

CONSENT TO ASSIGNMENT OF LEASE

TO: * ("Assignor")

AND TO: * ("Assignee")

AND TO: * ("Indemnifier")

AND TO: * ("Landlord")

DATE: *

WHEREAS

A. By a lease dated the ** day of **, ** (the "**Lease**"), the Landlord leased to the Tenant, for and during the term (the "**Term**") of ** (**) years commencing on the ** day of **, ** and expiring on the ** day of **, **, certain premises (the "**Premises**") designated as Unit # **, comprising a Rentable Area of approximately ** (**) square feet, and as shown cross-hatched on Schedule "" attached to the Lease, situated in the shopping centre known as **, located in the City of *, in the Province of *, (the "**Shopping Centre**");

B. The Assignor has agreed to assign to the Assignee the Lease pursuant to an assignment (the "**Assignment**") effective on ** (the "**Effective Date**");

C. The Indemnifier has agreed to execute the Supplementary Indemnity Agreement attached hereto as Appendix "A" for the purpose of acknowledging the Indemnifier's agreement to jointly and severally indemnify and save the Landlord harmless from and against any non-payment of Rent and any non-observance or non-performance of any of the terms, covenants and conditions contained in the Lease to be observed and performed on the part of the Tenant therein. **[NTD: optional - delete if not required]**

1. Consideration

The consideration for this Agreement is the mutual covenants and agreements between the parties and the sum of Two Dollars (\$2.00) that has been paid by each of the parties to each of the others, the receipt and sufficiency of which is acknowledged.

2. Consent

The Landlord consents to the Assignment subject to the performance and observance of the terms of the Lease (including the payment of Rent) and subject to the terms and conditions set out in this Agreement.

3. Covenants of Assignee

(a) The Assignee covenants with the Landlord that the Assignee shall, during the balance of the Term, pay the Rent reserved by the Lease (as the term "**Rent**" is defined in the Lease) and any arrears of Rent which may be outstanding as of the Effective Date (including amounts of Rent for periods prior to the Effective Date which are permitted by the Lease to be subsequently adjusted and recovered by the Landlord and items of Rent not yet billed for the period ending on the Effective Date) and perform the covenants, conditions and agreements contained in the Lease on the part of the Tenant to be observed and performed, including without limitation, the provisions of the Lease relating to the permitted use of the Premises; and

(b) The Assignee acknowledges that it has received a copy of the executed Lease and is familiar with its terms, covenants and conditions.

4. Conditions

(a) This consent shall not derogate from the rights of the Landlord under the Lease and the Assignor shall remain jointly and severally responsible with the Assignee for the fulfilment of all obligations of the Tenant under the Lease for the balance of the Term and any renewal or extension thereof (the whole without novation of any kind) including, without limitation the obligation to pay all Rent from time to time becoming due under the Lease;

(b) The Assignor waives any and all rights and remedies to which it may be entitled at law, in equity or as tenant under the Lease including, without limitation, the right to apply for relief from forfeiture or to obtain any reassignment of the Lease;

