

**OFFICE LEASE**

**M.A.S. REAL ESTATE SERVICES, INC.,  
an Arizona corporation,  
as agent for  
Northpointe Village Centre, LLC,  
an Arizona limited liability corporation**

**and**

**OMNI POOL BUILDERS AND DESIGN, LLC,  
an Arizona limited liability company**

**6640-6650 North Oracle Road  
Tucson, Arizona**

**OFFICE LEASE**

THIS OFFICE LEASE (“Lease”) is made and entered into this \_\_\_\_\_ day of June 2023 by and between M.A.S. REAL ESTATE SERVICES, INC., an Arizona corporation, as agent for NORTHPOINTE VILLAGE CENTRE, LLC, an Arizona limited liability corporation (hereinafter referred to as “Landlord”), and OMNI POOL BUILDERS AND DESIGN, LLC, an Arizona limited liability company, (hereinafter referred to as “Tenant”).

WITNESSETH:

For and in consideration of the covenants hereinafter mentioned, the Landlord leases to the Tenant and the Tenant hereby leases from the Landlord, certain premises located in that certain office complex known as 6640-6650 North Oracle Road, County of Pima, State of Arizona, said office complex with the adjoining parking area being hereinafter referred to as the “Building”.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

1. **DESCRIPTION OF PROPERTY.** For and in consideration of the agreement of Tenant to pay the rental and other sums herein provided for and to perform the terms, covenants and conditions on its part herein contained, the full performance and observance of which and all thereof being hereby agreed by Tenant to be conditions precedent and subsequent to the covenants on the part of the Landlord, and, at the option of Landlord, to the continuance of this Lease, Landlord hereby leases to Tenant, and Tenant hereby hires and takes from Landlord, those certain Premises consisting of approximately 4,490 rentable square feet, known and described as 6640 North Oracle Road, Suite 130, designated on the floor plan attached hereto as Exhibit “A” and made part of this Lease, hereinafter referred to as the “Premises”.

2. **LEASE TERM.** The term of this Lease (“Lease Term”) shall be for a period of ninety (90) months commencing on the first (1<sup>st</sup>) day of June 2023, and ending on the thirtieth (30<sup>th</sup>) day of November 2030. In the event the commencement date of this Lease does not fall on the first (1<sup>st</sup>) day of a calendar month, then the first (1<sup>st</sup>) day of the succeeding calendar month shall be considered the commencement of the lease term, and the Tenant shall pay rent on a pro-rata basis for the number of days between the actual commencement date of the term, as defined herein, and the first (1<sup>st</sup>) day of the next succeeding calendar month.

3. **RENT.** Tenant hereby agrees to pay Base Rent for the use and occupancy of the Premises during the term, at the times and in the manner herein provided, and additional charges as hereinafter set forth.

3.1 **Base Rent.** Tenant shall pay Landlord as Base Rent for the Lease Term the sum of Six Hundred Thirty-two Thousand, Eight Hundred Twenty and 60/100 dollars (\$632,820.60); provided that while the Tenant keeps and performs the agreements set forth herein, including monthly rent payments, Tenant shall be permitted to pay said sum as follows:

<u>PERIOD</u>	<u>MONTHLY RENT</u>	<u>RATE PER SQ. FT.</u>
06/01/23 – 07/31/23	\$0.00	\$0.00
08/01/23 – 11/30/23	\$3,367.50	\$9.00
12/01/23 – 11/30/24	\$6,735.00	\$18.00
12/01/24 – 11/30/25	\$6,937.05	\$18.54
12/01/25 – 11/30/26	\$7,146.58	\$19.10

12/01/26 – 11/30/27	\$7,359.86	\$19.67
12/01/27 – 11/30/28	\$7,580.62	\$20.26
12/01/28 – 11/30/29	\$7,808.86	\$20.87
12/01/29 – 11/30/30	\$8,044.58	\$21.50

4. **BASE RENT ADJUSTMENT.** The Base Rent shall be subject to upward revision at the beginning of every lease year during the Lease Term to compensate for increases in property taxes, insurance premiums, including but not limited to, fire and other casualty insurance and public liability insurance, utilities, and the operating costs of the Building or as the same relate only to the separate building at 6640 North Oracle Road. The Building property taxes and insurance premiums for the calendar year 2024 and the operating costs of the Building for the calendar year in which this Lease commences shall be considered the “Base Year” Building Costs. The operating costs shall be determined on a cash basis and shall be determined by taking into account the maintenance cost of the property, utilities, management costs, including all labor costs involved in the operation and maintenance of the buildings, and all other costs which can properly and reasonably be considered expenses of operating, but excluding property additions and capital improvements, alterations for tenants, depreciation, interest, income taxes and administrative costs not specifically incurred in the operation of the Buildings. To determine the Tenant’s share of the increase with respect to the above expenses, if any, the Base Year operating costs shall be subtracted from the applicable Comparison Year costs and the remainder, if positive, shall be multiplied by the Tenant’s pro-rata portion. Property taxes shall include all taxes or special assessments levied on the real estate and improvements of the Landlord at the Building. The total of the Building’s property taxes, insurance premiums, utility, and operating costs, collectively the “Building Costs”, shall be divided by the number of rentable square feet in the Building to determine the Building Costs per square foot. If the Building Costs paid or incurred by the Landlord for the Comparison Year on account of the operation or maintenance of the Building of which the Premises are a part are in excess of the Building Costs paid or incurred for the Base Year, then the Tenant shall pay a pro-rata portion of the increase calculated by dividing the rentable area of the Premises by the rentable area of the Building of which Tenant’s Premises are a part and multiplying the resulting percentage by the amount of the total Building Cost increase. The Tenant’s pro-rata portions shall be defined further as follows:

- (i) The pro-rata share of the Building Costs specific to all the tenants of the Building (6640 and 6650 North Oracle Road) is twenty-six and twenty-five hundredths percent (26.25%). The expenses shall be defined as (i) common area maintenance, e.g., landscape maintenance, parking lot cleaning, common area lighting, landscape water, day porter, fountain maintenance and repairs; (ii) HVAC maintenance of Premises and repairs; (iii) real estate taxes; (iv) insurance; (v) roof repairs and maintenance; and (vi) exterior Building repairs and maintenance;
- (ii) The pro-rata share of the Building Costs specific to all the tenants of the 6640 North Oracle Road building is forty-seven and fifty-one hundredths percent (47.51%). The expenses shall be specific to (i) the common hallway and restrooms including janitorial, related supplies, electricity and plumbing repairs and maintenance; and (ii) the Building utilities, ceiling and interior light repairs and maintenance;

Upon receipt of the statement for the first Comparison Year, Tenant shall pay in full the total amount of increase due for the first Comparison Year. In addition, the amount of any such increase shall be used as an

estimate of Building Costs for the then current Comparison Year and this amount shall be divided into twelve (12) equal monthly installments and Tenant shall pay to Landlord, concurrently with the regular monthly rent payment next due following the receipt of such statement, an amount equal to one monthly installment multiplied by the number of months from the first month in the Lease Year in which said statement is submitted through the month of such payment. Subsequent installments, based on the estimate for the current Comparison Year, shall be payable concurrently with the regular monthly rent payments for the balance of that Comparison Year and shall continue until the next Comparison Year's statement is rendered.

