporting the "Geronimo Lodge" sign. Letters for the address shall be no more than eight inches tall.
 - E. The historic "Geronimo Lodge" sign shall be reinstalled at the column location.
2. Hotel Building
 - A. Retail tenant signage shall be located above the windows of the ground floor retail space at a uniform height. Signage may be neon (not flashing) or individual letters externally lit. Letters shall be of uniform height of no more than 24 inches. Size of the signage shall be determined by the formula of 1 ½ square feet per linear foot of street frontage per rental unit.

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