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Seminar #18

**Unique Issues in Gas Station and Dry Cleaner Leasing:
Fuel for Thought - Avoid Being Taken to the Cleaners**

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by:

Apollo Carey
Lewis Rice
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
acarey@lewisrice.com

Robert H. Crespi
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052
rcrespi@csglaw.com

Richard C. Doran
BJ's Wholesale Club, Inc.
350 Campus Drive
Marlborough, MA 01752
rdoran@bjs.com

Introduction

Many of the issues in gas station and dry cleaner leasing are substantially similar to retail leasing in general. Environmental issues should be considered in the context of each phase of the landlord-tenant relationship: leading up to commencement/possession; during the lease term; and following expiration/termination. In negotiating for the first phase, the issues of import include the defining the premises, describing the condition of the premises, permissible (and prohibited) uses of the premises, and due diligence. Each of these issues is more critical when considering uses where hazardous substances will be present. Lease negotiations should consider the allocation of responsibilities between the landlord and tenant, including compliance with environmental laws and regulations, for facility construction or fit-up, as well as standard operating concerns such as alteration of the premises, and indemnities. Finally, especially for gas station and, to a lesser extent, dry cleaners, to negotiate the “tail” issues, i.e., who has responsibility for what after the lease expires or terminates, including removing underground storage tanks and piping, and the dry-cleaning equipment.

Dry cleaners historically used perchloroethene or “Perc”, which is a chlorinated organic compound that can cause significant long-term contamination when released to the environment. Practically speaking, few if any new dry cleaners will use Perc, given the issues with Perc contamination resulting from historic dry cleaner operations. As such, new operations will likely involve the use of new generation petroleum-based closed system equipment, which poses much less threat of serious contamination. Thus, leasing considerations related to dry cleaners using Perc will likely be lease renewals or landlord refinancing of centers.

1. Overview - Environmental Liability

The general principal of liability under environmental laws and regulations flows from a person’s status not as landlord or tenant, but as “owner” or “operator”; as “generator” of hazardous materials (in its broadest sense) or “arranger” of the disposal of such materials. Some states, including New Jersey, interpret liability differently, although generally liability will extend to an owner, based solely on its status as property owner, and a person who discharges hazardous substances to the environment. The extent of a tenant’s control of the leased premises will be a factor in determining whether a tenant may be deemed an owner versus an operator for purposes of environmental liability. It is important to focus on the description of the premises, and the how the lease language divides responsibilities for the premises (including CAM!) between the landlord and tenant.

2. Basic Principles

a. Condition of Premises

From an environmental perspective, a landlord always wants to invoke – and a tenant always wants to avoid – the “AS-IS” language to address the condition of the premises. At a minimum, a tenant will insist on obtaining environmental reps and warranties made by the landlord, and potentially insisting on being allowed to conduct due diligence, especially when invasive activities will be conducted (like installation of USTs and piping).

b. Due Diligence

Tenant due diligence is more common, and more obvious. But does the standard set of due diligence questions prove sufficient for environmental issues? Likely not. Due diligence may help reveal latent environmental conditions. Or, for example, in multi-tenant facilities, a tenant may want to investigate the activities of other tenants to assess the possibility of a present or future environmental condition. Landlords too may benefit from due diligence, especially concerning the operational history of a potential tenant (the prospective tenant’s history (if any) of storing, using, selling, or disposing of hazardous materials?). If a landlord will be making reps and warranties, it may be wise to investigate its own space(s). Separately, should environmental insurance be considered and if so, who should obtain the policy?

c. Permitted Uses

Obviously, the traditional “permitted uses” clause of a lease for a gas station or dry cleaner cannot exclude the use or presence of hazardous materials, other than specifying that such use must be in accordance with applicable environmental laws (see sample definitions below).

3. Compliance

a. Landlord O&M

Landlords rarely are able to create environmental conditions, but they are able to prevent environmental conditions through proper O&M. Mold prevention may be the most obvious example, achieved through proper HVAC maintenance; roof and water/sewage-line maintenance (all to prevent leaks); and custodial activities. Other examples include maintenance of existing encapsulations of asbestos containing materials (ACMs) or lead paint. If the site is a prior brownfield, there may be an environmental easement and a corresponding site management plan; if so, the landlord may have obligations to address (see below).

b. Tenant O&M

Many lease forms now include language requiring a tenant to comply with environmental laws and regulations, and some even include a laundry list of alphabet-soup laws. These boilerplate provisions, however, may prove insufficient in dealing with the division of risk and responsibility between landlord and tenant, especially when dealing with alteration of the leased premises. Some courts, for example, have rejected a landlord’s reliance on such provisions to shift to a tenant the costs of remediating ACMs “discovered” during a tenant buildout.

c. Environmental Easements/Site Management Plans

The premises may have already undergone a remediation where residual contamination remains pursuant to “institutional controls” (deed or use restrictions) and/or “engineering controls” (surface caps or sub-slab vapor venting systems). Depending on the jurisdiction, the corresponding laws or regulations may require the owner/developer to adopt and implement a site management plan (SMP) to operate and maintain the ICs/ECs. The lease should address these issues directly, requiring the tenant to comply with and not interfere with or damage the ICs/ECs. This may directly impact the development of a gas station where the operator will disturb the controls in order to install the USTs. The obligations of each party regarding modification, if applicable, and maintenance of the controls should be specifically spelled out in the lease.

4. Expiration/Termination

a. Condition of Premises

Many standard leases require a tenant to return the premises in the original condition, “normal wear and tear excepted.” From the environmental perspective, such language may prove problematic for both landlord and tenant. The landlord needs to ensure the “normal wear and tear excepted” language does not relieve tenant of responsibility for remediating an incidentally created environmental condition. Conversely, a tenant needs to protect itself from stepping into liability for inadvertently exposing pre-existing environmental conditions.

Furthermore, the landlord and tenant may both benefit from an environmental “audit” prior to surrender of the premises. Much as is the case prior to move in, neither party wants to find itself ignorant of environmental conditions: the late discovery of such conditions undermines a landlord’s claim they were caused by the tenant and leaves the tenant without armor against claims asserted by the landlord. The lease should expressly set forth end of term issues, including, in the case of a gas station, whether the tanks will be removed, in the case of a dry cleaner, the dry-cleaning equipment and any hazardous materials, and if so, who is responsible to do so. The lease could also include a holdover provision if the tenant does not fulfill its end of term obligations or complete any required remediation. Tenant will want to limit its holdover exposure to situations where the required remediation actually impact landlord’s future use of the property (as opposed to, for example, a monitoring well).

b. Survival of Reps, Warranties & Covenants

Given the potential cost associated with environmental remediation, a landlord should try to negotiate the broadest, and longest-lasting, survival provisions applicable to environmental reps, warranties, and covenants. The tenant, by contrast, not only wants to limit the length of the survival period, but also focus the survival language to the tenant’s specific acts or omissions. As a trade for a landlord-sided survival clause, it may be beneficial to the tenant (from a cost perspective) to bargain for the right (but avoid the obligation) to perform any post-surrender remediation. (If included, additional issues arise, including right of access, union/non-union/prevaling wage, qualifications of personnel, insurance, etc.) Before agreeing to such provisions, the prudent landlord will make sure they do not conflict with any lender or insurer requirements/prohibitions. Tenants should review their environmental insurance to see whether and to what extent such surviving liability may or may not be covered.

5. Releases/Indemnifications/Insurance

An important point to understand is that contractual releases and indemnification provisions may operate effectively between landlord and tenant, but they are meaningless as between third parties (including governmental agencies). Indemnity provisions need to be written so as to be consistent with other relevant lease clauses, including the “use” provisions, the “compliance” provisions, and the O&M provisions. Failure to coordinate these provisions could open the door to an unintended expansion or narrowing of a tenant’s liability. Environmental insurance (pollution legal liability policies) may be a good means to limit liability for remediation costs, personal injury and property damage, and natural resource damages. In the case of a tenant that will be using hazardous substances, a landlord should require the tenant carry adequate environmental insurance covering their use.

Sample Definitions

(a) Contaminants. “Contaminants” shall mean any regulated substance, toxic substance, hazardous substance, hazardous waste, pollution, pollutant or contaminant, as defined or referred to in the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq.; the New Jersey Spill Compensation and Control Act, N.J.S.A. 26:2C-1 et seq.; the Hazardous Substance Discharge: Reports and Notices Act, N.J.S.A. 13:1K-15 et seq.; the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 9601 et seq.; the Water Pollution and Control Act, 33 U.S.C. 1251 et seq.; the “Tank Laws” as defined below; and any regulations promulgated therefrom, together with any substitutions thereof, as well as words of similar purport or meaning referred to in any other federal, state, county or municipal environmental statute, ordinance, rule or regulation.

(b) “CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., and any other amendments now or hereafter enacted.

(c) "Damages" shall mean all damages, and includes, without limitation, punitive damages, liabilities, costs, losses, diminutions in value, fines, penalties, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response action costs, compliance costs, investigation expenses, consultant fees, attorneys' and paralegals' fees and expenses and litigation expenses.

(d) "Discharge." "Discharge" shall mean the releasing, spilling, leaking, leaching, disposing, pumping, pouring, emitting, emptying or dumping of Contaminants at, into, onto or from the Demised Premises or the threat thereof, regardless of whether the result of an intentional or unintentional action or omission.

(e) "Disposal." "Disposal" shall mean not only the Discharge or placing of waste into or on any land or water, through the initial introduction of Contaminants onto the Demised Premises, but also the spreading, moving, dispensing and releasing of existing Contaminants at the Demised Premises due to any subsequent activity at the Demised Premises.

(f) "Environmental Claim" shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim, (whether administrative, judicial or private in nature) arising: (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law; (b) in connection with any Hazardous Material or actual or alleged Hazardous Material Activity; (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Material Environmental Law or other order of a Governmental Authority; or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources or the environment.

(g) "Environmental Documents." "Environmental Documents" shall mean all environmental documentation in the possession or under the control of the producing party concerning the Demised Premises or its environs, including, without limitation, all sampling plans, cleanup plans, preliminary assessment plans and reports, site investigation plans and reports, remedial investigation plans and reports, remedial action plans and reports, or the equivalent, sampling results, sampling result reports, data, diagrams, charts, maps, analyses, conclusions, quality assurance/quality control documentation, correspondence to or from the NJDEP or any other Governmental Authority, submissions to the Licensed Site Remediation Professional ("LSRP"), NJDEP or any other Governmental Authority, and directives, orders, approvals, including any No Further Action letter ("NFA") or Response Action Outcome ("RAO"), and disapproval's issued by the NJDEP, any LSRP, or any other Governmental Authority, and all environmental consultant's reports.

(h) "Environmental Law" shall mean any current or future Legal Requirement pertaining to: (a) the protection of health, safety and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources or wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to any Hazardous Material; or (e) pollution (including any Release to air, land, surface water and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.*, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6901 *et seq.*, Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, Clean Air Act of 1966, as amended, 42 U.S.C. 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 U.S.C. 2601, *et seq.*, Hazardous Materials Transportation Act, 49 U.S.C. 1801 *et seq.*, Occupational Safety and Health Act of 1970, as amended 29 U.S.C. 651 *et seq.*, Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300(f) *et seq.*, any similar, implementing or successor law, and any amendment, rule, regulation, order or directive issued thereunder.

(i) "Environmental Laws": means all federal, state or local laws, ordinances, statutes, orders, directives and decrees, and all orders, directives, rulings, rules, regulations and decisions of a governmental or quasi-governmental authority, or any regulatory or quasi-regulatory body, relating to Hazardous Materials or the pollution, contamination, regulation, monitoring, cleansing or protection of the environment, including any which relate to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution or (v) any other environmental or health matter, including without limitation those Environmental Laws specified in the definition of "Hazardous Materials".

(j) “Environmental Record” shall mean any document, correspondence, pleading, report, assessment, analytical result, Governmental Approval, or other record concerning a Hazardous Material, compliance with an Environmental Law, an Environmental Claim, or other environmental subject.

(k) “Governmental Approval” shall mean any permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision or action or approval of a Governmental Authority.

(l) Governmental Authority. “Governmental Authority” shall mean the federal, state, county or municipal government, or any department, agency, bureau or other similar type body obtaining authority therefrom or created pursuant to any Laws.

(m) “Hazardous Material” shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, or material which is hazardous or toxic, and includes, without limitation: (a) asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof); and (b) any such material classified or regulated as “hazardous” or “toxic” pursuant to an Environmental Law.

(n) Hazardous Material(s): means all pollutants, contaminants, explosives, flammable materials, compressed materials, corrosives, petroleum-based products, diesel fuel, paints, solvents, lead and toxic, radioactive and hazardous materials, and all other substances, the use, containment, existence, monitoring, transporting, maintenance prevention and/or removal of which is monitored, restricted, prohibited or penalized by an Environmental Law, and shall include, but is not limited to: (i) any “hazardous substance” as that term is defined under the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended as of the date of this Agreement (CERCLA); (ii) a “chemical substance” as that term is defined under the Toxic Substance Control Act (15 U.S.C. Sec. 2601 et seq.); (iii) a “hazardous waste” as defined under Resource Conservation and Recovery Act (41 U.S.C. Sec. 6901 et. seq.); (iv) “hazardous material” as defined by the Hazardous Transportation Act, as amended (49 U.S.C. Section 1801, et seq.); (v) asbestos, polychlorinated biphenyls, or mold; or (vi) any other material considered to be regulated, unsafe or otherwise capable of causing any type of pollution or otherwise deemed a hazardous substance under any federal, state or local law, rule or regulation.

Hazardous Materials: the term "Hazardous Materials" shall not include reasonable quantities of the foregoing substances used or stored at the Land and the Building in compliance with all Environmental Statutes and in the ordinary course of operating and maintaining a Class A residential/mixed-use project (including common cleaning supplies located at the Land and the Building). Notwithstanding the foregoing exclusion from the definition of Hazardous Materials of reasonable quantities of substances used or stored at the Premises in strict compliance with all Environmental Statutes and in the ordinary course of operating a Class A residential/mixed-use project (including common cleaning supplies located at the Land and the Building), any claim or disposal relating to such substances excluded from the definition of Hazardous Materials shall nevertheless be deemed to be a disposal with respect to which Tenant shall be obligated to notify Landlord and indemnify, defend and hold harmless Landlord.

(o) “Hazardous Material Activity” shall mean any activity, event, or occurrence involving a Hazardous Material, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Material.

(p) ISRA. “ISRA” shall mean the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the regulations promulgated thereunder and any amending and successor legislation and regulations.

(q) Law or Laws. “Law” or “Laws” shall mean each and every applicable federal, state, county or municipal statute, ordinance, rule, regulation, order, directive or requirement, currently or hereafter existing, together with all successor statutes, ordinances, rules, regulations, orders, directives or requirements, of any Governmental Authority, including, without limitation, Laws in any way related to Contaminants, and the common law.

(r) “Legal Requirement” shall mean any treaty, convention, statute, law, regulation, ordinance, Governmental Approval, injunction, judgment, order, consent, decree, or other requirement of any Governmental Authority.

(s) “Material Adverse Effect” shall mean any changes or effects that individually or in the aggregate are or are reasonably likely to be materially adverse to: (a) the assets, business, operations, income or condition

(financial or otherwise) of Landlord or Tenant; (b) transactions contemplated by this agreement; or (c) the ability of Landlord or Tenant to perform their respective obligations under this Lease; or (d) the condition or fair market value of the Shopping Center or the Demised Premises.

(t) NJDEP. "NJDEP" shall mean the New Jersey Department of Environmental Protection or its successor.

(u) Notices. "Notices" shall mean, in addition to its ordinary meaning, any communication of any nature, whether in the form of correspondence, memoranda, orders, directives or otherwise.

(v) "Pre-Existing Conditions" shall mean the conditions of the Demised Premises and the Shopping Center as of the date Landlord delivers the Demised Premises to Tenant, including without limitation the presence of any Hazardous Material, whether in compliance with Legal Requirements or not.

(w) "Post-Existing Conditions" shall mean the conditions of the Demised Premises and the Shopping Center which are not Pre-Existing Conditions and which arise after the date Landlord delivers the Demised Premises to Tenant.

(x) "RCRA" shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6901 *et seq.*, and any amendments now or hereafter enacted.

(y) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Material.

(z) Remediate or Remediation. "Remediate" or "Remediation" shall have the meaning ascribed to such term under N.J.S.A. 13:1K-8 *et seq.*, of the laws of the State of New Jersey, and shall include, without limitation: environmental investigation, monitoring and sampling; installation, maintenance and removal of monitoring wells; storage of excavated materials; and installation, maintenance, storage and removal of machinery and equipment used in connection with the Remediation.

(aa) Tank Laws. "Tank Laws" shall mean the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 *et seq.*, and the federal underground storage tank law, Subtitle I of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*, together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, and successor legislation and regulations.

(bb) Tenant's Representatives. "Tenant's Representatives" shall mean any shareholder, officer, director, member, partner, employee, agent, licensee, invitee, assignee or sublessee of Tenant, or any other third party other than Landlord.

(cc) Underground Storage Tanks. "Underground Storage Tanks" shall have the meaning ascribed to such term under the Tank Laws, as well as unregulated underground storage tanks used to store Contaminants.