If the second or any succeeding Comparison Year results in a greater increase in Building Costs, then upon receipt of a statement from Landlord, Tenant shall pay a lump sum equal to the Tenant's share of such total increase in Building Costs over the Base Year less the total of the monthly installments of estimated increases paid in the previous Comparison Year, and the estimated monthly installments to be paid for the next Comparison Year following said Comparison Year shall be adjusted to reflect such increase.

If in any Comparison Year the Tenant's share of Building Costs is less than the preceding Comparison Year, then upon receipt of Landlord's statement, any overpayment made by Tenant on the monthly installment basis provided above shall be credited toward the next monthly rent falling due and the estimated monthly installments of Building Costs to be paid shall be adjusted to reflect such lower Building Costs for the preceding Comparison Year.

The determination of Building Costs per square foot shall be examined by such accountant and/or Landlord's authorized representative as may regularly be employed with respect to such year and their report thereon shall be final and conclusive on both parties. The space occupied by the Tenant hereunder is four thousand, four hundred, ninety (4,490) rentable square feet.

5. **ADDITIONAL CHARGES.** Commencing ~~August~~<sup>June</sup> 1, 2023, in addition to the Base Rent, Tenant shall pay all other sums of money or charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to this Lease (herein called "Additional Charges") whether or not the same are designated as Additional Charges. It is the intention of the parties that Additional Charges shall be considered additional rent, that Landlord shall have the same rights and remedies for the collection of Additional Charges as the Lease provides for the collection of rent; and, as with rent, Tenant shall have no right of offset against such Additional Charges.

6. **LATE CHARGES.** Tenant acknowledges that the late payment by Tenant to Landlord of Base Rent or any Additional Charges due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impractical to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Base Rent or Additional Charges due from Tenant is not received by Landlord or Landlord's agent within ten (10) days after such amount is due, providing Landlord has given written notice to Tenant within (5) days after such amount is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. A returned check due to insufficient funds will be treated as a late payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge by Landlord shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

7. **INTEREST ON PAST-DUE OBLIGATIONS.** Any Base Rent or Additional Charges due to Landlord not paid when due shall bear interest from the date due until paid at the rate of twelve percent

(12%) per annum; provided, however, that interest shall not be payable on late charges pursuant to Paragraph 6.

8. **SECURITY DEPOSIT.** Tenant will deposit with Landlord upon the execution of this Lease the sum of Ten Thousand and No/100 Dollars (\$10,000.00). Said sum shall be held by Landlord as security for the favorable performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including but not limited to, provisions relating to the payment of rent, and provisions relating to Tenant's obligation to repair the Premises, Landlord may (but shall not be required to) use, apply or retain all or any portion of the security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. The Landlord shall not be required to keep this security deposit separate from its general funds and Tenant shall not be entitled to interest on said deposit.

Provided Tenant is not, or has not been, in default of any of the Terms and Conditions of the Lease Agreement, Landlord will refund to Tenant \$7,000 of the held Security Deposit on the forty-first (41<sup>st</sup>) month of the Lease Term.

9. **USE OF PREMISES.** Tenant shall use the Premises for a Pool Showroom, an Office, and Administrative use and for no other purpose. Tenant shall not commit, or suffer to be committed, any nuisance or other act or thing against public policy, or which may disturb the quiet enjoyment of any other tenant of the Building. Tenant agrees not to deface or damage the Building in any manner or overload the floors of the Premises. Tenant agrees not to use or permit the use of the Premises or any part thereof for any purpose prohibited by law, and Tenant agrees, at its sole expense, to comply with and conform to all of the requirements of all governmental authorities having jurisdiction thereof, present or future, relating in any way to the condition, use and occupancy of the Premises throughout the entire term of this Lease. No goods, merchandise or materials shall be kept, stored, or sold by Tenant on or about the Premises which are in any way hazardous, and Tenant shall not suffer or permit any acts of omission or commission to be done on or about the Premises which will increase the existing rate of fire insurance. If the said insurance rate is increased by such an act, then the increased cost of such insurance on the Building shall be paid by Tenant to Landlord with the next succeeding installment of rental. Tenant, at its sole expense, shall comply with any and all requirements of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the Premises and the Building.

10. **COMMON AREAS AND PARKING.** The common area portions of the Building shall be for the joint use of all tenants in the Building, their customers, invitees and employees, and the Landlord hereby grants to Tenant, and its customers, invitees and employees, the non-exclusive right of use of all of the common areas as the same may from time to time exist. It is understood that the employees of Tenant and the other tenants of Landlord within the Building and employees of other owners of the Building shall not be permitted to park their automobiles in the automobile parking area which may from time to time be designated for patrons of the Building. The Landlord agrees to furnish and/or cause to be furnished either within the Building parking area, or reasonably close thereto, space for employee parking. Landlord at all times shall have the right to designate the particular parking areas to be used by any or all of said employees and any such designation may be changed from time to time. Tenant and its employees shall park their cars only in those portions of the parking areas, if any, designated for that purpose by Landlord. Tenant shall

furnish Landlord with its and its employees license numbers within fifteen (15) days after taking possession of the Premises and Tenant shall thereafter notify Landlord of any changes within five (5) days after such change occurs. If Tenant or its employees park their cars in parking areas designated for patrons, then Landlord may charge Tenant Ten Dollars (\$10.00) per day for each day or partial day per car parked in such areas; provided, however, that Landlord shall give Tenant written notice of the first violation of this provision and Tenant shall have two (2) days thereafter in which to cause the violation to be discontinued; and if not discontinued within said two (2) day period, then the Ten Dollars (\$10.00) per day charge shall commence. After notice of such first violation, no prior notice of any subsequent violation shall be required. All amounts due under the provisions of this Paragraph shall be payable by Tenant within ten (10) days after demand therefore as additional rent hereunder. Tenant hereby authorizes Landlord to tow away from the Building any car or cars belonging to Tenant or Tenant's employees, and/or to attach violation stickers or notices to such cars.

11. **UTILITIES.** Commencing ~~August~~June 1, 2023, the Tenant shall be responsible for and shall pay (i) all Premises electrical expenses and (ii) its pro-rata share of any increase in water, sewer, or electric with respect to the Building after the 2024 Comparison Year.

12. **ACCEPTANCE OF PREMISES.** Tenant hereby accepts said Premises and acknowledges that they are in good and tenantable condition. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business. At the expiration or sooner termination of this Lease, Tenant shall deliver the Premises to Landlord in a state of repair in which said Premises existed at the commencement of the term hereof, reasonable wear and tear excepted.