- (c) This consent shall not be construed or interpreted as a forfeiture of any of the Landlord's rights under the Lease and does not constitute a waiver of the necessity for obtaining consent to any further or other assignment or subletting or any other Transfer of the Lease (as the term "**Transfer**" is defined in the Lease);
- (d) By giving its consent, the Landlord does not acknowledge or approve of any of the terms of the Assignment as between the Assignor and the Assignee, except for the assignment of the Lease itself;
- (e) The Assignor and the Assignee shall be jointly and severally responsible for all costs, including legal costs incurred by the Landlord in connection with the preparation of this consent to the Assignment;
- (f) The Assignor and the Assignee shall, at their expense, promptly execute any further assurances with respect to the Premises as the Landlord reasonably requires from time to time;
- (g) The Assignee agrees that it is accepting possession of the Premises in an "as is" condition and the Landlord has no responsibility or liability for making any renovations, alterations or improvements in or to the Premises and all further renovations, alterations or improvements in or to the Premises are the sole responsibility of the Assignee and shall be undertaken and completed at the Assignee's expense and strictly in accordance with the terms of the Lease and Schedule "___" attached thereto;
- (h) The Assignee shall forthwith deliver to the Landlord certificates of insurance on the Landlord's standard form or, if required by the Lease, certified copies of each insurance policy which the Tenant is required to maintain under the terms of the Lease;
- (i) **[NTD: Optional, if lease provides for payment of Percentage Rent]** At the Landlord's option the current Rental Year shall be deemed to end on the Effective Date and the next Rental Year shall commence on the day immediately after the Effective Date and expire on the date on which the current Rental Year would have ended, and the remaining Rental Years during the Term shall be as defined in the Lease (as the term "**Rental Year**" is defined in the Lease);
- (j) The Assignee shall not be entitled to any special rights of the Tenant under the Lease (such as, by way of example, any right of renewal or extension, right of first refusal or first opportunity, termination right or restrictive covenant); and
- (k) The Indemnifier shall execute the Supplementary Indemnity Agreement attached hereto as Appendix "A" for the purpose of jointly and severally agreeing to indemnify and save harmless the Landlord from and against the non-payment of Rent reserved by the Lease and the non-performance and non-observance of the other terms, covenants and conditions contained in this Lease to be observed and performed on the part of the Tenant therein.
[NTD: optional - delete if not required]

5. Amendments to Lease

The parties acknowledge and agree that the Lease is hereby amended as of the Effective Date as follows:

[NTD: insert any required amendments to the Lease]

6. Definitions

All defined terms or expressions where used in this Agreement have the same meaning as in the Lease or this Agreement, as the case may be.

[Balance of page is intentionally left blank]

7. Binding Effect

This Agreement shall enure to the benefit of the Landlord and its successors and assigns and shall be binding upon each of the other parties hereto and each of their permitted successors and permitted assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

(Assignor)

Per: _____
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.

(Assignee)

Per: _____
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.

(Indemnifier)

Per: _____
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.

(Landlord)

Per: _____
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.

APPENDIX "A"

SUPPLEMENTARY INDEMNITY AGREEMENT

THIS AGREEMENT is dated the * day of *, 20**.

B E T W E E N :

(the "Landlord")

OF THE FIRST PART

- and -

(the "Indemnifier")

OF THE SECOND PART

In order to induce the Landlord to provide its consent to an assignment as evidenced in the Consent to Assignment of Lease dated the * day of *, 20**, and made among the Landlord, the Assignee, the Assignor and the Indemnifier thereby among other things, assigning to * a certain lease (the "**Lease**") dated the * day of *, 20**, made between *, as Landlord, and *, as Tenant, and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Indemnifier hereby makes the following indemnity and agreement with and in favour of the Landlord:

1. (a) The Indemnifier hereby agrees with the Landlord that at all times during the Term of the Lease and any extensions or renewals thereof or overholding by the Tenant under the Lease, it will (i) make the due and punctual payment of all Rent, monies, charges and other amounts of any kind whatsoever payable under the Lease by the Tenant whether to the Landlord or otherwise; (ii) effect prompt and complete performance and observance of all and singular the terms, covenants and conditions contained in the Lease on the part of the Tenant to be kept, observed and performed; and (iii) indemnify and save harmless the Landlord from any loss, costs or damages arising out of any failure by the Tenant and the Indemnifier to pay the aforesaid Rent, monies, charges and other amounts of any kind whatsoever payable under the Lease or resulting from any failure by the Tenant and the Indemnifier to observe or perform any of the terms, covenants and conditions contained in the Lease.
- (b) The Indemnifier's covenants and obligations set out in paragraph (a) above will not be affected by any disaffirmance, disclaimer, repudiation, rejection, termination or unenforceability of the Lease or by any other event or occurrence which would have the effect at law of terminating any obligations of the Tenant prior to the termination of the Lease whether pursuant to court proceedings or otherwise and no surrender of the Lease to which the Landlord has not provided its written consent (all of which are referred to collectively and individually in this Indemnity Agreement as an "**Unexpected Termination**"), and the occurrence of any such Unexpected Termination shall not reduce the period of time in which the Indemnifier's covenants and obligations hereunder apply, which period of time includes, for greater certainty, that part of the Term of the Lease and any extensions or renewals thereof which would have followed had the Unexpected Termination not occurred.
2. This Indemnity is absolute and unconditional and the obligations of the Indemnifier and the rights of the Landlord under this Indemnity Agreement shall not be prejudiced, waived, released, discharged, mitigated, impaired or affected by (a) any extension of time, indulgences or modifications which the Landlord extends to or makes with the Tenant in respect of the performance of any of the obligations of the Tenant (or any other obligated Person) under the Lease; (b) any waiver by or failure of the Landlord to enforce any of the terms, covenants and conditions contained in the Lease; (c) any Transfer of the Lease (as that term is defined in **Article *** of the Lease) **[DRAFTING NOTE - REFER TO LEASE TO CONFIRM]** by the Tenant or by any trustee, receiver, liquidator or any other Person; (d) any consent which the Landlord gives to any such Transfer; (e) any amendment to the Lease or any waiver by the Tenant of any of its rights under the Lease; (f) the expiration of the Term or (g) any Unexpected Termination (as that term is defined in Section 1(b) above). The obligations of the Indemnifier are as primary obligor and not as a guarantor of the Tenant's obligations.
3. The Indemnifier hereby expressly waives notice of the acceptance of this Indemnity Agreement and all notice of non-performance, non-payment or non-observance on the part of the Tenant of the terms, covenants and conditions in the Lease. Notwithstanding the foregoing but without prejudicing the foregoing, any notice which the Landlord desires to give to the Indemnifier shall be sufficiently given if delivered to the Indemnifier, or, if mailed, by prepaid registered mail addressed to the Indemnifier at the Premises, or, at the Landlord's option, at the address, if any, set forth above and every such notice is

deemed to have been given upon the day it was delivered, or if mailed, seventy-two (72) hours after the date it was mailed. Despite what is stated above, the Indemnifier acknowledges that if its address is stipulated as a post office box or rural route number, then notice will be considered to have been sufficiently given to the Indemnifier if delivered or sent by registered mail to the Premises or, where notice cannot be given in person upon the Premises, by posting the notice upon the Premises. The Indemnifier may designate by notice in writing a substitute address for that set forth above and thereafter notice shall be directed to such substitute address. If two or more Persons are named as Indemnifier, such notice given hereunder or under the Lease shall be deemed sufficiently given to all such Persons if delivered or mailed in the foregoing manner to any one of such Persons. Service by facsimile, email or other electronic means shall not be deemed valid service of notice.

4. In the event of a default under the Lease or a default under this Indemnity Agreement, the Indemnifier waives any right to require the Landlord to (a) proceed against the Tenant or pursue any rights or remedies against the Tenant with respect to the Lease; (b) proceed against or exhaust any security of the Tenant held by the Landlord; or (c) pursue any other remedy whatsoever in the Landlord's power. The Landlord has the right to enforce this Indemnity Agreement, regardless of the acceptance of additional security from the Tenant and regardless of any release or discharge of the Tenant by the Landlord or by others or by operation of any law.