Key Provisions to Understand in Lease Transactions

1. Environmental Indemnity and Environmental Release

Both an environmental indemnification provision and a release are contractual mechanisms by which the parties to a lease agree in advance on who should take the responsibility, and, more importantly, the liability, for any environmental problems that may arise during the term of the lease and potentially beyond the terms of the lease. Given the substantial costs associated with environmental cleanup and lawsuits, it is typically in the parties' best interest to attempt to address these issues upfront. Each party will want to attempt to reasonably minimize its exposure to potential liability. For example, a landlord will want to prevent contamination by a tenant and limit the landlord's liability for any such contamination. Meanwhile, a tenant will want protection against contamination affecting the property that it did not cause. Each party to a lease transaction uses an environmental indemnification provision and/or release to address two primary sources of potential environmental liability: (1) liability based on the other party's use of the property (first party claims) and (2) liability based on third parties who are not parties to the

lease transaction, such as guests or business visitors on the property, prior tenants, landlords, or owners, or future owners and operators of the property (third party claims).

In essence, a release is a covenant not to sue. It proactively extinguishes a claim or cause of action and is an absolute bar to any suit on the released matter(s) between the contracting parties, but not with respect to third parties. It is often thought of as a “risk shield” and, accordingly, thought to be a defensive mechanism for a party to limit its potential liability. On the other hand, an indemnity involves a promise by one party (the indemnifying party) to defend or hold the other party (the indemnified party) harmless against existing or future types of claims and damages, losses, liabilities, or other expenses, usually including reasonable attorneys’ fees. Contrary to a release, an indemnity is often thought of as a “risk shift,” whereby a party takes an offensive position to limit its potential liability by affirmatively shifting it to the other party. An indemnity typically applies to third party claims by default—meaning that without specifically referencing the types of claims to which the indemnity applies, the default is typically that the indemnity applies only to third party claims. See, e.g., *Dress Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505, 506-07 (Tex. 1993) and *Laurens Emergency Medical Specialists, PA v. M.S. Bailey & Sons Bankers*, 584 S.E.2d 375, 378 (S.C. 2003). However, an indemnity may apply to first party claims between the contracting parties based on the intent of the provision, as interpreted by a court, or if the language of the indemnification provision clearly and unequivocally contemplates covering such claims. Thus, in order to include first party claims within the coverage of an indemnification provision and avoid having to reach a court for interpretation of the provision, a party who wants to include first party claims should explicitly state that the indemnification obligations cover such claims in the indemnification provision.

An indemnity does not work to suppress a cause of action like a release does. Additionally, an indemnity provision is often only as good as the indemnifying party’s financial condition. If a landlord has an environmental indemnity provision as part of a proposed lease that shifts the responsibility to the tenant to clean up hazardous materials, the landlord should review the prospective tenant’s financial statements to ensure it has sufficient assets to support the indemnification and the tenant’s responsibilities under the indemnification provision. If there is a possibility that the indemnifying party might become insolvent, the indemnified party should consider additional means of protection. Depending on the potential claims and the parties’ ability to allocate risks, a lease agreement may have only a release or indemnification provisions, or it may contain both. For example, a landlord may want to limit its liability to the tenant and to third parties. The landlord could use a release to address certain claims involving the tenant and an indemnification provision to address certain other third-party claims.

Whether contained in the lease itself or in an ancillary agreement, an environmental indemnification and environmental release are standard concepts to incorporate into a lease transaction. While similar, in that each aims to address the liability of a party and manage environmental risks, these concepts are distinct. In most commercial real estate transactions, landlords require environmental indemnities from tenants for any environmental problems or liabilities caused by the tenant, although a reasonable environmental indemnity can serve to protect the interests of both parties in a leasing transaction. For example, the parties can use a reasonable environmental indemnity to balance responsibility for and distinguish between pre-occupancy liabilities, liabilities occurring during occupancy, and post-occupancy liabilities. As mentioned above, a lease transaction may contain both concepts. A party can identify a release by the typical release language, including “release, discharge, and relinquish.” Similarly, an indemnity uses typical language, including “indemnify, save, protect, save/hold harmless.” In drafting and reviewing a lease or an ancillary document containing an indemnification or release, the parties should review which concepts are integrated into the lease or ancillary document, the liabilities addressed by these concepts, the types of covered claims, and the allocation of risk between the parties.

2. Allocation of Environmental Liability and Governmental Liability

Parties to a lease transaction use a lease to allocate risks between the parties, including environmental liability, through mechanisms such as an environmental indemnification or release, discussed above. However, in order to properly negotiate and reach an agreement, it is important for contracting parties to understand the limits to an allocation of environmental liability in a lease. Specifically, one item for parties to bear in mind is that most courts have determined that the contractual allocation of environmental liability in a lease does not, and cannot, limit the parties’ liability to the government. See *Beazer East, Inc. v. Mead Corp.*, 34 F.3d 206, 211 (3d Cir. 1994) (holding that agreements to indemnify or hold harmless are enforceable between the parties but not against the government). Because the government is not contractually bound to the parties, like the parties are to each other in a lease transaction, a contractual allocation of environmental liability does not impact liability to the government and liability to the government overrides a contractual provision attempting to limit such liability.

With regard to potential liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) for cleanup, the limitation on parties’ liability to the government was a notable development. This development further emphasized the importance of the allocation of environmental risks between the parties to a contract through mechanisms such as indemnification provisions. For example, some courts consider the private allocation of liability under CERCLA between parties to be merely “tangential” to government interests under CERCLA and as a result, although contracts cannot alter or excuse the underlying liability to the government, they can change who ultimately pays that liability. *Mardan Corp. v. C.G.C. Music, Ltd.*, 804 F.2d 1454, 1459 (9th Cir. 1986). The overarching principal is that the result of such a contract “cannot prejudice the right of the government to recover cleanup or closure costs from any responsible party.” *Id.* Parties to a leasing transaction should be informed on the interpretation of allocating liabilities to the government between the parties in the applicable jurisdiction and keep it in mind when choosing the governing law for the lease, especially if the landlord, tenant, and/or property are located in different states, which could interpret the concept differently. How the jurisdiction whose law governs the lease interprets the allocation of liabilities to the government between parties to a lease may become important if a dispute arises in the future on this issue and evaluating this issue up front can provide some predictability for the parties, as well as an opportunity to address the issue at a point when there is not a dispute potentially creating tension between the parties.

3. Impacts of “AS IS” Clauses

A clause disclaiming any and all warranties is also known as an “as is” clause because, in a lease, it provides that by executing the lease, the tenant is accepting the property “as is.” It stems from the historic notion of “*caveat emptor*,” meaning “buyer beware.” The tenant accepts the property in the condition it is in when it executes the lease. Thus, if an “as is” clause is included in a lease, it can significantly limit a landlord’s liability for claims by the tenant and creates a responsibility for the tenant to conduct adequate due diligence and inspection of the property.

However, in taking on this risk, tenants should be aware that an “as is” clause generally does not operate to transfer environmental liability under CERCLA from a landlord to a tenant unless there is “clear and explicit contractual language of indemnification, clearly manifesting parties’ intent to transfer environmental liability.” *M & M Realty Co. v. Eberton Terminal Corp.*, 977 F. Supp. 683, 688 (M.D. Pa. 1997).

The goal of an “as is” clause is similar to a release in that it attempts to significantly limit claims between the contracting parties, however, because of the often extreme results of an “as is” clause, it may not be as ironclad as the landlord intends. In some contexts, courts further examine the enforceability of “as is” clauses in situations where one party took advantage of another party. See, e.g., *Gym-N-I Playgrounds, Inc. v. Snider*, 158 S.W.2d 78, 85 (Tex. App. 2005) (considering five factors for the enforceability of an “as is” clause in a commercial lease: (1) the sophistication of the parties, (2) the terms of the “as is” agreement, (3) whether the “as is” agreement was freely negotiated, (4) whether the agreement was an arm’s length transaction, and (5) whether there was a knowing misrepresentation or concealment of a known fact). However, landlords can also look to these factors to help ensure that an “as is” clause in a lease is enforceable. For example, a landlord may want to ensure that a prospective tenant has the opportunity to seek counsel in reviewing a lease, which could help indicate that the lease, and an “as is” clause within the lease, was freely negotiated. Overall, in order for a landlord to maximize the effectiveness of an “as is” clause, it should be used in conjunction with indemnity provisions and releases, as discussed above, to more clearly address environmental liabilities and provide multiple risk allocations and liabilities protections within the lease.

4. Conducting Due Diligence: What, When, and Why?

What?

Environmental due diligence is the manner by which a party to a lease transaction assesses the known and potential environmental liabilities and obligations associated with a piece of property. Environmental due diligence can provide context for the parties to negotiate the lease and allocate the risk of environmental liability within the lease. The types and extent of environmental due diligence depends upon the transaction type (e.g., commercial vs. residential or purchase vs. lease), the prior use of the property, the characteristics of the property, the environmental risk of the property, and any known contamination or environmental issues. For example, the purchase or lease of a former dry cleaner site, which may be at risk of solvent contamination, will likely require more in-depth due diligence than the purchase or lease of a prior office space, which likely carries little environmental risk. Determining property history and prior uses and examining the environmental risks associated with such uses is key for the parties to be able to evaluate potential environmental liabilities and, when they arise, determine how such liabilities

can be properly attributed to their cause—whether it be the prior owner/tenant or the current owner/tenant. Additionally, certain characteristics of the property, such as location, size of the facilities on the property, and its proximity to other properties can impact the extent of due diligence. For example, if the property is near a body of water, which could potentially increase the effect of groundwater contamination from the property, a tenant may want to perform enhanced due diligence. Adjusting due diligence efforts based on a specific property allows a tenant to gain an individualized understanding of the environmental risks associated with the property and how to adequately account for such risks in a lease transaction.

Environmental due diligence typically focuses on known or potential soil or groundwater contamination, the potential for any existing contamination to migrate to or from the property, the presence of hazardous materials, and compliance with applicable environmental regulations. Environmental due diligence is an essential part of any commercial real property transaction. When planning to engage in a lease transaction, a potential tenant should begin with asking the landlord about the current owner, prior owners, and prior tenant uses. Additionally, the tenant should request copies of any environmental licenses, permits, and reports that the landlord has for the property. The information that a tenant can obtain from a landlord will help to determine the extent to which the tenant needs to perform additional environmental due diligence. However, a tenant should always look beyond the information from the landlord in conducting environmental due diligence. Tenants want to confirm information obtained from the landlord with an independent source, given the landlord's interest and potential bias in the lease transaction. Further, a landlord may not have the most up-to-date information, so it is prudent for a tenant to confirm that the information received from a landlord is still accurate and complete so that a tenant has a current understanding of the property and its associated environmental conditions and risks.

For starters, a prospective tenant should provide the landlord with an environmental questionnaire to understand potential risks for the property from the landlord's perspective. Environmental questionnaires request certain information from a landlord or property owner on the condition, use, and environmental issues associated with a property. Next, a prospective tenant should conduct some environmental due diligence on the property online, including by checking applicable environmental government databases for information on the property, such as records of any spills, underground storage tanks, leaking underground storage tanks, and the history and prior ownership and tenancy of the property, if available. For example, the U.S. Environmental Protection Agency (EPA) offers various multi-program databases which can provide property-specific information on environmental issues and which map various types of environmental information for properties across the United States. Additionally, states also maintain environmental databases that can be used to find information about a property. Some state databases are particularly helpful and may provide more information than the EPA databases, while other state databases may only provide a limited amount of information. A prospective tenant can utilize these databases to find out important environmental information about the property it intends to lease, as well as surrounding properties, in a valuable, yet nonintrusive manner that allows it to analyze potential environmental risks. With the information that a prospective tenant can gather online, which may vary based on the history of the property and the database used, a tenant may be able to determine what level of additional due diligence, if any, should be performed on the property. For example, the tenant may want to obtain environmental assessments to fill in the gaps for information not found in an online search or to provide more information on a particular topic of concern arising from an online search.

If the tenant decides to have further environmental assessments performed for the property, to the extent environmental assessments are out of the scope of the tenant's expertise, which is usually the case, a tenant should engage professionals to review existing environmental information, determine the scope of any necessary assessments, and conduct such assessments.

For lower-risk properties, such as office buildings, one assessment is a Transaction Screen Assessment. A Transaction Screen Assessment is often thought of as a "scaled-down" version of a Phase I Environmental Site Assessment (ESA), which is for high-risk properties and is described more below. A Transaction Screen Assessment typically entails regulatory records review, key personnel interviews, photos and maps of the property, and limited historical research, however, it typically does not include a site visit like a Phase I ESA. The American Society for Testing and Materials (ASTM) sets forth standard practices for a Transaction Screen Assessment.

For high-risk properties, some tenants may go straight to a Phase I ESA from online diligence, instead of conducting a Transaction Screen Assessment. A Phase I ESA is one of the most common and prudent acts of diligence that a tenant can have performed to identify any actual or potential environmental contamination. A Phase I ESA investigates past and current ownership and uses of the property to assess the possible existence of contamination. A Phase I ESA does not include any sampling or testing of the property but instead typically involves a report on

possible contamination based on a site visit, a review of public records, and interviews of owners, occupants, and local government officials. A Phase I ESA often will also encompass a search through governmental databases for the property and surrounding properties. ASTM also sets forth the standard practices for a Phase I ESA. The purpose of a Phase I ESA is to identify potential environmental conditions that may affect the property or trigger liability if not identified, evaluated, addressed, and properly managed. Additionally, if a Phase I ESA identifies potential liabilities, prospective tenants may look to the Phase I ESA to determine whether further due diligence, such as a Phase II ESA, is necessary or recommended.

A Phase II ESA includes invasive testing, such as the testing of soil or groundwater and/or building materials. In some cases, a landlord will not want to grant permission to a prospective tenant to conduct a Phase II ESA because if the tenant discovers contamination during the Phase II ESA, the landlord, as the owner of the property, would be required to perform the cleanup, if required by environmental law. If a landlord prohibits a tenant from performing a Phase II ESA, the tenant can use that to its advantage during the negotiation of a lease or the indemnification provision within a lease to obtain protection from environmental risks associated with the property. A Phase II ESA further investigates the presence of contamination and quantifies the potential environmental contaminants identified in a Phase I ESA.

When?

It is key that at least some level of environmental due diligence is performed prior to a potential tenant making any commitment to lease property, even if only done by online search. It is important to start the due diligence process early, before the parties invest too much in the transaction and before it becomes too late to address issues or creates significant delays in the transaction. A potential tenant should complete the full spectrum of environmental due diligence, and analyze the results of such diligence, before creating a binding obligation to move forward with the transaction. Because the due diligence should be a prerequisite for creating a binding obligation, the parties should ensure that diligence is part of the transaction timeline, with ample time for completion.

Prospective tenants should consider environmental due diligence to be just as important as if they were buying the property because, even though tenants are not owners of a property, they can still be held liable for environmental issues on the property, for example, as an operator of the property. Thus, prospective tenants, like prospective buyers, must know the history of the property, as well as existing and potential environmental issues, so that the parties to a transaction can decide whether to proceed and, if they proceed, how to allocate the risks accordingly through indemnities, releases, and other lease provisions.

It is also critical that environmental due diligence is up to date. As discussed above, relying on previous assessments from a landlord comes with risk and a tenant should confirm that it reviews current environmental due diligence so that it can preserve its ability to indicate whether a prior tenant caused environmental issues that arise down the line. Further, creating an indication of where environmental risks stood at the beginning of the relationship will benefit both parties, as a landlord will also want to measure the environmental impact of a tenant's activities throughout the term of the lease, which may involve additional environmental due diligence that the parties could then use to compare to the diligence done at the outset of the lease transaction.

Why?

The major driving force behind the need for environmental due diligence is the potential effects of not conducting, or of not conducting adequate, environmental due diligence. Both parties to a lease transaction need to know the current conditions of the property in order to negotiate and enter into the transaction. The failure to allow time for adequate due diligence can delay, and even sometimes terminate, a transaction. Additionally, environmental due diligence allows the parties to a lease transaction to be informed when negotiating a lease and allocating risks using indemnities, releases, "as is" clauses, or other mechanisms. Neither party wants to agree to be responsible for an environmental issue caused by another.

For certain properties, environmental due diligence can become costly. However, in weighing the costs of diligence, a potential tenant should also weigh the costs of potential cleanup for environmental issues that could have been identified and properly managed in the diligence process and in the lease.

Environmental due diligence can create both present and future protections for the parties in a lease transaction. For example, the parties can presently use environmental due diligence to decide whether to engage in a lease transaction and how to allocate risks in a lease, and, in the future, the parties can look to environmental due

diligence to indicate what environmental issues should be attributed to which causes and can use additional environmental due diligence to show a party's lack of compliance with applicable law or the lease. The amount of time and money that a potential tenant puts into the environmental due diligence process allows the parties to identify and address issues at the outset and may create significant savings down the line by allowing a party to escape an environmental risk or problem.

Sample Lease Provisions

Shopping Center Lease: Gas Station Convenience Store: Tenant Permitted to Conduct Due Diligence

ENVIRONMENTAL.

(dd) As used in this Lease:

"Environmental Laws" means any federal, state or local law, ordinance, rule, regulation, policy, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health or safety, the environment or natural resources, including without limitation, regulation of releases and disposals to air, land, water and groundwater.

"Hazardous Materials" means any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled, limited or regulated in any manner under any Environmental Laws. The definition of Hazardous Materials does not include Existing Environmental Conditions (defined herein) or Existing Contamination (defined herein).