13. **LANDLORD'S REPAIRS.** Landlord agrees to keep the following portions of the Building in good condition and repair: exterior walls, but not including wall coverings on the interior thereof; roof, but not including the ceiling in the Premises. Landlord's obligation hereunder shall not apply to repairs caused by wear and tear, and acts of Tenant or Tenant's customers, agents, employees, or invitees, including Tenant alterations and damage related thereto or caused thereby. Landlord shall not furnish the Premises with janitorial services. Any janitorial requirements of Tenant will be the responsibility of Tenant. Landlord shall repair and maintain the structural portions of the Building, including the basic plumbing, air conditioning, heating and electrical systems, installed or furnished by Landlord, unless such maintenance and repairs are caused by the act, neglect, fault or omission of any duty by the Tenant, its agents, servants, employees or invitees, in which case Tenant shall pay to Landlord the reasonable cost of such maintenance and repairs. Landlord shall not be liable for any failure to make any repairs for which it is responsible or to perform any maintenance for which it is obligated unless such failure shall persist for ten (10) business days after receipt of written notice (or twenty-four [24] hours in the case of an emergency or forty-eight [48] hours in the case of air conditioning during the months of May through October) of the need of such repairs or maintenance is given to Landlord by Tenant. If such repairs cannot be made within the ten (10) business day period, this period shall be extended provided that Landlord commences to cure such repairs within such ten (10) business day period and proceeds diligently thereafter to effect such repair. There shall be no abatement of rent and no liability of Landlord by reason of injury to or interference with Tenant's business arising from the making of any repairs, alterations, or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances, and equipment therein. Tenant waives the right to make repairs at Landlord's expense under any law, statute, or ordinance now or hereafter in effect, except in the case of emergency and such repairs are not completed in twenty-four (24) hours. Except for acts of negligence by Landlord, its agents, or employees, Landlord shall not be responsible or liable to Tenant for any injury or damage from acts or omissions of persons occupying the property adjoining the Premises or any part of the Building of which the Premises is a part, or for any injury or damage resulting to the Tenant, or its property,

from bursting, stoppage, or leaking of water, gas, sewer, or steam pipes, or from any structural defects in the roof, exterior walls or the like.

14. **TENANT'S REPAIRS AND ALTERATIONS.** Tenant shall at all times throughout the Lease term, at its sole cost and expense, keep the interior of the Premises (including the interior walls, non-structural portions of the Premises, exterior doors and entrances, windows, floor coverings, sills, door closures, moldings, trim of all doors and windows), and all partitions, door surfaces, fixtures, and equipment exclusively serving the Premises in good order, condition, and repair. Without limiting the generalities thereof, Tenant shall keep the glass of all windows, doors, and showcases clean and presentable; replace immediately all broken glass in the Premises; keep all plumbing and electrical systems clean and in a good state of repair and also including all pipes, drains, and basins; engage the services of a licensed pest control service to periodically, but not less than quarterly, eradicate pest and rodent infestations; and shall keep all utilities, including circuit breaker and panel box and the Tenant's meters within the Premises in a good state of repair. In the event Tenant shall not make the necessary repairs or replacements, Landlord may after ten (10) days prior written demand, complete such repairs if necessary, and the Tenant shall pay to the Landlord the cost thereof plus twenty percent (20%) for overhead and supervision. Said amount shall be payable in full within fifteen (15) days after Tenant receives a statement from the Landlord, and any unpaid portion thereof shall bear interest at the rate of eighteen percent (18%) per annum from the date of said statement.

Tenant may make no alterations, improvements, additions, or utility installations in, on or about the Premises costing in excess of One Thousand and ~~Five Hundred No/100~~ Dollars (\$1,~~500000~~.00), including the office layout, location of fixtures and general décor, without Landlord's prior written consent, which consent may be conditioned upon such bonds, other assurances or completion as Landlord may reasonably require. The term "utility installations" shall include bus ducting, power panels, fluorescent fixtures, space heaters, conduits, and wiring. Tenant shall give Landlord not less than ten (10) days notice prior to the commencement of any work in the Premises. Tenant agrees not to permit any liens to stand against the Premises for work done or materials furnished in connection with such alterations or improvements and Landlord may post notice of non-responsibility on the Premises. Any such mechanic's or materialman's liens against the Premises shall be a breach of this Lease by Tenant. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1½) times the estimated cost of such improvements, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

All interior construction by the Tenant, including original installation of trade fixtures and other tenant improvements and remodeling and repair, shall not be commenced until Landlord has consented thereto in writing. The term "interior construction" as used herein shall include construction and installation of any kind in the interior of the Premises, except movable furniture and furnishings.

Unless Landlord requires their removal, all alterations, improvements, additions, and utility installations (whether or not such utility installations constitute trade fixtures of Tenant) which may be made on the Premises shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph, Tenant's machinery and equipment other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of this Paragraph.

15. **INSURANCE.** **Tenant's Insurance Requirement.** Tenant shall purchase and maintain, at its sole cost and expense, during the term of this Lease and any extension thereof, comprehensive general liability insurance coverage, on an occurrence basis, in an amount not less than Two Million and No/100

Dollars (\$2,000,000.00) combined single limit for personal injury, bodily injury and/or death, sickness, disease of any person and property damage or destruction (including loss of use thereof). Said liability insurance shall cover Tenant, its agents, employees, independent contractors and customers use of the Premises or any subsequent use of any other property facilities or means of access, owned, or controlled by the Landlord at the Premises, or the Building. Tenant shall cause the required liability insurance to include: the Landlord and Owner (if the Owner is other than the Landlord), its owners, officers, employees and agents as additional named insureds as respects all coverages required under this clause; blanket or specific contractual liability endorsement, which shall provide coverage for the indemnification clause contained in this Lease under Paragraph 23; and a severability of interest clause, which shall apply to both the primary liability policy and any excess liability policy, in the event that the required coverage is arranged through the use of multiple policies. Tenant shall promptly reimburse Landlord for any increase in Landlord's premium caused by Tenant's activities and as established by a letter from the Landlord's insurance carrier setting forth the reason for the premium increase and the additional premium arising from Tenant's activities.

Prior to the commencement of any work, whether construction, remodeling, or repair, in or about the Premises, Tenant shall cause each of the Tenant's subcontractors to obtain insurance with limits and specifications as provided herein.

Tenant shall purchase and maintain, at its sole cost and expense, during the term of this Lease and any extension thereof, Property insurance for the Premises, which shall include coverage for all Tenant's personal property and all Tenant's improvements and betterments, permanently installed/attached to the Building, in an amount not less than the actual replacement cost of such property. The required building coverage shall consist of: all risk coverage or its equivalent, including business interruption or loss of income therefrom, and which may exclude the perils of earthquake and flood; shall contain a replacement cost endorsement; shall contain a loss payee clause to the benefit of Landlord as respects its interest in the Tenant improvements and betterments.