5. Without limiting the generality of the foregoing, the liability of the Indemnifier under this Indemnity Agreement is not and is not deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or any Unexpected Termination (as that term is defined in Section 1(b) above) and shall continue with respect to the periods prior thereto and thereafter, for and with respect to the Term as if an Unexpected Termination or any receivership, bankruptcy, wind-up or other creditors' proceedings had not occurred, and in furtherance hereof, the Indemnifier agrees, upon any such Unexpected Termination or any receivership, bankruptcy, wind-up or other creditors' proceedings, that the Indemnifier shall, at the option of the Landlord, exercisable at any time after such Unexpected Termination or any receivership, bankruptcy, wind-up or other creditors' proceedings, become the Tenant of the Landlord upon the same terms and conditions as are contained in the Lease, applied *mutatis mutandis*. The liability of the Indemnifier shall not be affected by any failure of the Landlord to exercise this option, nor by any repossession of the Premises by the Landlord provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossessing and reletting the Premises shall be credited from time to time by the Landlord against the indebtedness of the Indemnifier hereunder and the Indemnifier shall pay any balance owing to the Landlord from time to time immediately upon demand.

6. No action or proceedings brought or instituted under this Indemnity Agreement and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Indemnity Agreement by reason of any further default or default hereunder or in the performance and observance of the terms, covenants and conditions contained in the Lease.

7. No modification of this Indemnity Agreement shall be effective unless it is in writing and is executed by both the Indemnifier and two authorized representatives of the Landlord.

8. The Indemnifier shall, without limiting the generality of the foregoing, be bound by this Indemnity Agreement in the same manner as though the Indemnifier were the Tenant named in the Lease.

9. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) execute this Indemnity Agreement as Indemnifier, the liability of each such individual, corporation, partnership or other business association hereunder is joint and several. In like manner, if the Indemnifier named in this Indemnity Agreement is a partnership or other business association, the members of which are by virtue of statutory or general law, subject to personal liability, the liability of each such member is joint and several.

10. All of the terms, covenants and conditions of this Indemnity Agreement extend to and are binding upon the Indemnifier, his, her or its heirs, executors, administrators, successors and assigns, as the case may be, and enure to the benefit of and may be enforced by the Landlord, the Owners and any Mortgagee.

11. The expressions "Landlord", "Tenant", "Rent", "Term", and "Premises" and other terms or expressions where used in this Indemnity Agreement, respectively, have the same meaning as in the Lease.

12. The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Indemnity Agreement to such person or persons or circumstances as the context otherwise permits.

13. The undersigned, as Indemnifier, hereby represents and warrants to and covenants and agrees with the Landlord that:

(a) notwithstanding the foregoing or any performance in whole or in part by the Indemnifier of the

covenants of this Indemnity Agreement, the Indemnifier shall not, except at the option of the Landlord, have any entitlement to occupy the Premises or otherwise enjoy the benefits of the Tenant under this Lease;

- (b) the Indemnifier has full power and authority to enter into this Indemnity Agreement and to perform the Indemnifier's obligations contained herein;
- (c) this Indemnity Agreement is valid and binding upon the Indemnifier and enforceable against the Indemnifier in accordance with its terms; and
- (d) in entering into this Indemnity Agreement, the Indemnifier, if a corporation, is not contravening **Section 20 of the Ontario Business Corporations Act, R.S.O. 1990, Ch. B-16 [DRAFTING NOTE - REFERENCE THE APPLICABLE PROVINCIAL LEGISLATION]** or Section 44 of the Canada Business Corporations Act, R.S.C. 1985, Ch. C-44, as the case may be, as these Acts may be amended from time to time, or any statute that replaces or supersedes those Acts.

14. If a part of this Indemnity Agreement or the application of it to any Person hereunder or circumstance is to any extent held or rendered invalid, unenforceable or illegal, that part:

- (i) is independent of the remainder of this Indemnity Agreement and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Indemnity Agreement; and
- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person hereunder and circumstance, except those as to which it has been held or rendered invalid, unenforceable or illegal.

15. The Indemnifier agrees to execute such further assurances in connection with this Indemnity Agreement as the Landlord may reasonably require.

16. This Indemnity Agreement shall be construed in accordance with the laws of the Province in which the Shopping Centre is located.