"Incidental Materials" means inventory held for sale, construction materials (other than asbestos or polychlorinated biphenyls), equipment, fixtures, fuel and similar products contained in vehicles, customary office and janitorial supplies and other maintenance materials that are or contain Hazardous Materials, to the extent they are incidental to, and reasonably necessary for, the construction, operation, maintenance and use of the Leased Premises and to the extent that they are in compliance with Environmental Laws.

"Release" means any spill, leak, emission, discharge or disposal of Hazardous Materials into the environment other than pursuant to and in compliance with valid permits issued under applicable Environmental Laws.

(b)(i) Tenant's obligations under this Lease are conditioned upon Tenant obtaining environmental and engineering studies, analyses, tests, surveys and inspections (collectively, the "Initial Environmental Site Assessments") satisfactory to Tenant in its sole discretion. Not later than ten (10) days from the Effective Date and continuing thereafter throughout the term of this Lease, Landlord shall provide Tenant, or whomever Tenant designates, copies of all previous environmental inspections, investigations, studies, audits, tests, reviews, governmental communications or other analyses relating to the Leased Premises that are in Landlord's possession or control. If any environmental assessment, including previous inspections, is not acceptable to Tenant, Tenant may terminate this Lease by written notice to Landlord given no later than five (5) days following the expiration of the Feasibility Period, time being of the essence with respect to the giving of such notice. If Tenant fails to timely provide notice of its termination of this Lease pursuant to this Section, then Tenant shall be deemed to have waived its right to terminate this Lease pursuant to this Section and this Lease shall continue in full force and effect, in which event there shall be no further liability hereunder between the parties, except for liabilities which specifically survive the termination of this Lease or for liabilities arising prior to the date of such termination.

Tenant hereby acknowledges receipt of the environmental reports listed on **Exhibit G** which, among other items, discloses the existing groundwater contamination, deed notice, approved CEA to be filed in the future and historic fill (the "Existing Environmental Conditions") (the "Existing Contamination") and access agreements with _____ (the "Access Agreements") pursuant to which the ground water is being monitored for natural ground water attenuation. Tenant agrees to repair any and all damage caused to the Leased Premises as a result

of conducting the Environmental Site Assessments thereon, and to restore the Leased Premises to its condition prior to such Tenant's entry thereon to the extent reasonably practicable. Tenant agrees, at all times during the term, to allow access to the Leased Premises from time to time as may be permitted, required or desired pursuant to the Access Agreements or Environmental Laws, provided that any such access shall be conducted so as to not unreasonably interfere with Tenant's conduct of business, and to otherwise comply with the terms and conditions of the Access Agreements as same may be amended from time to time. In addition, Tenant hereby acknowledges that there are monitoring wells (the "Wells") on the Leased Premises and that such Wells may be relocated from time to time during the term of the Lease, or new Wells may be installed. Tenant hereby authorizes the installation of new Wells or the relocation of the Wells provided that such relocation of existing Wells or the location of new Wells do not materially and adversely affect Tenant's ability to conduct its business at the Leased Premises and Tenant agrees to cooperate at no cost or expense to Tenant in connection with any relocation of the Wells.

(ii) Notwithstanding anything to the contrary contained herein, Tenant's obligations hereunder are conditioned upon the fulfillment (or waiver by Tenant) of the conditions set forth in either (x) or (y) below:

(x) Within one hundred eighty (180) days prior to the Tenant's Construction Period Start Date, Tenant may, in its discretion, obtain updated test borings, analyses, tests, surveys and inspections ("Updated Environmental Site Assessments"), which show no New Environmental Conditions; or

(y) In the event that the Updated Environmental Site Assessments show any New Environmental Conditions ("Unsatisfactory Updated Environmental Site Assessments"):

A. Tenant shall have the right, at Tenant's election:

- i. to terminate this Lease and the parties shall have no further rights or obligations under this Lease; or
- ii. not to terminate this Lease, in which event this Lease shall remain in full force and effect.

Tenant shall provide Landlord with written notice of its election to proceed pursuant to Subsection 10(b)(ii)(y)A.i. or ii above within thirty (30) days following receipt of the Unsatisfactory Updated Environmental Site Assessments, but in no event later than Tenant's Construction Period Start Date, time being of the essence with respect to the giving of such notice. If requested by Landlord in writing, Tenant's notice shall include a copy of the Unsatisfactory Updated Environmental Site Assessments together with all back-up information. If Tenant fails to send timely notice of its election, then Tenant shall be deemed to have waived its right to terminate this Lease and this Lease shall continue in full force and effect. A "New Environmental Condition(s)" shall mean a discovery of a discharge or Release of Hazardous Materials in violation of Environmental Laws which discharge or Release occurred subsequent to the Feasibility Period and was not caused by the acts or omissions of Tenant or any Tenant Group.

Landlord may nullify Tenant's termination by sending written notice to Tenant within thirty (30) days of receipt of Tenant's notice of termination that Landlord will be responsible to remediate the New Environmental Condition in accordance with applicable laws and obtain a Response Action Outcome for such remediation, including use of engineering and institutional controls, consistent with use of the Leased Premises for the Permitted Uses set forth in **Exhibit B**.

(c) Except as otherwise set forth on **Exhibit G**, Landlord represents and warrants, to its knowledge, that (i) no part of the Leased Premises has ever been used as a sanitary landfill, waste dump site or for the treatment, storage or disposal of Hazardous Materials other than the storage of Incidental Materials, (ii) no underground tanks are present upon the Leased Premises, (iii) no Release of Hazardous Materials in violation of Environmental Laws has occurred from, under or upon the Leased Premises, and (iv) the Leased Premises do not contain any Hazardous Materials other than the storage of Incidental Materials in violation of any Environmental Law. Except as otherwise set forth on **Exhibit G**, neither Landlord nor, to Landlord's actual knowledge, any other person has received any notice of any action or proceeding relating to any Hazardous Materials or Release thereof on, under, or at the Leased Premises, and neither Landlord nor, to Landlord's knowledge, any other person has transported or caused to be transported any Hazardous Materials other than Incidental Materials on, to, or from the Leased Premises other than in compliance with applicable Environmental Law.

(d) Landlord shall indemnify, defend and hold harmless Tenant and its officers, directors, shareholders, employees and agents (collectively, "Tenant Indemnified Parties") from any claims, judgments, damages, fines, penalties, costs, remediation costs (including any and all costs incurred in connection with any investigations of all or any portion of the Leased Premises or any cleanup, removal, repair, remediation, detoxification or restoration and the preparation of any closure or other plans required or permitted by any governmental authority), liabilities (including sums paid in settlement of claims) or loss relating to the Leased Premises, including reasonable attorney fees, consultant fees, and expert fees (collectively, "Claims and Losses") that arise during or after the term of this Lease to the extent arising from, on account of, or in connection with (i) the violation of any Environmental Laws by Landlord or anyone claiming by or through Landlord, unless such violation arises from the actions or omissions of Tenant or any of Tenant's licensees, invitees, contractors or subcontractors, agents or employees (collectively, the "Tenant Group"); (ii) the presence, use, generation, storage, or Release of Hazardous Materials in violation of any Environmental Law existing prior to Tenant's Construction Period Start Date in, on, under, or above the Leased Premises, unless arising from (A) the acts or omissions of Tenant or any Tenant Group, or (B) the Tenant's fuel dispensing facility; or (iii) any breach of the representations, warranties or obligations of Landlord contained in this Section.

(e)(i) Tenant acknowledges the Existing Environmental Conditions. To the extent that Tenant is required to excavate and remove soils to install its underground tanks and equipment, Landlord agrees to reimburse Tenant the Cost Differential for Soil Disposal (as hereinafter defined) if the excavated soils need to be sent to a special disposal facility due to contamination caused by the Existing Environmental Conditions or the Existing Contamination. The Cost Differential for Soil Disposal shall mean the incremental increase in cost to dispose of the soils because of the contamination caused by the Existing Environmental Conditions or the Existing Contamination over what the cost would have been had the soils not been contaminated. Tenant shall bid out the disposal cost by affording at least three (3) contractors, which contractors must first be approved by Landlord, the opportunity to submit sealed detailed bids covering the disposal with details for the Cost Differential for Soil Disposal. Landlord shall also have the right to select contractors to submit bids covering such work. Landlord shall also have the right to be present at the time the bids are opened, and Tenant will provide Landlord with adequate notice so that a representative of Landlord can be present. Tenant shall award the work to the lowest bidder.

(ii) Notwithstanding the foregoing, if the Cost Differential for Soil Disposal exceeds \$100,000 (the "Soil Cap Amount"), Landlord may elect to terminate this Lease by giving written notice thereof to Tenant, in which event there shall be no further liability hereunder between the parties, except for liabilities which specifically survive the termination of this Lease or for liabilities arising prior to the date of such termination. However, if Landlord terminates this Lease, Tenant shall have the right, upon written notice to Landlord given within fifteen (15) days of receipt of Landlord's termination notice, to void Landlord's termination of this Lease by agreeing to be responsible for all costs in excess of the Soil Cap Amount, in which case, this Landlord's termination notice shall be null and void and this Lease shall continue in full force and effect.

(iii) As to any and all New Environmental Conditions discovered by Landlord or Tenant during the performance of Landlord's Work or the construction of the Tenant Improvements, Landlord shall remediate or correct such New Environmental Conditions, consistent with use of the Leased Premises for the Permitted Uses set forth in **Exhibit B**, and in accordance with the following: (i) such remediation or corrective action must be accomplished in accordance with all applicable Environmental Laws (the "Completed Environmental Corrective Action"), (ii) if applicable, Landlord must deliver to Tenant a Response Action Outcome (a "RAO") and (iii) the Completed Environmental Corrective Action shall not unreasonably interfere with or delay Tenant's construction of the Tenant Improvements. In the event the work or actions necessary to achieve the Completed Environmental Correction Action unreasonably interferes with or delays the construction of Tenant Improvements, the Tenant Completion Date shall be extended on a day-for-day basis for such delay until such delay or interference ends. In the event the work or actions necessary to achieve the Completed Environmental Correction Action unreasonably interferes with Tenant's use and enjoyment of the Leased Premises or delays Tenant in obtaining a certificate of occupancy, the Rent Commencement Date shall be extended on a day-for-day basis for delay until such delay or interference ends.

(iv) Notwithstanding the foregoing, if the cost of the Completed Environmental Corrective Action exceeds \$500,000 (the "Completed Correction Action Cap Amount"), Landlord may elect to terminate this Lease by giving written notice thereof to Tenant, in which event there shall be no further liability hereunder between the parties, except for liabilities which specifically survive the termination of this Lease or for liabilities arising prior to the date of such termination. However, if Landlord terminates this Lease, Tenant shall have the right, upon written notice to Landlord given within fifteen (15) days of receipt of Landlord's termination notice, to void Landlord's termination of this Lease by agreeing to be responsible for all costs in excess of the Completed Correction Action

Cap Amount, in which case, this Landlord's termination notice shall be null and void and this Lease shall continue in full force and effect.

(f) Tenant agrees and covenants that:

(i) Neither Tenant nor the Tenant Group will engage in activities or operations during the term of this Lease that involve the generation, manufacturing, refining, transportation, treatment, storage, disposal, handling or Release of Hazardous Materials on the Leased Premises. The foregoing covenant shall not prohibit Tenant's operation of its fuel dispensing facility or any Incidental Materials on the Leased Premises that are used, sold or disposed of in compliance with Environmental Laws; and

(ii) At all times following the date Tenant takes possession of the Leased Premises, Tenant shall obtain, maintain in effect and comply with all permits, licenses and other requirements pursuant to any Environmental Laws relating to activities on the Leased Premises by Tenant and the Tenant Group.

(g) Tenant shall indemnify, defend and hold harmless Landlord, its officers, partners, directors, shareholders, employees and agents, from any Claims and Losses arising during or after the term of this Lease from, on account of, or in connection with (i) the violation of any Environmental Law by Tenant or the Tenant Group, (ii) the presence, use, generation, storage or Release of Hazardous Materials in, on, under or above the Leased Premises occurring after the Effective Date to the extent occurring as a result of (A) the acts or omissions of Tenant or the Tenant Group or (B) the Tenant's fuel dispensing facility including, without limitation, all structures, tanks, piping, containers, pumps or other appurtenances, or (iii) any violation of the obligations of Tenant contained in this Section.

(h) Tenant, at its expense and in accordance with the time limitations of the section captioned "Tenant Improvements", shall (i) dismantle and remove any and all structures associated with Tenant's fuel dispensing facility, including any tanks, piping, containers or other appurtenances, (ii) conduct any necessary environmental sampling and remediation associated with Tenant's fuel dispensing facility, and prepare and submit any necessary storage tank closure or other reports to the appropriate governmental agencies, in compliance with and as required by Environmental Laws, and simultaneously provide to Landlord copies of all documentation submitted to governmental authorities including all necessary approvals from the governmental authority confirming that the fuel dispensing facility has been properly decommissioned, removed and that any Hazardous Materials have been removed, and (iii) close any excavated areas resulting from the removal of the Tenant's fuel dispensing facility and fill with clean soils, compacted, seeded, graded in such areas and provide to Landlord documentation that such excavated areas have been filled with clean soils. Prior to the expiration or termination of the term, Tenant shall also deliver to Landlord an environmental report certified to Landlord (or a reliance letter from such engineering firm stating that Landlord may rely on such report) by a reputable environmental engineering firm that the fuel dispensing facility has been promptly decommissioned and removed in accordance with all applicable laws and that the Leased Premises is free of Hazardous Materials. Prior to the expiration or termination of the term, Tenant shall also deliver to Landlord a site wide unrestricted RAO.

(i) Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of any governmental authority having jurisdiction in connection with its business at the Leased Premises. Should applicable Environmental Law require preparation and implementation of a clean-up plan because of any spills, Releases or discharges of Hazardous Materials which occurred during the term of this Lease and for which Tenant has an indemnification obligation pursuant to Section 10(g) hereof, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and financial assurances, and carry out the approved plans in order to obtain an unrestricted use RAO for the area of concern for such spills, Releases or discharges of Hazardous Materials.

(j) Tenant agrees to fully cooperate with Landlord and provide such documents, affidavits and information as may be requested by Landlord in connection with any requirements of Environmental Laws applicable to the Leased Premises and/or (x) to comply with any requirements of Environmental Laws.

(k) Landlord may, if Landlord reasonably believes that Hazardous Materials or other environmental condition violates or threatens to violate any Environmental Laws, cause an environmental audit of the Leased Premises or portions thereof to be conducted to confirm Tenant's compliance with the provisions of this paragraph, and Tenant shall cooperate in all ways with Landlord in connection with any such audit. Tenant shall pay all reasonable costs and expenses incurred in connection therewith in the event that the audit shows the presence of

1.5 Term Extension Options _____ extensions of _____ years each.

1.8 Key Dates (a) Anticipated Approvals Date: _____
(b) Outside Approvals Date: _____
(c) Anticipated Fueling Facility Pad Turnover Date: _____
(d) Outside Fueling Facility Pad Turnover Date: _____

ARTICLE II Due Diligence Documents and Inspections

2.1 Landlord Deliveries. “Commencement Date” means the date this Lease is executed by Landlord and Tenant. Within thirty (30) days following the Commencement Date, Landlord will deliver to Tenant those documents listed in Schedule 2.1.

2.2 Tenant Review. “Landlord Mortgagee” shall mean any holder of a mortgage on the Premises of which Landlord has delivered to Tenant the name and address and requested that the Landlord Mortgagee be designated as such. Tenant shall have sixty (60) days following delivery of the last of the documents referenced in Schedule 2.1 (“Due Diligence Period”) to determine whether the Premises are suitable for Tenant’s use. During the Due Diligence Period, Landlord shall provide Tenant and its agents and representatives access to the Premises for purposes of conducting such non-invasive inspections, investigations, tests and studies as Tenant may determine. Any party other than Tenant entering the Premises for such inspections shall first provide a certificate of insurance to Landlord evidencing that the party carries commercial general liability insurance with a combined single limit of at least \$1,000,000 per occurrence and names Tenant, Landlord and Landlord Mortgagee as additional insureds, as their interests may appear. Tenant agrees to indemnify and hold Landlord harmless from any personal injury, death, damage, loss or expense caused by Tenant, its agents or representatives in the course of their inspection of the Premises. Tenant further agrees to restore the Premises to the same condition it was in prior to the inspection. Landlord shall provide such additional information as may be requested by Tenant prior to expiration of the Due Diligence Period. Tenant shall have the right to terminate this Lease for any reason in Tenant’s sole discretion by giving written notice to Landlord on or before the expiration of the Due Diligence Period, in which case this Lease shall terminate and be of no further force and effect. If the Lease is not terminated, Tenant and its agents and representatives shall continue to have access to the Premises prior to the Fueling Facility Pad Turnover Date (defined in Section 4.1(h)) for such non-invasive purposes as Tenant shall determine in preparation for its occupancy of the Premises.