Tenant shall, as a condition of this Lease, deliver Certificates of Insurance to the Landlord, evidencing the insurance coverages as required under this Paragraph no later than ten (10) days prior to occupancy and ten (10) days prior to the expiration of any policy, as evidenced by any Certificate of Insurance. All insurance policies required herein shall state that the coverages provided shall not be canceled prior to the Landlord receiving ten (10) days written notice of the cancellation. Landlord may, at its option, require, and Tenant agrees to provide, true and certified copies of any insurance policy maintained by the Tenant to satisfy the requirements of this Paragraph. Tenant shall deliver or cause to be delivered the described copies within twenty (20) days from the written request of the Landlord.

Tenant shall cause the placement and purchase of all insurance coverages required under this Paragraph with insurance carriers authorized and licensed to do business in Arizona and which are satisfactory to the Landlord/Owner and any Lender having a security interest in the Premises. Said insurance carriers shall have a minimum rating of "A" as established by the most current edition of "Bests Key Rating Guide".

16. **ASSIGNMENT AND SUBLETTING.** This Lease may not be assigned nor the Premises sublet in whole or in part without the express written consent of Landlord, which consent shall not be unreasonably withheld. The Tenant shall not have nor allow any concessionaires or licensees on the Premises without the written consent of the Landlord. Landlord acknowledges Tenant has independent contractors who shall use portions of the space on an intermittent basis. In the event there is a change in the identify of the shareholders of the Tenant, if Tenant is a corporation, or in the identity of the partners or venturers, if Tenant is a partnership or a joint venture, or in the identity of the beneficiaries, if Tenant is a trust, or in the identity of the members, if Tenant is a limited liability company, then Tenant shall promptly



notify Landlord in writing of such change, and if Landlord determines that such transfer or change of identities results in a change in control of the Tenant, then Landlord may terminate this Lease at any time after such change in control by giving Tenant ninety (90) days prior written notice of such termination.

17. **PLATE GLASS REPAIR.** Tenant shall be responsible for and shall, at Tenant's sole cost and expense, replace any cracked or broken glass, including plate glass or other breakable materials used in structural portions and in windows and doors of the Premises occurring as a result of any act of negligence in whole or in part by Tenant, its agents, servants, employees, or invitees. Tenant shall be responsible for the maintenance of and for any damage caused by any machinery or equipment on the Premises. The Landlord may, at its option, obtain individual or blanket policies covering plate glass in the Building, and the Landlord shall then pro-rate the premiums on such policies among the tenants in the Building who are covered thereunder, and the Tenant shall promptly pay his portion of such insurance premiums to the Landlord. Prorations made by the Landlord based upon square footage of plate glass, size, or other standards, shall be final and binding upon the Tenant. Landlord may select, by written notice to the Tenant, to replace broken plate glass or other breakable structural material, and the Tenant shall then reimburse the Landlord for such expense plus twenty percent (20%) for the Landlord's overhead and supervision.

18. **BUILDING RULES.** The Tenant hereby promises and agrees to keep and perform each and all of the rules and regulations of said Building attached hereto as Exhibit "B" and incorporated herein by this reference. The Landlord shall have the right to reasonably amend said rules and to make other and different reasonable rules and regulations limiting, restricting and regulating the privileges of tenants in the said Building, and all such rules and regulations so made by the Landlord, after notice thereof to the Tenant, shall be binding upon the Tenant and become conditions of the Tenant's tenancy and covenants on the part of and to be performed by the Tenant.

19. **BANKRUPTCY.** If at any time during the term of this Lease in any judicial action or proceeding in any Court against Tenant or any of the Tenant's heirs or assigns, a receiver or other officer or agent be appointed to take charge of said Premises or the business conducted therein, and shall be in possession thereof, or if this Lease or the interest or estate created thereby vest in any other person or persons by operation of law or otherwise, except by consent, as aforesaid, of Landlord, or in the event of any action taken by or against Tenant under the Federal Bankruptcy Laws or other applicable statutes of the United States, or any State, or if Tenant shall make an assignment for the benefit of creditors, or if an attachment or execution is levied upon the Tenant's property or interest under this Lease, the occurrence of any such event shall be deemed to be a breach of this Lease by Tenant, and Landlord shall have the rights herein provided in the event of any such breach, including the right, at Landlord's option, to terminate this Lease immediately and enter said Premises and remove all persons and property therefrom.

20. **RENTAL TAXES.** In addition to the rent payable by the Tenant under the terms of this Lease, the Tenant shall pay to the Landlord an amount equal to the excise, transaction, sales or privilege tax (except income tax) now or hereafter levied or imposed upon the Landlord by any government or governmental agency on account of, attributed to or measured by the rentals, including Base Rent, Base Rent Adjustments, or other charges or prorations paid by the Tenant hereunder. Said tax amounts shall be payable to Landlord together with each payment of rent hereunder.

21. **EMINENT DOMAIN.** In the event all of the Premises shall be taken by direct or inverse condemnation or eminent domain proceedings, then this Lease shall thereupon terminate as of the date of vesting of title in such proceedings and the parties hereto shall have no claim against each other and the Tenant shall have no claim against the condemning authority for the value of any unexpired term of this Lease. Tenant shall, however, have the right to claim from the condemning authority, but not from the

Landlord, such compensation as may be separately awarded to Tenant on account of damage to Tenant's business and the cost of removing such business and Tenant's merchandise, furniture, and equipment to a new location.

In the event condemnation as aforesaid results in a partial taking of the Premises which renders such Premises unsuitable for the business of the Tenant, then this Lease shall terminate in the same manner set forth for total condemnation. In the event that such partial condemnation does not render the Premises unsuitable, the Landlord shall restore the Premises to a condition as closely comparable to its former condition as possible and this Lease shall continue in effect without any reduction or abatement of rent.

22. **ABANDONMENT OF PREMISES.** Tenant shall not vacate or abandon the Premises at any time during the term of this Lease without Landlord's written consent, which consent shall not be unreasonably withheld; and if Tenant shall abandon or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord. Abandonment shall constitute a breach of this Lease. Either the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or a general assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under a general assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency or bankruptcy act shall constitute a breach of this Lease by Tenant, with the Landlord having priority as the first lienee. Neither this Lease nor any interest herein, nor any estate thereby created, shall pass to any trustee or receiver in bankruptcy, or any assignee for the benefit of creditors, or by operation of law.