17. The Indemnifier attorns to the jurisdiction of and agrees to be bound by the laws of the Province and Canada.

18. This Indemnity Agreement is the sole agreement between the Landlord and the Indemnifier relating to the indemnity and there are no other written or verbal agreements or representations relating thereto. This Indemnity Agreement may not be amended except in writing and signed by the Indemnifier and two authorized representatives of the Landlord.

19. Wherever in this Indemnity Agreement reference is made to either the Landlord or the Indemnifier, the reference is deemed to apply also to the heirs, executors, administrators, successors and assigns of the Landlord and the heirs, executors, administrators, successors and assigns of the Indemnifier. Any assignment by the Landlord of any of its interests in the Lease operates automatically as an assignment to such assignee of the benefit of this Indemnity Agreement.

[Balance of page is intentionally left blank – Signature page follows]

IN WITNESS WHEREOF the Landlord and the Indemnifier have signed and sealed this Indemnity Agreement.

SIGNED, SEALED AND DELIVERED)	
in the presence of)	
)	
)	_____
	)	(Landlord)
)	
	)	Per: _____
)	
)	
	)	Per: _____
)	
	)	I/We have authority to bind the corporation.
)	
)	
)	
_____)	_____
Witness	)	(Indemnifier)
)	
_____)	
Print Name)	
)	
_____)	
Address)	
)	
)	
)	
	)	OR
)	_____
	)	(Indemnifier)
)	
	)	Per: _____
)	
)	
	)	Per: _____
)	
	)	I/We have authority to bind the corporation.

CONSENT TO CHANGE OF CONTROL

THIS AGREEMENT is dated the * day of *, 20**

B E T W E E N :

(hereinafter called the "Landlord")
OF THE FIRST PART

- and -

(hereinafter called the "Tenant")
OF THE SECOND PART

WHEREAS:

A. By a lease dated the * day of *, 20** (the "Lease") and made between the Landlord and the Tenant, the Landlord leased to the Tenant, for and during a term (the "Term") of * (*) years, commencing on the * day of *, 20** (the "Commencement Date") and expiring on the * day of *, 20**, certain premises (the "Premises"), designated as Store No. *, comprising a GLA of approximately * (*) square feet (* square metres), shown outlined in red on the plan attached to the Lease as Schedule "*" and located in * (the "Shopping Centre"), in the City of *, in the Province of *;

B. At the date of execution of the Lease, the corporate shares of the Tenant were beneficially owned and controlled as follows:

<u>Name of Shareholder</u>	<u>Percentage of Shares Held</u>
*	*

(hereinafter collectively referred to as the "Original Shareholder");

C. Section * of the Lease contains a covenant on the part of the Tenant not to effect any change in control of the Tenant by the party holding such voting control at the date of execution of the Lease, without notifying the Landlord in each instance; and

D. The Tenant has notified the Landlord of the transfer (the "Transfer") of * percent (*%) of its corporate shares, which were beneficially owned and controlled by *, to *, (the "New Shareholder"), as of the * day of *, 20**, (the "Effective Date"), subject to and upon the terms and conditions herein set out.

1. The consideration for this Agreement is the mutual covenants and agreements between the parties to this Agreement and the sum of TWO DOLLARS (\$2.00) that has been paid by each of the parties to the other, the receipt and sufficiency of which is acknowledged by all parties.
2. The parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.
3. The Landlord acknowledges and consents to the Transfer upon the terms and conditions contained in this Agreement.

- 4. This consent does not constitute a waiver of the necessity for notification of any further change in the control of the Tenant existing as at the Effective Date, which must be effected in accordance with the terms of the Lease.
- 5. The parties confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all capitalized terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.
- 6. This Agreement shall enure to the benefit of and be binding upon the parties hereto the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

*

(Landlord)

Per: _____
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.

*

(Tenant)

Per: _____
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.