ARTICLE IV Construction of Fueling Facility

4.1 Important Deadlines.

(a) “Approvals” means all discretionary consents, approvals and permits which are prerequisite to the construction and operation of the Fueling Facility to be built on the Premises by Tenant, storage of fuel and the signage required by Tenant as shown on Schedule 14.1. As of the date hereof, the Approvals which have been identified by Landlord are listed on Schedule 4.1(a). Such list is not intended to be an exclusive list of the Approvals, but only as a list of those identified to date. Landlord shall be responsible for obtaining all Approvals, at its sole cost and expense. Once the Approvals for the Fueling Facility have been obtained, Tenant shall be responsible for any other permits or approvals necessary for the construction of the Fueling Facility, including the building permit, all operational licenses and the final Certificate of Occupancy. In the event the Approvals require offsite improvements or other offsite studies or work (“Offsite Requirements”), Landlord shall be responsible for the construction of, installation of and/or payment for same.

(b) The date upon which Landlord obtains all of the Approvals not subject to further appeal is referred to as the “Approvals Date”. Landlord and Tenant agree to execute a certificate at the request of either party memorializing the Approvals Date.

(c) Landlord and Tenant anticipate that all Approvals will be obtained by Landlord by the Anticipated Approvals Date set forth in Section 1.8(a) and Landlord agrees to use reasonable efforts to obtain all

approvals by the Anticipated Approvals Date. If Landlord, despite its reasonable efforts, is unable to obtain the Approvals by the Anticipated Approvals Date, Tenant shall have the option, by notice to Landlord, to obtain the Approvals at Landlord's sole cost and expense.

(d) The "Fueling Facility" means the self-service fueling facility to be constructed by Tenant on the Premises in such location and with such layout as Tenant shall determine. The Fueling Facility shall be comprised of a passenger vehicle fueling station, including a kiosk, fuel dispensers, dispenser pumps, concrete pad, canopy, underground storage tanks, generator and equipment ancillary to the operation of a service station and the convenience store operated in conjunction therewith. In no event shall Tenant be obligated to construct the Fueling Facility.

(e) The "Fueling Facility Pad" means the area surrounding the Fueling Facility and upon which the Fueling Facility will be constructed.

(f) Landlord and Tenant anticipate that the Fueling Facility Pad will be turned over to Tenant by the Anticipated Fueling Facility Pad Turnover Date set forth in Section 1.8(c) and Landlord agrees to use reasonable efforts to achieve the Fueling Facility Pad Turnover Date by the Anticipated Fueling Facility Pad Turnover Date.

(g) "Phase I Site Work" means all site and Fueling Facility Pad preparation work required to construct the Fueling Facility as set forth in Schedule 4.1(g). Landlord shall commence the Phase I Site Work within thirty (30) days following notice from Tenant once the Approvals have been obtained ("Commencement Date"). The Phase I Site Work includes, without limitation, demolition and removal of any existing structures and/or hardscape on the Premises, if applicable, access improvements to the Premises from the Main Street(s), installation of utilities to the kiosk/canopy/pad, installation of stormwater facilities, pad preparation, curbing and paving. Once Landlord commences the Phase I Site Work, the Construction Timetable attached hereto as Schedule 4.1(g) will be revised by Landlord and Tenant to insert the appropriate dates keyed off of the Commencement Date.

(h) The "Fueling Facility Pad Turnover Date" is the date upon which all of the Fueling Facility Pad Turnover requirements are satisfied.

(i) The "Fueling Facility Pad Turnover Requirements" are as follows:

- (i) Landlord shall turn over the Fueling Facility Pad to Tenant free of all tenants and occupants, with all Phase I Site Work complete;
- (ii) Landlord shall give Tenant at least _____ weeks notice that all Approvals have been obtained and simultaneously deliver an opinion from an attorney and a certificate from an engineer, both reasonably satisfactory to Tenant confirming that all Approvals have been issued and all conditions contained in the Approvals have been satisfied;
- (iii) Landlord shall give Tenant at least _____ weeks notice that all tie in permits required to connect the Fueling Facility to the municipality's water and sewer systems have been issued and paid for in full by Landlord, together with copies of all such permits;
- (iv) Landlord shall deliver a certificate from a professional licensed environmental engineer reasonably acceptable to Tenant at least two (2) weeks prior to the satisfaction of the Fueling Facility Pad Turnover Requirements confirming that the Premises are in compliance with the environmental requirements of this Lease; and
- (v) The building permit required to construct the Fueling Facility has been issued, Tenant agreeing to diligently:
 - (a) prepare and file the construction plans required by the permit issuing authority; and
 - (b) pursue issuance of the building permit by the permit issuing authority.

ARTICLE VIII
No Trespass

8.1 No Trespass. Landlord authorizes Tenant to enforce any No Trespass actions regarding the Premises and to initiate any proceedings to remove any third parties from the Premises which Tenant, in Tenant's reasonable business judgment, deems necessary or appropriate for Tenant's continued quiet enjoyment of the Premises.

ARTICLE IX
Utilities

9.2 Landlord Responsibilities. Landlord shall be responsible for maintaining in good condition and repair utility infrastructure and connections from the utility tie in point outside the Premises to the point of connection to the Fueling Facility.

ARTICLE X
Use

10.1 Tenant Use. The Premises may be used by Tenant for any lawful use.

10.2 Opening Requirement. In no event shall Tenant be obligated to open for business on the Premises or conduct business on the Premises.

ARTICLE XI
Repairs and Alterations

11.1 Landlord Obligations. "Applicable Legal Requirements" mean applicable statutes, ordinances, regulations, bylaws and requirements of governmental authorities having jurisdiction, including, without limitation, zoning and building codes and conditions and requirements of the Approvals. Landlord shall maintain in good repair and condition and in compliance with Applicable Legal Requirements, with the exception of reasonable wear and tear, damage by casualty, condemnation or Tenant's negligence:

- (i) the utility systems serving the Fueling Facility from the main public utility lines to the entry points to the Fueling Facility;
- (ii) any element which Tenant is required to repair that results from defective construction by Landlord or Landlord's failure to repair something for which it was responsible;
- (iii) any damage to the Fueling Facility caused by settling;
- (iv) any damage arising out of defective materials, workmanship or failure to comply with Landlord's Construction Responsibilities in the construction of the Phase I Site Work or Phase II Site Work;
- (v) Offsite Requirements; or
- (vi) any damage arising out of Landlord's negligence.

Landlord shall perform such repairs without material interference with or disruption of the normal conduct of Tenant's business. Landlord shall give Tenant at least five days prior notice of the commencement of any repairs to the Premises except in the event of an emergency posing imminent risk of material harm to persons or property, in which event Landlord shall give such oral notice as may be reasonable under the circumstances. Landlord shall perform any repairs outside of regular business hours if Tenant advises Landlord that the conduct of such repairs will, in Tenant's reasonable judgment, affect Tenant's normal business operations.

11.2 Emergency Repairs. Tenant has the right to make repairs which are otherwise the responsibility of Landlord in the case of an emergency posing an imminent threat of material harm to persons or property, in which event Tenant shall use reasonable efforts to give Landlord oral notice of same. Upon the completion of such

emergency repairs, Tenant will invoice Landlord for the actual third-party costs incurred by Tenant in making the repairs, together with reasonable back-up, and Landlord will reimburse Tenant within fifteen (15) days of being invoiced therefor. If Landlord fails to reimburse Tenant within the fifteen (15) day period, Landlord shall pay Tenant interest at the Lease Interest Rate from the date the payment was due until the date payment is actually made.

11.3 Tenant Obligations. Tenant shall maintain the Premises and any improvements constructed thereon by Tenant, including the Fueling Facility, in good repair and condition or in such greater condition as may be required by Applicable Legal Requirements, reasonable wear and tear, damage by casualty or condemnation or Landlord's negligence excepted.

ARTICLE XV

Insurance and Indemnification

15.1 Liability Insurance. Tenant and Landlord shall each maintain a policy of commercial general liability insurance with a combined single limit of at least \$_____ per occurrence. Tenant's policy shall commence on the Fueling Facility Pad Turnover Date. Landlord's policy shall commence on the later of the Commencement Date or the date Landlord first takes possession of the Premises. Tenant's policy shall name Landlord and any Landlord Mortgagee as additional insureds, as their interests may appear, and Landlord shall name Tenant as additional insured, as its interests may appear.

15.2 Indemnity. To the extent permitted by law, each party indemnifies the other and holds the other harmless from and against any and all injury, loss or damage, or claims for injury, loss or damage, of whatever nature, to any person or property caused by or resulting from any act, omission or negligence of the indemnifying party or any employee or agent of the indemnifying party, including, without limitation, reasonable attorneys' fees. It is a condition of this hold harmless and indemnification that the indemnifying party receives prompt notice of any such claim from the indemnified party. Provisions of this section shall be subject to the waiver of subrogation provisions of Section 15.6.

15.3 Property Insurance. Tenant shall not be required to carry any property insurance on improvements erected by Tenant on the Premises.

15.4 Pollution Liability Insurance. During such time as fuel tanks are present on the Premises, Tenant shall maintain, at its sole cost and expense, pollution liability insurance with a minimum amount of \$5,000,000 per pollution event and an aggregate limit of \$10,000,000. The insurance may be provided as a part of a blanket policy obtained by Tenant for this and other fueling facilities operated by Tenant. The policy shall provide for first and third party liability, on-site Corrective Action expense and defense costs. Coverage shall include loading and unloading of petroleum products by suppliers, runoff of petroleum products or motor oil from vehicles and dispenser pumps and improper disposal of Hazardous Materials. Landlord shall be named as an additional insured on the policy and a certificate of insurance shall be provided to Landlord upon request.

15.5 Insurance Requirements Generally. All insurance required by this Article may be blanket with other insurance maintained by Landlord or Tenant and may be effected by any combination of basic and excess or umbrella coverage provided: (i) the total amount of the insurance available shall be at least the protection equivalent of separate policies in the amounts required; and (ii) in all other respects, all of the policies shall comply with the applicable provisions of this Article. All policies shall be issued by an insurance company authorized to do business in the state in which the Premises is located and rated at least A-, Class VI in the most current available Best's Key Rating Guide or any successor thereto (or if there is none, an organization having a national reputation). Landlord and Tenant shall each provide the other with certificates of the insurance required to be maintained hereunder. All policies shall provide that the insurer shall give not less than twenty (20) days notice of cancellation or expiration to the additional insureds named in the policy. Tenant may elect not to maintain any policy required by this Article so long as shareholder's equity on the Tenant's balance sheet (prepared in accordance with generally accepted accounting principles) exceeds \$200,000,000. Except for calendar years during which Tenant is a corporation, the majority of whose shares of voting stock are traded on a national securities exchange, if Tenant elects to self-insure, Tenant shall furnish Landlord with a balance sheet confirming that Tenant meets the requirements set forth in this Section within sixty (60) days after the end of Tenant's fiscal year. The beneficiaries of Tenant's self insurance shall be afforded at least the same insurance protection as if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder (including, without limitation, the protection of a legal defense by attorneys reasonably acceptable to the beneficiaries and the payment of claims within the same time period that a third-party insurance carrier of the quality and caliber otherwise required hereunder would have

paid such claims). The waiver of subrogation provisions provided herein shall be applicable to any self-insured exposure.

15.6 Waiver of Subrogation. Each of Landlord and Tenant hereby releases the other from any and all liability for loss or damage caused by fire or any of the extended coverage casualties or any other casualty which shall be brought about by the fault or negligence of the other party or any persons for whom the other party shall be responsible, provided that this release shall be in force and effect only with respect to loss or damage occurring during such time as the releasor's policies of fire and extended coverage insurance shall contain a clause to the effect that this release shall not affect such policies or right of the releasor to recover thereunder and the release shall apply only to the extent of the releasor's insurance coverage or with respect to any loss occurring during such time as the Tenant, as releasor, is self-insured in accordance with the terms of Section 15.5. Each of Landlord and Tenant agrees that its fire and extended coverage insurance policies shall include a waiver of subrogation clause so long as the same is obtainable and includable without extra cost, or if there is an extra cost, so long as the other party pays such extra cost. If an extra cost is chargeable (other than with respect to self-insurance), the party carrying the insurance shall advise the other party of the amount of the extra charge and the other party, at its election, may pay the same but shall not be obligated to do so.

15.7 No Release from Liability. Except as provided in the preceding Section, nothing in this Lease shall be deemed to release either party from liability for damages resulting from the fault or negligence of the party or parties for whom it is responsible or from responsibility for repairs necessitated by such fault or negligence.

ARTICLE XVIII Closure Options

18.1 Closure Options. Upon closing the Fueling Facility during the Term other than on a temporary basis for renovations or repairs, Tenant shall:

- (a) Remove the Fueling Facility in its entirety;
- (b) Decommission the Fueling Facility in accordance with Applicable Legal Requirements; or
- (c) Allow Landlord to purchase the Fueling Facility at a price agreeable to both parties.

If Tenant removes the Fueling Facility, it shall remove all above and underground facilities and tanks and restore the Premises to the same condition it was in prior to construction of the Fueling Facility. Upon closing of the Fueling Facility other than on a temporary basis for renovations or repairs and in any event, prior to the expiration of the Term, Tenant shall remove the Fueling Facility in its entirety unless Landlord and Tenant agree on a sale of the Fueling Facility to Landlord.

ARTICLE XXI Landlord's Representatives, Warranties and Assurances

21.1 Representations and Warranties. Landlord represents and warrants to Tenant, as follows:

- (a) Upon completion of Landlord's Construction Responsibilities, Tenant's construction of the Fueling Facility, the use of the Fueling Facility for the sale of passenger vehicle energy products and sources, motor oil and other products commonly sold at passenger vehicle fueling stations, for the sale of convenience store products and the use of any signage on the Premises shall be in full compliance with Applicable Legal Requirements; and
- (b) If at any time any public authorities having jurisdiction shall complain that the Premises or the signage (i) shall not have been constructed in compliance with Applicable Legal Requirements; or (ii) their use is in violation of Applicable Legal Requirements that must be corrected and a failure to correct shall in any way affect the use of the Premises or signage, affect any of the rights of Tenant under this Lease or impose any material adverse obligation upon Tenant not contained in this Lease, then Landlord shall, upon receipt of notice of such complaint, cause such repairs, alterations or other work to be done and take such action as is necessary to remedy the violation and comply with Applicable Legal Requirements.

If by reason of Landlord's violation of the representations contained in clauses (a) or (b) above, Tenant's use or enjoyment of the Premises or signage on the Premises is interrupted or otherwise disturbed, Minimum Rent shall abate on a per diem basis in proportion to such interruption and if such interruption does not cease in its entirety within ninety (90) days after Tenant gives Landlord notice thereof, Tenant, in addition to its other rights, may terminate this Lease by giving Landlord written notice thereof, whereupon Landlord shall promptly pay to Tenant the Unamortized Costs of Tenant's Improvements.

- (c) There will be free and uninterrupted access for vehicles between the Main Street(s) and the Premises. If any highway median strip crossover now existing near the Premises shall be relocated or if the installation of a highway median strip hereafter shall include a crossover near the Premises, the Landlord, subject to Tenant's approval, not to be unreasonably withheld, shall relocate the entrance to the Premises to conform then with the new median strip crossover. In the event relocation or installation of the highway median strip has a material adverse effect on Tenant's business in the Premises and Landlord is unable to relocate the entrance to the Premises in a manner which provides equivalent access to the Premises as existed prior to installation or relocation of the median strip crossover, Tenant, without waiving any rights Tenant may have, may terminate this Lease by giving Landlord notice thereof, whereupon Landlord shall promptly pay to Tenant the Unamortized Costs of Tenant's Improvements.

21.2 Landlord's Assurances. As an inducement for Tenant to execute this Lease, Landlord represents and agrees as follows:

- (c) The Premises is presently zoned and throughout the Term shall be zoned for use as a Fueling Facility or such use shall be permitted as a pre-existing, non-conforming use.
- (e) No consents are required from any third party other than the Landlord's first mortgage lender, if any, in order for the Premises to be constructed and operated as a Fueling Facility.
- (f) To the best of Landlord's knowledge, no release or threat of release of Hazardous Materials exists with respect to the Premises and none shall exist on the Fueling Facility Pad Turnover Date.

ARTICLE XXII

Environmental Laws

22.1 Landlord's Representation. "Hazardous Materials" means material in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment when improperly stored, treated, transported, disposed of, used or otherwise managed. The term shall also include oil of any kind, petroleum products of any kind, all substances which are included under 42 USC §9601 (14), and those substances that are regulated under the Environmental Laws. "Environmental Laws" means applicable federal, state or local laws now or hereafter enacted, including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 USC §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 USC §6901 et seq., the Federal Toxic Substances Control Act, 15 USC §2601 et seq., the Federal Hazardous Material Transportation Law, 49 USC §5101 et seq., the Federal Clean Air Act, 42 USC §7401 et seq., the Federal Water Pollution Control Act, 33 USC §1251 et seq., the environmental and public health laws of the state in which the Premises are located and/or any other federal, state or local law, rule or regulation relating to any Hazardous Materials or the protection of human health or the environment, all as amended. "Release" shall mean any leaking, spilling, pouring, pumping, emitting, injecting, escaping, leeching, dumping, discharging, depositing or disposing of any material, substance or Hazardous Materials into the environment, including the air, soil, groundwater or surface water, in sufficient quantity or concentration such that notification to a governmental authority or agency is required under the Environmental Laws. "Corrective Action" means environmental investigation and remediation, including Phase II testing, sampling, engineering, consulting, reporting, active remediation, passive remediation, monitoring and risk assessment or any combination of these activities which are conducted by either party as a result of a violation by either party of any Environmental Laws or any Release or threat of Release of Hazardous Materials which requires filing with the U.S. Environmental Protection Agency, or the environmental or health and safety

agency of the state or municipality in which the Premises are located. Landlord represents that to the best of Landlord's knowledge, as of both the Commencement Date and Fueling Facility Pad Turnover Date, there are and will be no Hazardous Materials present on the Premises except in compliance with Environmental Laws, and Landlord agrees that any Corrective Action of any Release or threat of Release of Hazardous Materials that become present on the Premises during the Term shall be undertaken at the sole cost and expense of Landlord unless Tenant is responsible for the Release or threat of Release of the Hazardous Materials.