23. **INDEMNITY.** Tenant agrees to indemnify and save Landlord or Owner (if Owner is other than Landlord) harmless against any and all claims, demands, costs, damages, and/or expenses, including attorney's fees for the defense thereof and court costs in connection therewith arising from the conduct or management of the business conducted by Tenant in the Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any act of negligence of Tenant, its agents, invitees, contractors, servants, employees, sublessees, concessionaires, or licensees in or about the Premises, the parking areas and common sidewalks, and the loading platform area, if any, allocated to the use of Tenant. In case of any action or proceeding brought against Landlord or Owner by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel satisfactory to Landlord, at Tenant's expense. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained at the sole risk of Tenant. Tenant agrees to pay and discharge any mechanic's, materialmen's and/or any other lien against the Premises or Landlord's interest therein claimed in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or upon the request of Tenant, except for tenant improvements for which Landlord is responsible, provided that Tenant may contest such lien claim, upon furnishing to Landlord such indemnification for the payment and discharge thereof, together with the costs and expenses of defending the same, as Landlord may require. Landlord shall not be liable, and Tenant waives all claims for personal or property damages sustained by Tenant resulting from the condition of the Building in which the Premises are located, or any part thereof, or the Premises or resulting from the disrepair of any equipment or appurtenances thereunto appertaining (except where such personal or property damages result from Landlord's grossly negligent act), or resulting from the acts or omissions of persons occupying adjoining Premises or any part of the Building of which the Premises are a part or any persons transacting any business in the Building or present therein for any other purpose, or for loss or damage resulting to Tenant or its property from burst, stopped or leaking water, gas, sewer or other pipes or conduits or plumbing fixtures, or from any failure of or defect in any electric line, circuit or facility, or

resulting from any accident in or about the Premises, the Building in which the same are situated or resulting directly or indirectly from any act of neglect of any other tenant or person in said Building.

24. **UNTENANTABILITY.** In the event the Premises are damaged or destroyed by fire, or the elements, or any other casualty so that they are unusable by the Tenant, the Landlord shall within sixty (60) days thereafter make an election to either construct and repair the Premises or may terminate this Lease. Written notice shall be given by the Landlord to the Tenant as to this election. In the event of the termination of this Lease pursuant to this Paragraph, rents shall be proportioned on a per diem basis and shall be paid in full to the date of the fire or other casualty. In the event the Landlord restores and repairs the Premises, then the rent payable by the Tenant shall be abated for the number of days in which the Tenant is prevented from operating its business because of such damage or destruction. In the event the Premises are partly damaged or destroyed by casualty, but are still usable by the Tenant, the Landlord shall cause such damage to be repaired and the minimum rent payable by Tenant shall be proportionately abated during the period of construction. In the event fifty percent (50%) or more of the rentable area of the entire Building shall be damaged or destroyed by any casualty, regardless of whether the demised Premises described herein are affected by such casualty, the Landlord may, at its option, terminate this Lease by giving the Tenant sixty (60) days prior written notice, and further provided that said notice is delivered to Tenant within sixty (60) days following the date of such casualty. Rent shall then be adjusted to date of termination unless Premises are unusable by Tenant as a result of the casualty, in which event rent shall be adjusted to the date of casualty. In the event the Premises are damaged or destroyed by fire or any other casualty caused by the negligence of Tenant or Tenant's agents, employees, or invitees, Landlord shall, in addition to all other rights and causes of action available to Landlord at law or in equity or under the Lease, have the right to terminate the Lease and/or exercise any other remedy available to Landlord hereunder in the event of Tenant's default.

25. **SUBROGATION.** The parties agree to use their best efforts to have any and all fire, extended coverage or any and all material damage insurance which may be carried endorsed with the following subrogation clause: "This insurance shall not be invalidated should the insured waive in writing prior to a loss, any or all right of recovery against any party for loss occurring to the property described herein;" and each party hereto hereby waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectable insurance policies to the extent of any recovery collectable under such insurance, subject to the limitation that this waiver shall apply only when it is either permitted or by the use of such best efforts could have been so permitted by the applicable policy of insurance. The foregoing notwithstanding, this Paragraph shall have no effect upon and shall not nullify the waivers set forth in Paragraph 23 hereof.

26. **DEFAULT BY TENANT AND LANDLORD REMEDIES.** The Tenant agrees with the Landlord that the nonpayment of the whole or any part of the Rent at the time when the same is due and payable hereunder and such failure shall continue for ten (10) days after written notice thereof from Landlord to Tenant, or if Tenant fails to perform or observe any term or condition of this Lease and such failure shall continue for thirty (30) days after written notice from Landlord to Tenant constitutes a default. Should a default occur, Landlord shall, in addition to all other remedies available at law or equity, have the following remedies, which are not exclusive and may be exercised concurrently or successively:

(a) Landlord may bring suit for the collection of Rent or other amounts for which Tenant is then in default, or for the performance of any other covenant or agreement devolving upon Tenant, all without having to enter into possession or terminate this Lease.

(b) Landlord may, without notice and without becoming liable to prosecution therefore, re-enter the Premises either by force or otherwise, recover possession from Tenant and the legal

representatives of Tenant or other occupant(s) of the Premises, remove and dispose of their effects and hold the Premises as if this Lease had not been made and relet the Premises or any portion thereof under terms as Landlord may determine in its sole discretion.

(c) Landlord shall have the right, by written notice to Tenant, to declare this Lease terminated and the Term ended. No act by Landlord, other than giving Tenant written notice of termination of this Lease, shall in fact terminate this Lease. In the event of such termination, this Lease and the Term shall expire with the same force and effect as though the date set forth in the notice of termination were the date originally set forth herein and fixed for the expiration of the Term, and Tenant shall vacate and surrender the Premises but shall remain liable for all obligations arising during the balance of the Term, as hereafter provided as if this Lease had remained in full force and effect. Also in such event, Landlord shall have the right to bring a special proceeding to recover possession from Tenant holding over and/or Landlord may, without notice, re-enter the Premises either by force or otherwise, and dispossess by summary proceedings or by the laws of the State or otherwise, recover possession from Tenant and the legal representatives of Tenant or other occupant(s) of the Premises and remove and dispose of their effects and hold the Premises as if this Lease had not been made. In the exercise of its rights under this paragraph, Landlord shall further have the right to recover from Tenant the following: (i) the worth, at the time of the award, of the unpaid Rent that had been earned at the time of termination of this Lease; (ii) the worth, at the time of the award, of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the expiration of the Term had the Lease not been terminated exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and, (iii) the worth, at the time of the award, of the amount by which the unpaid Rent for the balance of the Term after the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and, (iv) any other amount, including, without limitation, court costs, legal fees and costs of reletting (including brokers' commissions) necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which, in the ordinary course of things, would likely result therefrom, including, without limitation, any claims for Tenant's breach of this Lease or for the recovery of amounts then owed by Tenant under this Lease.

(d) If this Lease is terminated or Tenant is dispossessed before the expiration of the Term, or if Tenant shall abandon or vacate the Premises before the expiration or termination of the Term without having paid the full rent for the remainder of the Term, Landlord shall have the option to relet the Premises for such rent and upon such terms as Landlord may determine in its sole discretion, and, if the full rental reserved under this Lease (and any of the costs, expenses or damages indicated below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including deficiency in Rent. Tenant shall also be liable for Landlord's reasonable attorney's fees, brokerage fees, and expenses of taking the actions set forth in this Section, placing the Premises in rentable condition and re-letting the Premises. Landlord, in putting the Premises in good order or preparing the same for reletting may make such alterations, repairs or replacements in the Premises as Landlord, in its sole judgment, considers advisable and necessary for such purpose, and the making of such alterations, repairs or replacements shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess or be entitled to receive any credit with respect to the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder. If Tenant defaults under the Lease, Landlord shall be obligated to use reasonable efforts to mitigate its damages, including reasonable efforts to relet the Premises at commercially reasonable rates, terms and conditions and to collect any rentals due upon such reletting.

27. **SURRENDER OF POSSESSION.** At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises to the Landlord in good condition and repair.

28. **HOLDING OVER.** If without Landlord's consent, the Tenant or any other person claiming for, through or under the Tenant holds the Premises for any time after they should have been surrendered under the provisions of this Lease, the Tenant shall be deemed guilty of unlawful detainer of the Premises, and shall be subject to eviction and removal with or without process of law; provided, however, if the holding over is with Landlord's consent, such holding over shall be from month to month and Tenant shall pay as rent One Hundred and Twenty Five percent (125%) times the base rent plus the applicable Base Rent Adjustments, if any for the first six (6) months and One Hundred and Fifty percent (150%) times the Base Rent plus the applicable Base Rent Adjustments, if any thereafter. ~~one and one half (1.5) times the Base Rent plus the applicable Base Rent Adjustments, if any.~~

29. **REMOVAL OF FIXTURES.** Except as provided in Paragraph 14 hereof, at the expiration of the term of this Lease Tenant may remove from the Premises any trade fixtures installed therein by the Tenant, and upon expiration of the term hereof, all such trade fixtures shall be removed from the Premises with the Landlord's written consent not later than the time when, under the provisions hereof, the Tenant is required to surrender possession of the Premises to the Landlord; provided, however, that the Tenant shall have no right to remove its trade fixtures as aforesaid if it be in default hereunder. The removal of such trade fixtures shall be effected solely at the cost and expense of the Tenant and in such manner as will not injure or damage the Premises, and as approved by the Landlord. In case of such injury or damage, the Tenant covenants and agrees, at the Tenant's own cost and expense, to repair the same immediately. Tenant shall have the right during the term of this Lease to replace its trade fixtures with fixtures of equal or greater cost and quality, after receiving written consent from the Landlord.

30. **ACCESS TO PREMISES.** Landlord shall have the right to enter upon the Premises upon twenty-four (24) hours' notice at all hours during the term hereof for the purpose of inspecting the same and/or of making repairs, additions or alterations thereto and/or to the Building in which the same are located and/or for the purpose of exhibiting the same to prospective tenants, purchasers or others and/or for the purpose of serving or posting, and keeping posted thereon, notices which Landlord may deem to be for the protection of Landlord and/or the Premises. In the case of emergency, Landlord shall have the right to enter the Premises without notice to Tenant. Landlord shall not be liable to Tenant in any manner for any expense, loss or damage by reason thereof, nor shall the exercise of such right be deemed an eviction or disturbance of Tenant's use or possession. Tenant shall have twenty-four (24) hour, year-round access to the Premises.

31. **CHANGES AND ADDITIONS TO BUILDING.** Landlord hereby reserves the right at any time to make alterations or additions to and to build additional stories on the Building in which the Premises are contained and to build adjoining the same; and to construct other buildings or improvements from time to time; and to make alterations thereof or additions thereto; and to build additional stories on any such building or buildings, providing that such changes or additions shall not substantially impede access to the Premises.

32. **LOCATION OF PARKING AND COMMON AREAS.** Landlord reserves the right at any time to relocate any designated or reserved parking areas and may reconfigure or redesign common areas of the Building.

33. **SUBORDINATION AND ESTOPPEL CERTIFICATE.** Tenant agrees that this Lease shall be subordinate to any mortgages or trust deeds that may hereafter be placed upon the Building or any

part thereof, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. The Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this Lease to the lien of any such mortgage or deed of trust as shall be desired by the Landlord and/or any mortgagees or trustees, and hereby irrevocably appoints the Landlord the attorney-in-fact of the Tenant to execute and deliver any such instrument or instruments for and in the name of the Tenant. Tenant consents to the assignment or pledging of this Lease by Landlord as security for the payment of any loans that Landlord may have or shall obtain for the purpose of improving and/or repairing the said improvements of which the Premises are a part, or for constructing other improvements on said Premises.

Tenant further agrees at any time, upon not less than ten (10) days prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications, that the same is in full force and effect as modified), and the date to which the rental and other charges have been paid in advance, if any, it being intended that any such statement may be relied upon by any prospective purchasers of the Premises, or any holder or assignee of a mortgage or deed of trust encumbering the Premises.

34. **NOTICES.** Any notices or demands required to be given to the Landlord hereunder shall be in writing and shall be delivered personally or by an express delivery service, or deposited in the United States mail, sent certified, return receipt requested, addressed to the Landlord at:

M.A.S. Real Estate Services, Inc.  
4750 North Oracle Road  
Suite 210  
Tucson, Arizona 85705  
Attn: Michael Stilb

or such other place or places as the Landlord may designate in writing. Any notices or demands to be given to the Tenant hereunder shall be in writing and shall be delivered personally or by an express delivery service, or deposited in the United States mail, sent certified, return receipt requested, addressed to the Tenant at:

Omni Pool Builders and Design  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Ph: \_\_\_\_\_  
Email: \_\_\_\_\_

or such other place or places as the Tenant may designate in writing.

Notice sent in compliance with this Paragraph shall be deemed given and received on the date it is delivered to the other party if sent by an express delivery service or certified mail, return receipt requested.

35. **LANDLORD'S RIGHTS.** The Landlord may exercise the following rights without Tenant's consent and without affecting the Tenant's other obligations hereunder:

- a. To change the name of the Building;

- b. To install and maintain a sign or signs on the exterior of the Building;
- c. During the last six (6) months of the term or any part thereof, if Tenant has vacated the Premises, to decorate, remodel, repair, alter or otherwise prepare said Premises for occupancy;
- d. To retain at all times pass keys to the Premises;
- e. To grant to anyone the exclusive right to conduct any particular business or undertaking in the Building;
- f. To exhibit the Premises to others and to display "For Rent" signs on the Premises;
- g. To approve the weight, size and location of safes or other heavy equipment or articles, which articles may be moved in, about, or out of the Building or Premises only at such times and in such manner as Landlord shall direct and, in all events, however, at Tenant's sole risk and responsibility;
- h. To take any and all measures, including inspections, repairs, alterations, decorations, additions, and improvements to the Premises or to the Building as may be necessary or desirable for the safety, protection or preservation of the Premises or the Building or the Landlord's interests, or as may be necessary or desirable in the operation of the Building.