22.2 Hazardous Materials. Neither Landlord nor Tenant shall cause or permit the storage or Release or threat of Release of any Hazardous Materials on, in or under the Premises during the Term in violation of any Environmental Laws. Tenant agrees that the storage of any Hazardous Materials, including fuel, shall be in compliance with Applicable Legal Requirements, including Environmental Laws. Tenant shall, with respect to Tenant's operations on the Premises, comply with the requirements of all Environmental Laws. After either party discovers or is informed of the existence of a violation or potential violation of the Environmental Laws, or the Release or threat of Release of any Hazardous Materials or receipt of any notices from any governmental authority or third party with respect thereto, that party shall give immediate notice to the other party of such event.

22.3 Environmental Indemnification.

- (a) "Landlord's Environmental Liabilities" means: (i) any Hazardous Materials existing on, under or above the Premises prior to the Fueling Facility Pad Turnover Date; (ii) any Release or threat of Release of Hazardous Materials caused in whole or in part by Landlord or any party for whom Landlord is responsible; or (iii) any violation of Environmental Laws caused in whole or in part by Landlord or any party for whom Landlord is responsible. Landlord hereby indemnifies and holds harmless Tenant, its subtenants, lenders and any of their directors, officers, employees, agents, successors and assigns from and against all claims, losses, liabilities, damages, injuries, penalties, fines, costs, and expenses of any kind whatsoever, including reasonable attorneys' fees (collectively, "Environmental Costs") arising out of Landlord's Environmental Liabilities.
- (b) Landlord shall be responsible for all Corrective Action with respect to Landlord's Environmental Liabilities. Landlord shall, at Landlord's sole cost and expense, in a good, workmanlike and expeditious manner and in compliance with Applicable Legal Requirements, perform all Corrective Action so as to remediate Landlord's Environmental Liabilities in a manner which will minimize interference with Tenant's business operations.
- (c) In the event any of Landlord's Environmental Liabilities has a material adverse effect on Tenant's business operations on the Premises or causes any of the results referenced in Section 16.1 hereof with respect to a partial taking, Tenant shall notify Landlord in writing and all Minimum Rent and other amounts payable by Tenant hereunder shall be equitably abated based upon the loss of business experienced by Tenant. In the event the condition permitting the abatement continues for a period of sixty (60) days or Tenant is forced to cease operations of its business on the Premises due to an immediate risk to the health or safety of Tenant, Tenant's employees, agents or invitees for a period of thirty (30) days, Tenant, in addition to any other remedies available to it, shall have the right to terminate this Lease by notice to Landlord and upon Tenant giving such notice, this Lease shall be terminated as of the date of Tenant's notice, all Minimum Rent and other amounts payable by Tenant hereunder shall be apportioned and adjusted as of the time of such termination and Landlord shall promptly pay to Tenant the Unamortized Costs of Tenant's Improvements.
- (d) "Third Party Environmental Liabilities" mean any Release or threat of Release of Hazardous Materials or any violation of Environmental Laws caused in whole or in part by any party for whom neither the Landlord nor Tenant is responsible. Landlord shall be responsible for all Corrective Action with respect to Third Party Environmental Liabilities. Landlord shall, at Landlord's sole cost and expense, in a good, workmanlike and expeditious manner and in compliance with Applicable Legal Requirements, perform all Corrective Actions so as to remediate Third Party Environmental Liabilities.
- (e) In the event any Third-Party Environmental Liabilities has a material adverse effect on Tenant's business operations on the Premises or causes any of the results referenced in Section 16.1 hereof with respect to a partial taking, Tenant shall notify Landlord in writing and all Minimum Rent and other amounts payable by Tenant hereunder shall be equitably abated based upon the loss of

business experienced by Tenant. In the event the condition permitting the abatement continues for a period of sixty (60) days or Tenant is forced to cease operations of its business on the Premises due to an immediate risk to the health or safety of Tenant, Tenant's employees, agents or invitees for a period of thirty (30) days, Tenant, in addition to any other remedies available to it, shall have the right to terminate this Lease by notice to Landlord and upon Tenant giving such notice, this Lease shall be terminated as of the date of Tenant's notice and all Minimum Rent and other amounts payable by Tenant hereunder shall be apportioned and adjusted as of the time of such termination.

- (f) If Landlord fails to diligently commence and pursue to completion the Corrective Action necessary to remediate Landlord's Environmental Liabilities or Third Party Environmental Liabilities, then Tenant shall notify Landlord in writing specifying the reasons Landlord is not complying with the foregoing requirements and in the event Landlord fails to substantially correct the specified reasons within thirty (30) days of receipt of Tenant's notice, Tenant may, at its option: (i) undertake Corrective Action to remediate Landlord's Environmental Liabilities and/or Third Party Environmental Liabilities; or (ii) pursue any other remedies available to Tenant at law or in equity. If Tenant undertakes any such Corrective Action, Landlord shall reimburse the Tenant within fifteen (15) days after Landlord's receipt of Tenant's bill for any third-party costs and expenses incurred by Tenant in completing any such Corrective Action, including reasonable evidence of the costs and expenses paid, together with interest thereon at the Lease Interest Rate from the date of payment by Tenant until Tenant is repaid in full. The Landlord's environmental obligations and liabilities contained in this Article shall survive the expiration or earlier termination of this Lease.
- (g) "Tenant Environmental Liabilities" mean (i) any Release or threat of Release of Hazardous Materials caused in whole or in part by Tenant or any party for whom Tenant is responsible; or (ii) any violation of Environmental Laws caused in whole or in part by Tenant or any party for whom Tenant is responsible. Tenant hereby indemnifies and holds harmless Landlord, its lenders, and any of their directors, officers, employees, agents, successors and assigns from and against all Environmental Costs arising out of Tenant's Environmental Liabilities.
- (h) Tenant shall be responsible for all Corrective Action with respect to Tenant's Environmental Liabilities. Tenant shall, at Tenant's sole cost and expense, in a good, workmanlike and expeditious manner and in compliance with Applicable Legal Requirements, perform all Corrective Action so as to remediate Tenant's Environmental Liabilities. Following completion of any Corrective Action, Tenant shall deliver to Landlord evidence from the regulatory agency having jurisdiction over the Corrective Action that the Corrective Action has been completed in compliance with its requirements or if the agency does not issue such evidence, then Tenant will deliver to Landlord a report to that effect from a nationally or regionally recognized environmental engineering firm.
- (i) If Tenant fails to diligently commence and pursue to completion the Corrective Action necessary to remediate Tenant's Environmental Liabilities, then Landlord shall notify Tenant in writing specifying the reasons Tenant is not complying with the foregoing requirements and in the event Tenant fails to substantially correct the specified reason(s) within thirty (30) days of receipt of Landlord's notice, Landlord may, at its option: (i) undertake such Corrective Action to remediate Tenant's Environmental Liabilities; or (ii) pursue any other remedies available to Landlord at law or in equity. If Landlord undertakes any such Corrective Action, Tenant shall reimburse the Landlord within fifteen (15) days after Tenant's receipt of Landlord's bill for any third party costs and expenses incurred by Landlord in completing any such Corrective Action, including reasonable evidence of the costs and expenses paid, together with interest thereon at the Lease Interest Rate from the date of receipt of Landlord billing until Landlord is repaid in full. The Tenant's environmental obligations and liabilities contained in this Article shall survive the expiration or earlier termination of this Lease.

22.4 Reports

- (a) Tenant shall have the right to obtain a baseline Phase II environmental site assessment of the Premises conforming with applicable industry standards from a nationally or regionally recognized environmental engineering firm prior to the installation of underground storage tanks on the Premises. Upon Tenant's delivery of the assessment to Landlord, the assessment will serve as prima facie evidence of the environmental condition of the Premises as of the date the assessment

was undertaken in any proceeding involving Tenant's indemnification and/or Corrective Action obligations hereunder.

- (b) Prior to the expiration of the Term, Tenant shall deliver to Landlord a Phase II environmental site assessment on the Premises conforming with applicable industry standards from a nationally or regionally recognized environmental engineering firm. If the report indicates that no Hazardous Materials have been Released as a result of the Fueling Facility operations, then Tenant's environmental indemnification of Landlord for the Premises shall no longer apply and Tenant shall not be responsible for any environmental conditions on the Premises occurring after the date of the report. If the report discloses the existence of Hazardous Materials as a result of the Fueling Facility operations, then Tenant shall undertake Corrective Action in accordance with Section 22.3 (h) hereof.

ARTICLE XXIII

Default

23.4 Landlord Default.

- (a) If Landlord (i) defaults in any payment obligation hereunder, including, without limitation, payment of insurance premiums or any reimbursement due Tenant within fifteen (15) days after receipt of notice of such default from Tenant or (ii) defaults in the performance of any obligation, representation or warranty of Landlord under this Lease and Landlord shall fail to cure such default within thirty (30) days (or if such default cannot reasonably be cured within thirty (30) days, if Landlord shall not within the thirty (30) day period commence curing the default and thereafter diligently pursue the same to completion) or (iii) fails to pay when due any charge, the lien of which will be senior to the lien of this Lease, Tenant shall have the right, but not the obligation, to (A) perform such obligation of Landlord in accordance with the provisions of the Lease on behalf of and at the expense of Landlord, which performance shall include an administrative fee of ten percent (10%) of the cost incurred by Tenant ("Administrative Fee"); (B) bring suit for the collection of any amounts for which Landlord is in default, seek injunctive relief, or seek specific performance for any other covenant or agreement of Landlord; (C) offset against Minimum Rent and other amounts due to Landlord all amounts owed by Landlord to Tenant and/or reasonably expended by Tenant performing Landlord's obligations under the Lease, including reasonable attorneys' fees, together with interest at the Lease Interest Rate from the date of outlay until the date of payment and, at Tenant's option, to extend the Term if necessary in order to permit Tenant to fully recoup all amounts owed by Landlord to Tenant; and/or (D) terminate this Lease, without waiving its right to damages from Landlord's default, provided that Tenant's right to terminate is conditioned upon: (1) Landlord's default materially interfering with the normal conduct of Tenant's business operations in the Premises; (2) Landlord's default not being reasonably capable of being cured by Tenant; and (3) Tenant giving notice of Landlord's default to Landlord Mortgagee, and Landlord Mortgagee not curing Landlord's default within the mortgagee cure periods provided in this Lease.

Tenant's right of offset under clause (c) shall be limited to fifty percent (50%) of each installment of Minimum Rent next becoming due unless the amount of the offset cannot be fully recouped by the expiration of the Term, in which event Tenant may increase the amount of the monthly offset of Minimum Rent to such amount as shall permit recoupment of the offset prior to the expiration of the Term.

- (b) Tenant shall also be entitled to all other rights and remedies available to Tenant at law, in equity or otherwise, except as otherwise expressly set forth in this Lease.
- (c) If, in Tenant's reasonable judgment, a condition posing imminent risk of material harm to persons or property or material disruption to the normal conduct of Tenant's business operations on the Premises shall exist, then Tenant may immediately exercise, at its election and without prior notice to Landlord, any and all of the remedies set forth in clauses (A), (B) and (C) of Section 23.4(a) except that no Administrative Fee shall be due.
- (d) If Landlord defaults at any time in the timely completion of Landlord's work under Schedule 4.1(g) and Landlord does not commence to cure the default within ten (10) days after notice thereof by

Tenant and thereafter diligently pursue the same to completion, then Tenant shall have the right, but not the obligation to:

- (i) perform, at Landlord's sole cost and expense, all or any part of Landlord's work. If and to the extent Tenant exercises its rights hereunder, Landlord agrees to cooperate in good faith and provide Tenant with reasonable assistance so that Tenant can complete such portions of Landlord's work. Landlord grants Tenant the right, as its agent, to directly contact and contract with Landlord's contractors, on behalf of Landlord, to complete the work, all at Landlord's cost and expense. Landlord covenants, upon Tenant's request, to provide Tenant with duplicate sets of all plans, specifications and contracts prepared in connection with construction of the Fueling Facility Pad, as well as schedules of all contractors, subcontractors and suppliers. Landlord agrees to reimburse Tenant, within fifteen (15) days after receipt of request therefor by Tenant, which request shall be reasonably supported by invoices and/or written description of Landlord's work performed, for any and all costs incurred by Tenant in connection with any portion of Landlord's work which Tenant completes, together with the Administrative Fee. If Landlord does not timely reimburse Tenant as aforesaid, Tenant shall be entitled offset such amount against Minimum Rent, together with interest at the Lease Interest Rate from the date of expenditure by Tenant until Tenant receives payment in full;
- (ii) seek injunctive relief, specific performance or other equitable remedies against Landlord to require Landlord to perform its obligations under the Lease, the costs of which litigation shall be borne by Landlord, including reasonable attorneys' fees; and/or
- (iii) seek legal remedies available to Tenant, the costs of which shall be borne by Landlord, including, without limitation, reasonable attorneys' fees.

ARTICLE XXV Miscellaneous Provisions

25.4 Consequential Damages. Notwithstanding anything in this Lease to the contrary, in no event shall Landlord or Tenant be liable or responsible for consequential, special or indirect damages under this Lease.

25.7 Quiet Enjoyment. Landlord agrees that upon Tenant performing all obligations on its part to be performed hereunder within applicable grace and cure periods, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises and all rights of Tenant hereunder during the Term without any manner of hindrance or molestation.

25.11 Limitation of Liability. Landlord's liability for damages hereunder shall be limited to matters arising during the period of Landlord's ownership of the Premises and during that period, to the extent of Landlord's interest in the Premises including, without limitation, proceeds of any insurance policies relating to the Premises, any awards payable in connection with any taking of the Premises and any other rights, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Landlord shall have no personal liability beyond Landlord's interest in the Premises and no other property or assets of Landlord, or of any of the partners, members or principals of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies.

Landlord Friendly Dry Cleaner Lease - NJ Strip Center (Tenant using "Green Equipment")

ARTICLE IX Tenant's Insurance

Section 9.1 (a) During the Term of this Lease, Tenant shall pay for and maintain or cause to be paid and maintained, the following policies of insurance covering the Demised Premises, which insurance shall be obtained from companies currently rated "A-VIII" or better as defined in the then current edition of Best's Insurance Reports (or the equivalent thereof if Best's Insurance Reports is no longer published) and is licensed to do business in the state in which the Demised Premises are located:

- (i) Worker's Compensation Insurance covering Tenant and its employees for all costs, statutory benefits and liabilities under state Worker's Compensation and similar laws, and Employer's Liability Insurance with limits of no less than Five Hundred Thousand (\$500,000) Dollars per accident or disease.
- (ii) Commercial General Liability Insurance covering the Demised Premises with combined single limits of not less than Two Million (\$2,000,000) Dollars per occurrence for death, bodily injury or property damage.
- (iii) Special Form or Special Perils Insurance (formally known as All Risk Insurance) upon all buildings, building improvements, building alterations or personal property owned by Tenant (a) against loss or damage by fire, lightning, windstorm, tornado, hail and such other further and additional hazards of whatever kind or nature as are now or hereafter may be covered by standard extended coverage, (b) with "all risk" endorsements (including, but without limiting the generality of the foregoing, vandalism, malicious mischief and damage by water), (c) against flood disaster pursuant to the Flood Disaster Protection Act of 1973, 84 Stat. 572, 42 U.S.C. SS. 4001, if the Demised Premises are located in an area identified by the United States Department of Housing and Urban Development as a flood hazard area, (d) against earthquakes (including subsidence), (e) against any other risk commonly insured against by persons operating properties similar to the operations conducted at the Demised Premises, (f) containing demolition and increased cost of construction coverage, and (g) sprinkler leakage insurance. All of the foregoing insurance shall be for the full replacement costs of the building, building alteration, building improvement and/or personal property in or to the Demised Premises and shall contain such other endorsements as shall be reasonably requested by Landlord from time to time. The maximum deductible or self-insurance retention permitted under such insurance shall be Ten Thousand (\$10,000) Dollars.
- (iv) Rental Interruption Insurance coverage, in adequate amounts to avoid co-insurance provisions, for not less than 12 months, taking into consideration the reasonable time period required to rebuild and/or replace the insured property; including coverage for, but not limited to, loss and loss of use of Tenant's leasehold improvements, business fixtures, stock-in-trade and for "extra expense" as well as all Basic Annual Rent and Additional Rent required of Tenant pursuant to the terms of this Lease.
- (v) Pollution Liability Insurance covering new releases with combined single limits of not less than Two Million (\$2,000,000) Dollars per occurrence.

(b) The specified limits of insurance required hereunder may be satisfied by any combination of primary or excess/umbrella liability insurance policies. At the end of the Initial Term of this Lease, and at the beginning of each Renewal Period, Tenant shall review with Landlord the coverages and limits of all of the policies required herein and shall cause such coverages and liability limits to be increased as reasonably required by Landlord in view of inflation and other relevant factors.

- (b) Each policy required hereby shall expressly provide that it shall not be subject to cancellation, modification or change without at least thirty (30) days' prior written notice to Landlord and that the coverage provided by such policy shall be deemed primary insurance and that any insurance provided by or on behalf of Landlord shall be in excess of any insurance provided by the policy required hereby. Tenant shall furnish to Landlord, upon execution of this Lease, and prior to the inception of each successive policy period, insurance certificates, and, upon the written request of Landlord, copies of such policies required to be maintained hereunder, naming Landlord as an additional insured thereunder. Upon the request of Landlord, Tenant shall also provide coverage under such insurance (or so much thereof as Landlord may require) for the benefit of Landlord's mortgagee holding a lien on the Shopping Center or Demised Premises and shall name such mortgagee under a standard mortgagee provision. All policies required to be provided by Tenant hereunder shall include an endorsement or other provision whereby such insurance carrier acknowledges and accepts the waiver of subrogation in favor of Landlord contained in Article IX of this Lease.

ARTICLE X Use of Demised Premises

Section 10.1 (a) (i) Permitted Use: Tenant shall use the Demised Premises solely as, and for no other purposes than, the operation of a first class dry cleaner, subject to the terms hereof (the "Permitted Use"). Notwithstanding the foregoing, **in no event shall tetrachloroethylene or perchloroethylene be brought on or used in the Demised Premises**. Further, in no event shall there be any self-service dry cleaning or other laundering of clothing or other fabrics in or around the Demised Premises by Tenant's customers, invitees or any other third party. All soaps, solvents and/or other chemicals used in the dry cleaning or laundering of clothing or other fabrics shall be handled solely by qualified employees, licensees or contractors of Tenant, in accordance with applicable Laws. Tenant shall not be permitted to use the Demised Premises for any other purpose whatsoever. The Permitted Use shall be conducted in compliance with all applicable laws, rules, regulations, ordinances and requirements of all applicable governmental authorities having jurisdiction hereof (collectively, "Law(s)"). Landlord makes no warranty, representation or statement and hereby expressly disclaims any knowledge as to whether the Permitted Use is in compliance with applicable Laws. Tenant shall in all respects comply with the requirements and/or conditions associated with its obtaining and maintaining of any and all required governmental permits, certificates or approvals regarding its use and occupancy of the Demised Premises. Notwithstanding the foregoing, in no event may the Demised Premises be used in whole or in part for any of the following: offices (other than as reasonably required in connection with the retail use of the Demised Premises); theater; bar; restaurant, cafeteria; night club;; skating rink; massage parlor; "adult" book store; store selling pornographic materials or devices; game room; funeral parlor; off-track betting establishment. Notwithstanding anything to the contrary herein, Tenant will not violate any of the use restrictions of the leases referenced on the attached Exhibit B.

(ii) Equipment. All equipment, machinery and/or fixtures ("Equipment") to be installed, placed, stored or used in the Demised Premises must be approved by Landlord, in writing, in its sole but reasonable discretion. In connection therewith, Tenant agrees to provide Landlord with the specifications of any such Equipment for its review no later than thirty (30) days prior to the date in which such Equipment is to be placed, stored, installed or used in the Demised Premises. Tenant shall not place, store, install or use any Equipment in the Demised Premises for which it has not obtained Landlord's consent pursuant to the terms hereof. Landlord makes no warranty, representation or statement and hereby expressly disclaims any knowledge as to whether the Equipment is in compliance with applicable Laws. Tenant shall in all respects comply with the requirements and/or conditions associated with its obtaining and maintaining of any and all required governmental permits, certificates or approvals regarding its use and occupancy of the Equipment.

(iii) Compliance with Laws: Throughout the Term, Tenant shall maintain the Demised Premises in a safe, careful and proper manner. Tenant shall comply with all Laws, present or future, of any governmental authority whether federal, state, county or municipal, or any political subdivision of any of the foregoing which may exercise jurisdiction over the ownership, operation or maintenance of the Demised Premises, provided, however, that in complying with such Laws and documents, Tenant shall not be required to make structural alterations to the Demised Premises unless same are required as a consequence of Tenant's use of the Demised Premises. If, as a consequence of Tenant's use or occupation of the Demised Premises, any improvements are required to comply with any such Law, regulation, rule or document, Tenant shall promptly install and maintain the same at its sole cost and expense, provided that Landlord's approval of such action shall first be obtained. Tenant shall, throughout the Term, comply with any and all requirements of Landlord's insurance company or of Tenant's insurance company as same may relate to Tenant's use or occupation of the Demised Premises.

(iv) Hazardous Material. Tenant shall not cause or permit any Hazardous Material, as defined below, to be brought upon, kept or used in or about the Demised Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall at all times comply with all applicable environmental laws, including but not limited to ISRA (as hereinafter defined). Notwithstanding the foregoing, Hazardous Material customarily used in the conduct of Tenant's particular business may be used at the Demised Premises provided that such use is at all times in compliance with the manufacturer's instructions therefor and all applicable Laws; further provided, however, that in no event may tetrachloroethylene or perchloroethylene be stored or used on or in the Demised Premises. Tenant shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by the Landlord or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare or safety of persons, whether located on the Demised Premises or elsewhere, or (2) the condition, use or enjoyment of the Demised Premises, or any other real or personal property. If Tenant breaches any of the covenants contained herein, in addition to being a default under this Lease, Tenant shall be liable to Landlord for all damages resulting therefrom, and Tenant shall indemnify, defend and hold Landlord harmless from any and all

claims, judgments, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Demised Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Demised Premises, any personal injury (including wrongful death) or property damage (real or personal), and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees which arise during or after the Lease Term as a result of such breach or as a result of any contamination caused or permitted by Tenant. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any Federal, state or local governmental agency or political subdivision or by the holder of any mortgage encumbering the Demised Premises. Tenant shall promptly take all actions at its sole expense as are necessary to return the Demised Premises to the condition existing prior to the introduction of any hazardous material to the Demised Premises by Tenant, its agents, invitees, contractors or employees; provided that Landlord's approval of such action shall first be obtained. Tenant shall not use the Demised Premises or any part thereof for any activities or business which would cause the Demised Premises or any part thereof to become subject to the provisions of the Industrial Site Recovery Act formerly known as the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. and the regulations promulgated thereunder and any successor legislation and regulations ("ISRA"). The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have at law or equity and shall survive the transactions contemplated herein, and shall survive the termination of this Lease.

(b) It is understood and agreed that it is time of the essence of this Lease that Tenant open for business within thirty (30) days after the Delivery of Possession and thereafter conduct its normal business operations. Tenant covenants and agrees that it will continuously operate its said business in the entire Demised Premises throughout the Term hereof and shall remain open for business during the hours designated by Landlord, if any, for tenants in the Shopping Center.

(c) If Landlord shall permit Tenant to be open for business in the Demised Premises during hours in addition to those which are the normal business hours for other tenants at the Shopping Center, Tenant shall be responsible for any additional costs and expenses incurred by Landlord as a result of Tenant's operations during such additional hours, including, but not limited to any costs and expenses for lighting of the Common Areas and providing security therefor.

Section 10.2 Tenant agrees that Landlord shall have the right to prohibit the continued use by Tenant of any unethical or unfair method of business operation, advertising or interior display if, in Landlord's reasonable opinion, the continued use thereof would impair the reputation of the Shopping Center as a desirable place to shop or is otherwise out of harmony with the general character of the Shopping Center. Upon notice from Landlord, Tenant shall forthwith refrain from or discontinue any such activities. In addition, Tenant agrees to:

(a) obey and observe (and compel its officers, employees, contractors, licensees, invitees, subtenants, concessionaires and all others doing business with it) all reasonable rules and regulations established by Landlord from time to time for the conduct of Tenant or for the welfare of the Shopping Center, so long as the same are not discriminatory with respect to Tenant. Landlord shall, except in the case of any emergency, give Tenant at least five days notice of the establishment thereof; and

(b) handle and dispose of all rubbish, garbage and waste from Tenant's operations in accordance with regulations established by Landlord and not permit the accumulation (unless concealed in metal containers inside the Demised Premises) or burning of any rubbish or garbage in, on or about any part of the Demised Premises or Shopping Center.

Section 10.3 Tenant's abandonment of the Demised Premises, and/or Tenant's failure to be open to the public for business continually within the Demised Premises for a period in excess of six (6) months, without Landlord's permission, shall constitute a default under this Lease.

ARTICLE XI

Warranty of Use; Compliance with Laws

11.1 Definitions

(a) Contaminants. "Contaminants" shall mean any regulated substance, toxic substance, hazardous substance, hazardous waste, pollution, pollutant or contaminant, as defined or referred to in the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq.; the New Jersey Spill Compensation and Control Act, N.J.S.A. 26:2C-1 et seq.; the Hazardous Substance Discharge: Reports and Notices Act, N.J.S.A. 13:1K-15 et seq.; the

Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 9601 et seq.; the Water Pollution and Control Act, 33 U.S.C. 1251 et seq.; the “Tank Laws” as defined below; together with any substitutions thereof, as well as words of similar purport or meaning referred to in any other federal, state, county or municipal environmental statute, ordinance, rule or regulation.

(b) Discharge. “Discharge” shall mean the releasing, spilling, leaking, leaching, disposing, pumping, pouring, emitting, emptying or dumping of Contaminants at, into, onto or from the Demised Premises or the threat thereof, regardless of whether the result of an intentional or unintentional action or omission.

(c) Disposal. “Disposal” shall mean not only the Discharge or placing of waste into or on any land or water, through the initial introduction of Contaminants onto the Demised Premises, but also the spreading, moving, dispensing and releasing of existing Contaminants at the Demised Premises due to any subsequent activity at the Demised Premises.

(d) Environmental Documents. “Environmental Documents” shall mean all environmental documentation in the possession or under the control of the producing party concerning the Demised Premises or its environs, including, without limitation, all sampling plans, cleanup plans, preliminary assessment plans and reports, site investigation plans and reports, remedial investigation plans and reports, remedial action plans and reports, or the equivalent, sampling results, sampling result reports, data, diagrams, charts, maps, analyses, conclusions, quality assurance/quality control documentation, correspondence to or from NJDEP or any other Governmental Authority, submissions to NJDEP or any other Governmental Authority and directives, orders, approvals, and disapproval’s issued by NJDEP or any other Governmental Authority, and all environmental consultant’s reports.

(e) Governmental Authority. “Governmental Authority” shall mean the federal, state, county or municipal government, or any department, agency, bureau or other similar type body obtaining authority therefrom or created pursuant to any Laws.

(f) ISRA. “ISRA” shall mean the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the regulations promulgated thereunder and any amending and successor legislation and regulations.

(g) Law or Laws. “Law” or “Laws” shall mean each and every applicable federal, state, county or municipal statute, ordinance, rule, regulation, order, directive or requirement, currently or hereafter existing, together with all successor statutes, ordinances, rules, regulations, orders, directives or requirements, of any Governmental Authority, including, without limitation, Laws in any way related to Contaminants, and the common law.

(h) NJDEP. “NJDEP” shall mean the New Jersey Department of Environmental Protection or its successor.

(i) Notices. “Notices” shall mean, in addition to its ordinary meaning, any communication of any nature, whether in the form of correspondence, memoranda, orders, directives or otherwise.

(j) Remediate or Remediation. “Remediate” or “Remediation” shall have the meaning ascribed to such term under N.J.S.A. 13:1K-8 et seq., of the laws of the State of New Jersey, and shall include, without limitation: environmental investigation, monitoring and sampling; installation, maintenance and removal of monitoring wells; storage of excavated materials; and installation, maintenance, storage and removal of machinery and equipment used in connection with the Remediation.

(k) Tank Laws. “Tank Laws” shall mean the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the federal underground storage tank law, Subtitle I of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, and successor legislation and regulations.

(l) Tenant’s Representatives. “Tenant’s Representatives” shall mean any shareholder, officer, director, member, partner, employee, agent, licensee, invitee, assignee or sublessee of Tenant, or any other third party other than Landlord.

(m) **Underground Storage Tanks.** "Underground Storage Tanks" shall have the meaning ascribed to such term under the Tank Laws, as well as unregulated underground storage tanks used to store Contaminants.

11.2 Tenant's Environmental Compliance

(a) **ISRA Compliance.** Tenant shall, at Tenant's own expense, comply with ISRA. Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of NJDEP. Tenant's obligations under this subparagraph shall arise if there is a closing of operations, a transfer of ownership or operations, or a change in ownership at or affecting the Demised Premises pursuant to ISRA, whether triggered by Landlord or Tenant. Provided this Lease is not previously canceled or terminated by either party or by operation of law, Tenant shall commence its submission to the NJDEP in anticipation of the end of the Term, no later than six (6) months prior to the expiration of the Term. Should Tenant's operations at the Demised Premises be outside of those industrial operations covered by ISRA, Tenant shall, at Tenant's own expense, obtain a letter of non-applicability from NJDEP prior to the expiration or earlier termination of the Term, and shall promptly provide Tenant's submission and NJDEP's letter of exemption to Landlord.

(b) **Information to Landlord.** At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord or NJDEP for preparation of a non-applicability affidavit, de-minus quantity exemption, limited conveyance application or other submission made by Landlord, and shall promptly sign such affidavits and submissions when requested by Landlord or NJDEP.

(c) **Tenant Audit.** Landlord shall have the right, from time to time, during the lease term, and upon the expiration of the lease term, to require that Tenant hire, and in such event, Tenant shall at Tenant's own expense hire, an environmental consultant satisfactory to Landlord to undertake sampling at the Demised Premises sufficient to determine whether Contaminants have been Discharged during the Term. (Tenant's sampling shall also establish the integrity of all Underground Storage Tanks at the Demised Premises.)

(d) **Landlord Audit.** Tenant shall permit Landlord and Landlord's agents, representatives and employees, including without limitation, legal counsel and environmental consultants and engineers, access to the Demised Premises, from time to time, during the lease term, for purposes of conducting an environmental assessment, inspection and sampling, during regular business hours, or during other hours either by agreement of the parties or in the event of an environmental emergency. Tenant shall not restrict access to any part of the Demised Premises, and shall not impose any conditions to access. Landlord shall use reasonable efforts to avoid unreasonably interfering with Tenant's use of the Demised Premises, and upon completion of Landlord's assessment, investigation and sampling, shall, to the extent reasonably practicable, repair and restore the affected areas of the Demised Premises from any damage caused by the assessment, investigation and sampling.

(e) **Tenant Remediation.** Should the assessment, investigation or sampling performed pursuant to subparagraphs (c) or (d) above, or any other assessment, investigation or sampling, reveal the existence of: (x) a Discharge of Contaminants; or (y) a Discharge of other than sanitary waste to the Sewerage System; then, in addition to being in default under this Lease and Landlord having all rights available to Landlord under this Lease and by law by reason of such default, Tenant shall, at Tenant's own expense, undertake all Remediation required by Landlord and any Governmental Authority, including, without limitation, promptly: (i) preparing and submitting to the appropriate Governmental Authority, all required assessment, investigation, sampling and remedial action plans and reports; (ii) implementing, to the satisfaction of Landlord and the appropriate Governmental Authority, the approved assessment, investigation, sampling and remedial action plans and reports; (iii) removing from the Demised Premises all such Contaminants to the satisfaction of Landlord and the appropriate Governmental Authority; (iv) establishing a Remediation funding source, which funding source shall be satisfactory to Landlord and the appropriate Governmental Authority; and (v) obtaining and delivering to Landlord an unconditional No Further Action Letter.

(f) **Nature of Tenant's Remediation.** Notwithstanding anything to the contrary set forth in this paragraph, in no event shall Tenant's remedial action involve engineering controls, including, without limitation, capping, fencing or other physical barrier, institutional controls, including without limitation, a deed notice or other institutional control notice to pursuant to N.J.S.A. 58:10B-1 et seq., a groundwater classification exception area or well restriction area, and notwithstanding NJDEP's requirements or approvals, or any other Governmental Authority's requirements or approvals, Tenant's Remediation shall meet the most stringent published or unpublished Remediation standards for soil, surface water, groundwater and drinking water.

(g) Tenant's Restoration. Promptly upon completion of all Remediation, Tenant shall at Tenant's own expense, restore the affected areas of the Demised Premises from any damage or condition caused by the Remediation, including, without limitation, closing, pursuant to Law, any wells or piezometers installed by or on behalf of Tenant at the Demised Premises.

(h) Hold-over Tenancy. If prior to the expiration or earlier termination of the Term, Tenant: (i) fails to obtain from the NJDEP and deliver to Landlord, either (A) a non-applicability letter, (B) a DeMinimis Quantity Exemption, or (C) an unconditional Response Action Outcome, pursuant to ISRA (the "ISRA Clearance"); or (ii) fails to Remediate all Contaminants pursuant to subparagraph (f) above, and deliver to Landlord and unconditional No Further Action Letter (the "Environmental Clearance"); then upon the expiration or earlier termination of the Term, Landlord shall have the option either to consider the Lease as having ended or to treat Tenant as a hold-over tenant in possession of the Demised Premises. If Landlord considers the lease as having ended, then Tenant shall nevertheless be obligated to promptly obtain and deliver to Landlord the ISRA Clearance or the Environmental Clearance, as the case may be, and otherwise fulfill all of the obligations or Tenant set forth in this paragraph. If Landlord treats Tenant as a hold-over tenant in possession of the Demised Premises, then Tenant shall pay, monthly to Landlord, double the regular and additional monthly rent which Tenant would otherwise have paid under the lease, until such time as Tenant delivers to Landlord the ISRA Clearance or the Environmental Clearance, as the case may be, and otherwise fulfills its obligations to Landlord under this paragraph, and during the holdover period, all of the terms of this lease shall remain in full force and effect.