36. **AMERICANS WITH DISABILITIES ACT OF 1990 AND ARIZONANS WITH DISABILITIES ACT OF 1992.** Tenant agrees to assume sole responsibility for conforming its accommodations, facilities and services to the requirements of the Americans with Disabilities Act of 1990 and the Arizonans with Disabilities Act of 1992 and further covenants not to discriminate against disabled persons on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, and all consequences, including, without limitation, all judgments, claims, costs, liability, damages, expenses, attorney's fees and consultant's fees in defending any claims or alleged violations resulting from Tenant's violation of the Americans with Disabilities Act of 1990 and Arizonans with Disabilities Act of 1992, whether such violation is unintentional or intentional.

37. **TENANT'S WARRANTY AS TO HAZARDOUS OR TOXIC MATERIALS.** Tenant hereby agrees that all of its (and its agents', employees', or contractors') operations or activities upon, and their use and occupancy of, the Premises throughout the Term of this Lease shall be in compliance at all times with all applicable laws then governing or in any way relating to the generation, handling, use, release or spillage of Hazardous Substances. Tenant agrees that it will not (and it will take all reasonable steps necessary to assure that its employees, agents, invitees, and licensees do not) violate applicable law, maintain, carry, spill, release, discharge or dispose of any Hazardous Substances in, on, onto or into the Premises. Tenant shall defend, indemnify, and hold Landlord harmless from and against all direct or indirect costs, claims, obligations, liability, and damages as a result of a breach of the foregoing provision, including, without limitation, any consultant's or attorney's fees incurred in the investigation or defense of any claim against Landlord. Landlord may, but shall not be obligated to, duly clean up and dispose of such substances or any tanks or storage facilities and repair any damages resulting therefrom at the sole cost of the Tenant. Any violation of this Paragraph is a default under the Lease. This warranty and indemnity shall survive any termination, cancellation, surrender or expiration of this Lease.

38. **SIGNAGE.** In addition to two (2) common area directories, Tenant would have the right to maintain at its expense identification signage on the 6640 Building's north building façade and the screen

wall located at the southeast corner of Oracle Road and Casas Adobes Drive. Such identification signage is to be in conformance with the Building Standard Sign Criteria and the Pima County Building Sign Code.

39. **FORCE MAJEURE.** Any obligation of Landlord or Tenant which is delayed or not performed due to acts of God, strike, riot, shortages of labor or materials, war, acts of terrorism, governmental laws or action, or lack thereof, inaction by any governmental authority with respect to the issuance of any licenses or permits necessary to perform an act of Landlord or Tenant hereunder or any other causes of any kind whatsoever which are beyond Landlord's or Tenant's reasonable control (each a Force Majeure), shall not constitute a default hereunder and shall be performed within a reasonable time after the end of such cause for delay or nonperformance.

40. **OPTION TO RENEW.** Provided Tenant is not in default in performing any of Tenant's obligations under this Lease, Tenant would have the option to extend the renewal term of the lease for one (1) extension period of five (5) years each upon one hundred eighty (180) days prior written notice to Landlord. Upon the proper exercise of the Option to Renew, the term of the lease would be extended for five (5) years for all purposes to the same extent as though such period was part of the initial term of the lease, except that the annual Base Rent for each year of the option period would be increased annually by three percent (3%) per rentable square foot.

41. **TENANT IMPROVEMENT ALLOWANCE.** The Landlord shall provide to Tenant a Tenant Improvement Allowance equal to Twelve Dollars and No/100 (\$12.00) per rentable square foot for the design, permitting, construction, and reasonable supervision of Tenant's Landlord-approved, tenant improvements. Upon Landlord's receipt of copies of the (i) Certificate of Occupancy for the Premises and (ii) Full Unconditional Lien Waivers executed by each subcontractor and all material suppliers, Landlord shall reimburse Tenant an amount not to exceed Fifty-three Thousand Eight Hundred Eighty Dollars and No/100 (\$53,880.00).

42. **GENERAL PROVISIONS.**

a. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method or computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If "Tenant" consists of more than one person, the obligations of "Tenant" shall be the joint and several obligations of such persons.

b. The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party 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. No delay or omission of the right to exercise any power by either party shall impair any such right or power or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Lease by either party shall not be or be deemed to be a waiver of a subsequent breach of the same or any other covenant, term or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to approval of any subsequent similar act.



c. The laws of the State of Arizona shall govern the validity, performance, and enforcement of this Lease.

d. Time is of the essence with respect to the carrying out by Tenant of each term or provision of this Lease to be performed by Tenant.

e. The headings of the several paragraphs and sections contained herein are for convenience only and do not define, limit, or construe the contents of such paragraphs and sections. All negotiations, considerations, representations, and understandings between the parties are incorporated and expressly stated herein and may be modified or altered only by agreement in writing between the parties.

f. The covenants, agreements and obligations herein contained, and each of them, shall extend to, bind and inure to the benefit of, as the case may require, not only the parties hereto, but as well, their respective personal representatives, heirs, successors and assigns, subject at all times nevertheless to assignment or other transfer of the Tenant's interest herein.

g. In the event that, during the term of this Lease, the Landlord or Owner (if Owner is other than the Landlord) shall sell its interests in the Premises, then from and after the effective date of such sale, Landlord or Owner shall be released and discharged from any and all further obligations and responsibilities under this Lease except those already accrued.

h. This Lease shall not be recorded without the consent of both parties. A Memorandum of Lease may be recorded at Lender's election in a form satisfactory to both Landlord and Tenant.

i. The Landlord may install lines, walkways, drainage ways, landscape and planter island, lighting facilities, parking lot striping, directional signs, common purpose signs, loading docks, and other facilities which are and shall be generally beneficial to the Building and Landlord may, if deemed necessary by Landlord, even install some or all of the said facilities underground, notwithstanding the fact that there shall be some temporary disruption within the common areas, and a temporary impairment to the Tenant's business. The interpretation of this Paragraph shall be broad and non-restrictive, and a great deal of latitude shall be given to the Landlord.

j. Any provision of this Lease which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective as to the extent of such prohibition, unenforceability, or non-invalidity without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the Landlord and the Tenant have signed this Office Lease on the day and year first written above.