(i) Environmental Questionnaire. Contemporaneously with the signing and delivery of this Lease, and thereafter, annually on the anniversary date of the commencement of the Term, Tenant shall complete, execute and deliver to Landlord an environmental questionnaire which shall be in the form and shall contain such terms and provisions, as Landlord may, from time to time, submit to Tenant. In the event Tenant's response to the environmental questionnaire indicates, in the Landlord's determination, a potential environmental issue, then Tenant shall, at Tenant's own expense, undertake in accordance with Law, all environmental assessment and Remediation as Landlord deems appropriate.

(j) Environmental Documents. During the Term of this Lease and subsequently, promptly upon receipt by Tenant or Tenant's consultants or counsel, Tenant shall deliver to Landlord all Environmental Documents concerning or generated by or on behalf of Tenant, whether currently or hereafter existing.

(k) Attendance at Meetings. Tenant shall notify Landlord in advance of all meetings scheduled between Tenant or Tenant's representatives and NJDEP or any other Governmental Authority pertaining to the Demised Premises, and Landlord and Landlord's agents, representatives and employees, including, without limitation, legal counsel and environmental consultants and engineers, shall have the right, without the obligation, to attend and participate in all such meetings.

(l) Liens. Tenant shall promptly notify Landlord of any liens threatened or attached against the Demised Premises pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the regulations promulgated thereunder, and any amending or successor legislation or regulations, or any other laws. In the event that such a lien is filed against the Demised Premises as a result of the actions or omissions of Tenant or a Tenant's Representative, then Tenant shall be deemed in default under this Lease and, in addition to Landlord having all rights available to Landlord under this Lease and by Law by reason of such default, Tenant shall, at Tenant's own expense, within thirty (30) days from the date that the lien is filed against the Demised Premises, and in any event prior to the date any Governmental Authority commences proceedings to execute on the lien, either: (i) pay the claim and remove the lien from the Demised Premises; or (ii) deliver to Landlord either (A) a bond in an amount and with a surety satisfactory to Landlord in Landlord's sole and absolute discretion, or (B) a cash deposit in the amount of the lien, plus any interest that may accrue thereon. The foregoing shall not constitute a consent or agreement by Landlord to permit such a lien to attach to the Demised Premises, nor shall the foregoing be deemed a waiver by Landlord of a default by Tenant under this lease.

(m) Landlord's Consent for Tenant's Investigation. In no event shall Tenant, nor anyone on Tenant's behalf, undertake any environmental assessment or Remediation of the Premises without prior written notice to, and the prior written consent of Landlord. In the event Landlord consents to an environmental assessment or Remediation, then prior to undertaking any assessment or Remediation, Tenant shall, or shall cause Tenant's engineers and consultants, as the case may be, to provide Landlord with a protocol outlining in detail the nature, scope and location of all assessment or Remediation to be undertaken and shall receive Landlord's written consent to such Remediation. Landlord and Landlord's consultants, engineers and representatives shall have the right,

without the obligation, to be present during such assessment or Remediation, and shall have the right, at no expense to Landlord, to split all samples taken by Tenant or Tenant's consultants or engineers.

(n) Landlord's Right to Perform Tenant's Obligations. Notwithstanding anything to the contrary set forth in this lease, in the event, pursuant to this lease, Tenant is required to undertake any assessment or Remediation with respect to the Demised Premises, then, at Landlord's discretion, Landlord shall have the right, without the obligation, from time to time, during such assessment or Remediation activities, to perform such assessment or Remediation activities at Tenant's expense, and all sums incurred by Landlord shall be paid by Tenant, as additional rent, upon demand.

(o) Indemnity. Tenant shall indemnify, defend and hold harmless Landlord, and Landlord's (officers, directors, shareholders, members, partners,) employees, agents and personal or legal representatives from and against any and all claims, liabilities, losses, damages, penalties and costs, foreseen or unforeseen, including, without limitation, counsel, engineering and other professional or expert fees, which an indemnified party may incur, resulting directly or indirectly, wholly or partly from Tenant's actions or omissions with regard to Tenant's obligations under this Article 11 .

(p) Survival. This paragraph shall survive the expiration or earlier termination of this Lease. Tenant's failure to abide by the terms of this paragraph shall be restrainable, or enforceable, as the case may be, by injunction.

(q) Condition Precedent. As a condition precedent to Tenant's right to sublet the Demised Premises in whole or in part, or to assign this Lease, (if applicable) Tenant shall, at Tenant's own expense, first comply with ISRA and fulfill all of Tenant's environmental obligations under this paragraph which arise upon termination of Tenant's Term. If this condition shall not be satisfied, then notwithstanding anything to the contrary set forth in this Lease, Landlord shall have the right to withhold consent to a sublease or assignment.

(r) Interpretation. The obligations imposed upon Tenant under subparagraphs (a) through (q) above are in addition to and are not intended to limit, but to expand upon, the obligations imposed upon Tenant under Section 11.4 of this Lease.

Section 11.3 Landlord represents that, upon the Delivery of Possession the Demised Premises shall be free of all orders or notices of violation of any public or quasi-public authorities, and that, upon the Rent Commencement Date, Landlord's Work in connection with the construction of the Demised Premises shall comply with all applicable statutes and ordinances and with all applicable regulations, orders and requirements of all governmental authorities having jurisdiction. Landlord shall, at its expense, make any and all alterations or changes to the Demised Premises of a capital nature (determined in accordance with generally accepted accounting principles consistently applied) required by any of the aforesaid statutes, ordinances, regulations, rules, orders or requirements, and any amounts so expended by Landlord shall be included in Common Area Costs under Section 4.2(a) hereof; provided, however, that the cost of any such alterations or changes of a capital nature required solely by reason of Tenant's particular use or method of operation in the Demised Premises shall not be included in Common Area Costs and shall be paid by Tenant.

Section 11.4 During the Term hereof, subject to the provisions of the last sentence of Section 11.3 hereof, Tenant, at Tenant's expense, shall comply with all applicable statutes, ordinances, regulations, orders and requirements, foreseen and unforeseen, ordinary as well as extraordinary, of all governmental authorities having jurisdiction, and Tenant shall make any repairs or alterations to the Demised Premises required by any such applicable statutes, ordinances, regulations, orders or requirements. If Tenant shall fail, for a period of thirty (30) days after written notice to it, to comply with any such statute, ordinance, regulations, order or requirement with which it is obligated by this section to comply (or to commence to effect compliance therewith within such period and thereafter diligently continue its efforts to effect such compliance until completion thereof), Landlord shall have the right (but not the obligation) to do all things necessary to comply therewith. In the event of such compliance by Landlord, Tenant shall, on the first day of the calendar month next succeeding the calendar month in which such compliance shall have been completed by Landlord, pay to Landlord, as additional rent, the amount expended by Landlord in effecting such compliance, together with interest at the Lease Interest Rate from the time of such expenditure.

Miscellaneous Environmental Provisions

1. Industrial Building – Used for Retail Warehouse/Distribution; Institutional Landlord

(a) **Reportable Uses Require Consent.** The term “**Hazardous Substance**” as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is now or at any time hereafter, either: (i) potentially injurious to the public health, safety or welfare, to the environment, the Premises or the Project, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party pursuant to any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, solvents, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof and any substance that falls within the definition of “hazardous substance”, “hazardous material”, “pollutant”, “contaminant”, “toxic substance” or “hazardous waste” under any statute, ordinance or regulation applicable to the Premises. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor which may be given or withheld in Lessor’s sole and absolute discretion and timely compliance (at Lessee’s expense) with all Applicable Requirements. “**Reportable Use**” shall mean (A) the installation or use of any above or below ground storage tank, (B) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit, license or certification from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, (C) any Hazardous Substance present in a concentration, total aggregate quantity, or container size that is not available to the public on a retail basis, and/or (D) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to or personal protective equipment worn by persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any material risk of contamination, exposure or damage or expose Lessor to any liability therefor. Lessee will provide to Lessor copies of all Hazardous Substance manifests, Material Safety Data Sheets, Right to Know Surveys, inspection reports, permits and notices of violation from all government authorities. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor deems necessary in Lessor’s sole and absolute judgment to protect itself, the public, the Premises, the Project and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance** has come to be located, disposed of, generated, spilled, discharged or released in, on, under or about the Premises, and/or any part of the Project, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance. In furtherance of the foregoing and not in limitation thereof, Lessee agrees to deliver a completed Environmental Questionnaire in the form set forth on Exhibit F within thirty (30) days following Lessee’s execution of this Lease and at any time during the Term within thirty (3) days following request therefore.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be discharged, **spilled** or released in, on, under, or about the Premises (including, without limitation, through the plumbing or sanitary sewer system) and/or any part of the Project and shall promptly, at Lessee’s expense, take all necessary or reasonably recommended investigatory and/or remedial action, whether or not formally ordered or required, for the cleanup of any resultant contamination of, and for the maintenance, security and/or monitoring of the Premises, the Project or neighboring properties, that was caused or contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises shall be conducted in compliance with Applicable Requirements during the Term, by or for Lessee, or any third party. Any remediation or cleanup of any Hazardous Substance hereunder shall not include the use of Engineering Controls or Institutional Controls (e.g., deed notices) as those terms are defined under N.J.S.A. 58:10C-1 et seq. or any other Applicable Requirements.

(d) **Lessee Indemnification.** Lessee shall indemnify, protect, defend (with counsel satisfactory to Lessor) and **hold** Lessor, its officers, directors, members, managers, partners, employees, agents, contractors, invitees, lenders and master or ground lessor, if any, (each, a “**Lessor Party**” and collectively, the “**Lessor Parties**”) harmless from and against any and all loss of rents and/or damages, losses, liabilities, liens, judgments, claims, costs, expenses, penalties, attorneys’ and consultants’ fees, and expert witness fees (“**Claims**”) arising

out of or involving either directly or indirectly any Hazardous Substance brought, discharged, spilled or released in, on, under or about the Premises and/or any part of the Project by or for Lessee, or any Lessee Party. Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No expiration, termination or cancellation of this Lease and no release agreement entered into by Lessor and Lessee shall release Lessee from its obligations pursuant to this Lease with respect to Hazardous Substances, which obligations shall specifically survive the expiration or earlier termination of this Lease.

(e) **ISRA (New Jersey).** Without limiting anything hereinabove contained in this Section 5.2, Lessee expressly **covenants** and agrees to fully comply with the provisions of the New Jersey Industrial Site Recovery Act (N.J.S.A. 13:1K-6, et seq.) hereinafter referred to as "**ISRA**," and all regulations promulgated thereto (or under its predecessor statute, the New Jersey Environmental Cleanup Responsibility Act) prior to the expiration or earlier termination of this Lease or at any time that any action of Lessee triggers the applicability of ISRA. In particular, Lessee agrees that it shall comply with the provisions of ISRA in the event of any "closing, terminating or transferring" of Lessee's operations, as defined by and in accordance with the regulations which have been promulgated pursuant to ISRA. In the event evidence of such compliance is not delivered to Lessor prior to surrender of the Premises by Lessee to Lessor, it is understood and agreed that Lessee shall be liable to pay to Lessor an amount equal to two times the annual Base Rent then in effect, prorated on a monthly basis, together with all applicable additional Rent from the date of such surrender until such time as evidence of compliance with ISRA has been delivered to Lessor, and together with any costs and expenses incurred by Lessor in enforcing Lessee's obligations under this Section 5.2. Evidence of compliance, as used herein, shall mean: (A) a certification from a "licensed site remediation professional" ("LSRP") (as that term is defined at N.J.S.A. 58:10B-1) approved by Lessor certifying that Lessee's operations are not applicable to ISRA or a similar exemption from ISRA-compliance applies, (B) an approved unconditional "no further action letter" (as that term is defined at N.J.S.A. 58:10B-1) for the entire Premises issued by the New Jersey Department of Environmental Protection, hereinafter referred to as "NJDEP"; or (C) a "response action outcome" (as that term is defined at N.J.S.A. 58:10B-1) for the entire Premises issued by a LSRP approved by Lessor. Evidence of compliance shall be delivered to Lessor, together with copies of all submissions made to, and received from, the NJDEP, including all environmental reports, test results and other supporting documentation. In addition to the above, Lessee hereby agrees that it shall cooperate with Lessor in the event of the termination or expiration of any other lease affecting the Property, or a transfer of any portion of the Property, or any interest therein, which triggers the provisions of ISRA. In such case, Lessee agrees that it shall fully cooperate with Lessor in connection with any information or documentation which may be requested by the LSRP or NJDEP. Lessee hereby represents and warrants that its North American Industrial Classification System ("NAICS") No. is _____, and that Lessee shall not generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Materials, as above defined. Lessee hereby agrees that it shall promptly inform Lessor of any change in its NAICS number or the nature of the business to be conducted in the Premises. The within covenants shall survive the expiration or earlier termination of the Term.

(f) **Asbestos Notice.** Both state and federal Applicable Requirements require disclosure of asbestos-containing **construction** materials ("**ACM**") in the Building. This notification is being given to provide the information required pursuant to such legislation in order to help Lessee avoid any unintentional contact with the ACMs, and to assist Lessee in making appropriate disclosures to Lessee's employees and others, as required by Applicable Requirements.

[] Lessee acknowledges that Lessor has advised Lessee that Lessor has no actual knowledge that the Building contains ACMs, but that Lessee has satisfied itself as to the presence or absence of ACMs in the Building.

If the box above is not checked, Lessee acknowledges that Lessor has advised Lessee that the Building contains ACMs. Lessor has made available to Lessee, Lessor's asbestos management plan or other relevant data concerning same. However, Lessee has satisfied itself as to the completeness and accuracy of same. If Lessee undertakes any Alterations or repairs to the Premises (to the extent permitted pursuant to Section 6.3), Lessee shall, in addition to complying with the requirements of Section 6.3, undertake the Alterations or repairs at Lessee's sole cost and expense and in a manner that avoids disturbing any ACMs present in the Building, if any. If ACMs exist in the Building and are likely to be disturbed in the course of such work, Lessee shall comply with all Applicable Requirements pertaining to such ACMs, including but not limited to retaining a licensed asbestos abatement contractor to encapsulate or remove the ACMs, if any, at Lessee's sole cost and expense and in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable environmental laws, including giving all notices required by the Applicable Requirements.

If a Hazardous Substance Condition (defined in Section 8.1(e)) occurs during the Term (unless Lessee is responsible therefor pursuant to this Lease, in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights pursuant to this Section 6 and Paragraph 12), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if and to the extent required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds twelve (12) times the then monthly Base Rent or one hundred thousand dollars (\$100,000), whichever is greater, give written notice to Lessee, within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within ten (10) days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to twelve (12) times the then monthly Base Rent or one hundred thousand dollars (\$100,000), whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

(g) **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided for in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

(h) **Inspection; Compliance.** Lessor and Lessor's Lender (as defined in Section 29.1 below), if any, and **consultants** shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements or a Hazardous Substance Condition is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall promptly upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination.

(i) **Safety and Health.** Lessee, at Lessee's sole cost and expense, covenants at all times during the Term to comply **with** the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C. Subsection 65, et seq., and any similar legislation in the state wherein the Premises is located (hereinafter, the "**Act**"), to the extent that the Act applies to the Premises and any activities thereon. Without limiting the generality of the foregoing, Lessee covenants to maintain all working areas, all machinery, structures, electrical facilities, and the like, at the Premises in a condition that fully complies with the requirements of the Act, including such requirements as would be applicable with respect to agents, employees or contractors of Lessee who may, from time to time, be present upon the Premises, and Lessee agrees to indemnify and hold Lessor and the Lessor Parties harmless from and against any liability, claim or damages, arising as a result of a Default of the foregoing covenant and from all costs, expenses, and charges arising therefrom, including without limitation, attorneys' fees, expert and consultant fees, and other costs, incurred by Lessor and/or Lessor Parties in connection therewith, which indemnity shall survive the expiration or termination of this Lease.

2. RETAIL SHOPPING CENTER; INSTITUTIONAL LANDLORD - ENVIRONMENTAL CLAUSE #1

Tenant shall not use or suffer the Demised Premises to be used in any manner so as to create an environmental violation or hazard, nor shall Tenant cause or suffer to be caused any chemical contamination or discharge of a substance of any nature which is noxious, offensive or harmful or which under any law, rule or regulation of any governmental authority having jurisdiction constitutes a hazardous substance or hazardous waste. As used herein, the term "Hazardous Materials" means and includes all potentially hazardous materials, including, without limitation, radon, harmful radiation, asbestos, and asbestos containing materials. Tenant covenants and agrees that at any and all times during the Term it shall be responsible for compliance with any federal, state,

county, local, or municipal law, statute, ordinance, code, regulation or administrative recommendation pertaining to Hazardous Materials (including, without limitation, any requirements pertaining to the clean-up, removal, and/or encapsulation of any Hazardous Materials that may be in the Demised Premises or may have emanated therefrom). Tenant shall, at its sole cost and expense, undertake any and all steps which may be required for compliance as aforesaid regardless of whether Tenant had installed said Hazardous Materials or that same existed at the Demised Premises prior to Tenant's occupancy of same. Tenant shall be solely responsible for restoring and repairing any damage to the Demised Premises caused by or resulting from such compliance, e.g. the replacement of any ceiling tiles or insulation with comparable products not containing any Hazardous Materials.