By: \_\_\_\_\_

Michael A. Stilb

**LANDLORD:**

Its: President

M.A.S. REAL ESTATE SERVICES, INC., an  
Arizona corporation, as agent for  
NORTHPOINTE VILLAGE CENTRE, LLC, an  
Arizona limited liability corporation

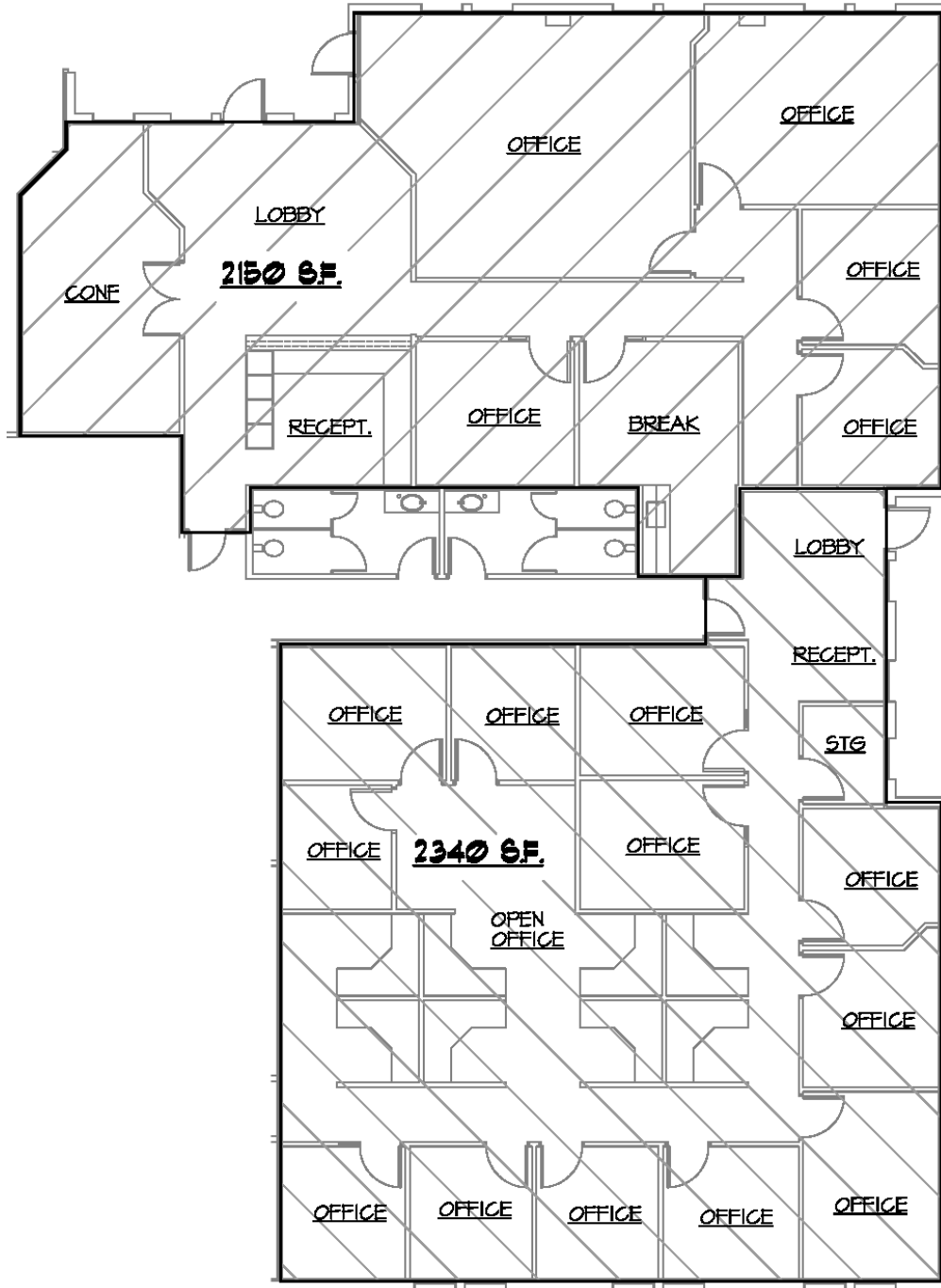
**TENANT:**

OMNI POOL BUILDERS AND DESIGN, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**



## **EXHIBIT B**

### **RULES AND REGULATIONS which constitutes a part of the attached Lease**

1. The sidewalks, entrances, courtyards, corridors, or halls of the Building shall not be obstructed or used for any purpose other than ingress and egress.
2. No awnings or other projection shall be attached to the outside walls of the Premises without Landlord's prior written consent.
3. Neither the interior nor the exterior of any windows shall be coated, covered or otherwise sun-screened without Landlord's prior written consent.
4. No sign, advertisement or notice shall be exhibited, painted, or affixed by Tenant on any part of, or as to be seen from the outside of, the Premises without Landlord's prior written consent. In the event of Tenant's violation of the foregoing, Landlord, without waiving any other rights or remedies, may remove the same without any liability and may charge the expense incurred in such removal to Tenant.
5. No window or other air conditioning or heating units or other similar apparatus shall be installed or used by Tenant without Landlord's prior written consent. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the Building's air conditioning and heating system.
6. Neither Tenant nor its employees or visitors shall at any time bring or keep upon the Premises any flammable, combustible, or explosive fluid, chemical or substance, except for a reasonable quantity of such material necessary for conduct of Tenant's trade or business.
7. Tenant shall not make, or permit to be made, any disturbing noises, or disturb or interfere with other occupants of the Building by the use of any musical instrument, radio, phonographs or loud or unusual noise, or in any other way.
8. No bicycles, vehicles, or animals of any kind, with the exception of service animals, shall be brought into or kept in or about the Premises. Tenant shall not cause or permit any unusual or objectionable odors to be produced in or emanate from the Premises.
9. No vending or coin operated machines shall be placed by Tenant within the Premises without Landlord's prior written consent.
10. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to impair the reputation of the Building and, upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
11. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether voluntary, involuntary or pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceedings. Without Landlord's prior written consent, Tenant shall not sell or display any merchandise from any portion of the Building except the interior of the Premises.

12. Landlord reserves the right to control access to the Building by all persons after reasonable hours of the generally recognized business days. Tenant shall be responsible for all persons for whom it requests after-hours access (but Landlord reserves the right to deny such access) and shall be liable to Landlord for all acts of such persons. Landlord assumes no responsibility and shall not be liable for any damage resulting from the admission of any unauthorized person to the Building.

13. Tenant and Tenant's employees and agents shall not solicit business in the Common Areas, nor shall they distribute any handbill or other advertising matter at any place within the Building other than the interior of the Premises.

14. All garbage and refuse shall be kept in the kind of container specified by Landlord and shall be placed prepared for collection in the manner and at the times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same and shall pay its proportionate share of the cost.

15. No aerial shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance the written consent of Landlord.

16. Tenant and Tenant's employees shall park their cars only in those portions of the Common Area designated for that purpose by Landlord.

17. The plumbing facilities of the Building (including those installed by Tenant in the Premises) shall not be used for any other purposes than that for which they are constructed. No foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by the Tenant, whose employees, agents or invitees shall have caused it.

18. Tenant shall use, at Tenant's cost, such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

19. Tenant shall not burn any trash or garbage of any kind in or about the Premises or the Building.

20. Landlord shall not be deemed to have given any assent or consent to any matter requiring Landlord's prior consent unless such consent is in writing and Landlord may give or withhold such consent in its sole discretion.

21. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations, as in Landlord's judgment, may from time to time be necessary for the management, safety, care and cleanliness of the Building. Landlord shall not be responsible to Tenant or to any other person for the nonobservance of the Rules and Regulations by any other tenant or other person. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises. These Rules and Regulations (as changed from time to time) shall be deemed to be a part of the Lease to which they are attached, as if set forth therein.