3. RETAIL SHOPPING CENTER; INSTITUTIONAL LANDLORD - ENVIRONMENTAL - CLAUSE #2

- A. Tenant shall, at its sole cost and expense, procure and maintain all licenses and permits legally necessary for the operation of Tenant's business at the Demised Premises. At all times after the execution of this Lease, Tenant shall comply with all ground and underlying leases, and with all governmental laws, codes, orders and regulations affecting the Demised Premises and the use thereof, including, without limitation, environmental laws and regulations relating to hazardous substances (as hereinafter defined). Tenant shall make all repairs, alterations and improvements required to place the Demised Premises in compliance.
- B. If Tenant fails to comply with the requirements of the foregoing Paragraph A, Landlord or its agents may enter the Demised Premises after ten (10) days' notice in order to effectuate compliance at Tenant's expense, whereupon Tenant shall reimburse Landlord for all costs incurred. The notice required in this Paragraph shall not apply in an emergency. Further, if Tenant's failure to comply results in the issuance of a violation or similar notice from a governmental entity or ground lessor requiring an action and/or appearance by Landlord's representatives at a hearing or payment of a fine, then in addition to all other remedies available to Landlord under this Lease Tenant shall pay, as Additional Rent, an administrative fee of Seven Hundred Fifty ((750.00) Dollars plus all costs, fines, and expenses incurred for the time spent by Landlord's agents and attorneys at hearings (including time spent by in-house counsel).
- C. The term "hazardous substances" as used in this Lease means....
- D. Tenant shall indemnify, defend and hold the Landlord harmless from fines, claims, losses and expenses (including legal and consultant's fees) of every kind arising out of or in connection with the storage or handling of, or the occurrence of spills or discharges of hazardous substances or wastes at the Demised Premises. Tenant shall furnish Landlord and the appropriate governmental agencies with information required in connection with environmental laws and if a cleanup plan must be prepared and a cleanup undertaken, Tenant shall prepare, submit and implement same and shall grant Landlord access to the Demised Premises to supervise Tenant's performance of such work. Tenant's liability under this Paragraph shall survive expiration of the Lease Term.

4. RETAIL SHOPPING CENTER; INSTITUTIONAL LANDLORD - ENVIRONMENTAL - CLAUSE #3

A. Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of at or about the Shopping Center; however, Tenant may use and store "de minimus" quantities of standard cleaning materials as may be reasonably necessary for Tenant to conduct normal operations in the Premises for the Permitted Use, provided all of the foregoing are handled, stored and disposed of in strict accordance with all Legal Requirements and Insurance Requirements. Upon Tenant's surrender of the Premises to Landlord, the Premises shall be free of Hazardous Materials and in compliance with all environmental Legal Requirements. "Hazardous Materials" shall be defined as any substance that is then defined or listed in, or otherwise classified pursuant to, any Legal Requirement, as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, or reproductive toxicity; and any other substance whose presence could be detrimental to the Shopping Center or hazardous to human health or the environment.

B. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from and against any Claims (including litigation costs and attorneys' fees) in any way relating (directly or indirectly, in whole or in part) to the presence or removal of any Hazardous Material generated, used, released, stored or disposed of: (a) at or about the Premises during Tenant's and Tenant's Agents' occupancy of the Premises, and (b) at or about

the Premises, the Shopping Center or the Shopping Center by Tenant or Tenant's Agents, whether before or after the Commencement Date. Tenant shall give Landlord immediate verbal and follow-up written notice of any actual or threatened release, spill or discharge of a Hazardous Material on or from the Premises or the Shopping Center or any environmental condition requiring responsive or remedial action, or any emergency environmental condition, and in any such case Tenant shall cure same in accordance with all Legal Requirements and to the reasonable satisfaction of Landlord. Upon the occurrence of any of the foregoing events, Landlord may, but shall not be obligated to, immediately enter the Premises to supervise and approve any actions taken by Tenant to address such occurrence, at Tenant's sole cost and expense, and, if Tenant fails to immediately address same to Landlord's reasonable satisfaction, to perform, at Tenant's sole cost and expense, any lawful action necessary to address same. Promptly upon request, Tenant shall execute from time-to-time affidavits, representations and similar documents concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials at the Premises or the Shopping Center. Tenant's indemnification obligations set forth in this Article [] shall survive the Expiration Date or earlier termination of this Lease.

C. In the event Landlord reasonably believes that Tenant's operations at the Premises could cause the Premises to be subject to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., (as same may be amended, together with all rules, regulations, etc. promulgated thereunder, being hereinafter collectively referred to as "ISRA"), then not later than sixty (60) days prior to "closing, terminating or transferring operations" (as defined in ISRA) in the Premises Tenant shall, at its sole cost and expense, provide Landlord with either a true copy of a Letter of Non-Applicability (or similar document) from the New Jersey Department of Environmental Protection ("DEP"), stating that ISRA does not apply to Tenant's use of the Premises, or any one of the following, as approved by the DEP: (i) a De Minimis Quantity exemption, (ii) a Negative Declaration; or (iii) a Remedial Action Workplan. Any failure to comply with the provisions of this Section 25.3(a) shall constitute an immediate Event of Default.

(a) If Tenant fails to fully comply with the requirements of ISRA or any other environmental Legal Requirement as of the Expiration Date or earlier termination of this Lease, then Landlord shall have the right, at its sole option, to treat Tenant as a holdover tenant pursuant to Section 27.1 hereof, until such time as Tenant so fully complies.

D. Tenant represents that its NAICS number as set forth in Article I does not subject the Premises to ISRA applicability. Any change by Tenant to an operation with an NAICS number which is subject to ISRA shall require Landlord's prior written consent, request for which must be submitted to Landlord at least sixty (60) days in advance, and Landlord may deny such consent in its sole judgment. The foregoing shall not be deemed to permit Tenant to change its Permitted Use, even to one which would not subject the Premises to ISRA applicability, unless and to the extent consented to by Landlord.

National Big-Box Retailer; Tenant's Form Lease – Environmental - Clause #1

A. Landlord represents and warrants as of the Commencement Date that:

(i) the Shopping Center complies in all material respects with any applicable Environmental Law;

(ii) Landlord has obtained all Governmental Approvals required for the Shopping Center by any applicable Environmental Law;

(iii) Landlord has not, and has no knowledge of any other person who has, caused any Release, threatened Release, or disposal of any Hazardous Material at the Shopping Center; the Shopping Center is not adversely affected by any Release, threatened Release, or disposal of a Hazardous Material originating or emanating from any other property;

(iv) the Shopping Center does not contain and has not contained any: (a) underground storage tank; (b) asbestos-containing building material; (c) any landfills or dumps; (d) hazardous waste management facility as defined pursuant to RCRA or any other comparable state law; or (e) site on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(v) Landlord has used no Hazardous Material in violation of any Environmental Law and has

conducted no Hazardous Material Activity at the Shopping Center;

(vi) Landlord is not subject to, has no notice or knowledge of, and is not required to give any notice of any Environmental Claim involving the Shopping Center; there are no conditions or occurrences at the Shopping Center which could form the basis for an Environmental Claim against Landlord or the Shopping Center;

(vii) the Shopping Center is not subject to any, and Landlord has no knowledge of any imminent, restriction on the ownership, occupancy, use or transferability of the Shopping Center in connection with any: (a) Environmental Law; or (b) Release, threatened Release, or disposal of a Hazardous Material;

(viii) there are no conditions or circumstances at the Shopping Center which pose a risk to the environment or the health or safety of persons; and,

(ix) Landlord has provided or otherwise made available to Tenant any Environmental Record concerning the Shopping Center which Landlord possesses or could reasonably have obtained.

B. Tenant represents and warrants as of the Commencement Date that Tenant intends to use no Hazardous Material in violation of any Environmental Law.

C. Landlord shall:

(i) within ten (10) business days notify Tenant in writing of and provide any reasonably requested documents upon learning of any of the following which arise in connection with the Shopping Center:

(a) any liability for response or corrective action, natural resource damage, or other harm pursuant to CERCLA, RCRA, or any comparable state law;

(b) any Environmental Claim;

(c) any violation of an Environmental Law or Release, threatened Release, or disposal of a Hazardous Material;

(d) any restriction on the ownership, occupancy, use or transferability arising pursuant to any: (i) Release, threatened Release, or disposal of a Hazardous Material; or (ii) Environmental Law; or,

(e) any environmental natural resource, health or safety condition which could materially impair the condition of the Shopping Center or could have a Material Adverse Effect;

(ii) cure to the reasonable satisfaction of Tenant any violation of applicable Environmental Laws at the Shopping Center at the expense of Landlord which are Pre-Existing Conditions or Post Existing Conditions (except Post-Existing Conditions which are violations caused by the negligence or willful misconduct of Tenant, or its employees, agents or contractors); and,

(iii) conduct in accordance with any applicable Environmental Law any investigation, study, sampling, testing, abatement, clean-up, removal, remediation, or other response action ("Response Action") necessary to remove, remediate, clean up, or abate any Release, threatened Release, or disposal of a Hazardous Material at Landlord's expense to the extent such Response Action is attributable to events or conditions which are Pre-Existing Conditions or Post-Existing Conditions (except Post-Existing Conditions caused by the negligence or willful misconduct of Tenant, or its employees, agents or contractors).

D. Tenant shall:

(i) maintain the Demised Premises in compliance in all respects with any applicable Environmental Law and be responsible for making any notification or report concerning the Demised Premises to a Governmental Authority required to be made by any applicable Environmental Law;

(ii) if Landlord fails to cure legal violations, have the right to cure to the reasonable satisfaction

of Tenant any violation of applicable Environmental Laws at the Demised Premises: (a) at the expense of Landlord to the extent such violation is attributable to events or conditions which are Pre-Existing Conditions; and (b) at its own expense to the extent such violation is attributable to Post-Existing Conditions caused by the negligence or willful misconduct of Tenant or its employees, agents or contractors;

(iii) not create or operate at the Demised Premises any: (a) landfill or dump; or (b) hazardous waste management facility or solid waste disposal facility as defined pursuant to RCRA or any comparable state law;

(iv) not manufacture, use, generate, transport, treat, store, Release, dispose, or handle any Hazardous Material at the Demised Premises except in the ordinary course of its business as of the Rent Commencement Date;

(v) if Landlord fails to conduct Response Actions, have the right to conduct to the reasonable satisfaction of Tenant and in accordance with any applicable Environmental Law any Response Action necessary to remove, remediate, clean up, or abate any Release, threatened Release, or disposal of a Hazardous Material from the Demised Premises: (a) at Landlord's expense to the extent such Response Action is attributable to events or conditions which are Pre-Existing Condition or a Post-Existing Condition (except a Post-Existing Condition caused by the negligence or willful misconduct of Tenant or its employees, agents or contractors); and (b) at Tenant's expense to the extent such Response Action is attributable to events or conditions which are a Post-Existing Condition caused by the negligence or willful misconduct of Tenant or its employees, agents or contractors;

(vi) allow Landlord or its representatives from time to time upon reasonable notice and at Landlord's expense to inspect the Demised Premises and conduct an environmental assessment (including invasive soil or groundwater sampling), including without limitation, to facilitate any other sale or lease of the Shopping Center;

(vii) remove from the Demised Premises at its expense by the termination date any Hazardous Materials or equipment to manufacture, generate, transport treat, store, Release, dispose, or handle any Hazardous Material used by Tenant or in the course of Tenant's business; and

(viii) have the right to terminate this Lease as a result of any environmental, health, or safety events or conditions which Tenant did not know existed before the Rent Commencement Date and could reasonably be expected to cause a Material Adverse Effect.

E. (i) Landlord shall indemnify, defend, and hold Tenant harmless, and hereby waives any claim for contribution against Tenant for any Damages to the extent they arise from:

(a) Pre-Existing Conditions or Post-Existing Conditions not caused by the negligence or willful misconduct of Tenant or its employees, agents or contractors, and which relate to:

- at the Shopping Center;
- (1) any Release, threatened Release, or disposal of any Hazardous Material
 - (2) the operation or violation of any Environmental Law at the Shopping Center; or,
 - (3) any Environmental Claim in connection with the Shopping Center;

(b) the inaccuracy or breach of any representation or warranty by Landlord in this Article of this Lease.

(ii) Tenant shall indemnify, defend, and hold Landlord harmless, and hereby waives any claim for contribution against Landlord for any Damages to the extent they arise from:

(a) Post-Existing Conditions caused by the negligence or willful misconduct of Tenant or its employees, agents or contractors, and relate to:

- at the Demised Premises;
- (1) any Release, threatened Release, or disposal of any Hazardous Material
 - (2) the operation or violation of any Environmental Law at the Demised

Premises;

(3) any Environmental Claim in connection with the Demised Premises; or,

(b) the inaccuracy or breach of any representation or warranty by Tenant in this Article of this Lease.

(iii) These indemnifications and waivers shall be binding upon successors and assigns of Landlord and Tenant and inure to the benefit of Landlord, Tenant, their respective directors, officers, employees and agents, and their successors and assigns and shall survive the expiration or sooner termination of the Term of this Lease.

(iv) Landlord shall have supplied to Tenant an environmental report certified to Tenant, prepared by an environmental consultant licensed in the state or territory where the Demised Premises are located disclosing any and all Hazardous Materials, including items listed in Exhibit "D" attached hereto and prior to the execution of this Lease. In the event that the environmental report discloses any Hazardous Material, Tenant shall have the option to terminate this Lease unless Landlord, as part of Landlord's Work, remediates such Hazardous Material.

National Big-Box Retailer; Tenant's Form Lease – Environmental - Clause #2

A. Landlord will maintain the Shopping Center and conduct its business thereon in compliance with all federal, state or local laws and regulations relating to pollution control, hazardous or toxic wastes, substances and constituents, including petroleum hydrocarbons (collectively, "Hazardous Substances"), and other environmental and ecological matters, including but not limited to the Federal Water Pollution Control Act (33 U.S.C. Sect. 1251 et seq.), Resource Conservation & Recovery Act (42 U.S.C. Sect. 6901 et seq.), Safe Drinking Water Act (42 U.S.C. Sect. 300f et seq.), Toxic Substances Control Act (15 U.S.C. Sect. 2601 et seq.), the Clean Air Act (42 U.S.C. Sect. 7401 et seq.), Comprehensive Environmental Response of Compensation and Liability Act (42 U.S.C. Sect. 9601, et seq.), and other comparable state laws (the "Environmental Laws"). If Landlord shall receive: (a) any notice of any violation or administrative or judicial complaint or order having been filed or about to be filed against Landlord, the Shopping Center or the Demised Premises alleging violations of any federal, state or local environmental law or regulation or requiring Landlord to take any action in connection with the release of any Hazardous Substances, into the environment, or (b) any notice from a federal, state or local governmental agency or private party alleging that Landlord may be liable or responsible for costs associated with a response or cleanup of a release of any Hazardous Substances into the environment or any damages caused by that release, Landlord shall, within fifteen (15) days of receipt thereof, provide Tenant with a copy of such notice and thereafter Landlord shall at Landlord's sole cost diligently proceed to take all actions necessary to correct such violation, and shall have the right to contest the imposition of liability and defend itself against such claims. Landlord agrees to indemnify and hold Tenant harmless from and against all causes, claims, demands, losses, liabilities, costs and expenses (including without limitation attorneys' fees) (hereinafter "Damages") incurred, directly or indirectly, by Tenant as a result of or in connection with (i) Landlord's failure to comply with any of the provisions of this Paragraph 13, and (ii) without limiting the generality of Subsection (i) any environmental condition in violation of any Environmental Law (including any resolution or settlement thereof with appropriate authorities), resulting from or associated with the matters disclosed in the Environmental Report (defined in Section 1.2 of this lease). The provisions of this Paragraph 13 shall not apply to any such claims, demands, etc. resulting from the acts or omissions of Tenant, its contractors, agents or employees.

B. Tenant will maintain the property which the Tenant is obligated to maintain under the provisions of this lease and conduct its business in the Demised Premises in compliance with all Environmental Laws. If Tenant shall receive: (a) any notice of any violation or administrative or judicial complaint or order having been filed or about to be filed against Tenant with respect to the Demised Premises or the property which the Tenant is obligated to maintain under the provisions of this lease alleging violations of any Environmental Law or requiring Tenant to take any action in connection with the release of any toxic or hazardous substance, waste or constituent, including any hydrocarbon substance, into the environment with respect to the Demised Premises or, or (b) any notice from a federal, state or local governmental agency or private party alleging that Tenant may be liable or responsible for costs associated with a response or cleanup of a release of toxic or hazardous substance, waste or constituent, including any hydrocarbon substances, into the environment or any damages caused by that release with respect

to the Demised Premises (or outside of the Demised Premises if such release is by Tenant or its employees, agents or contractors) or, Tenant shall, within thirty (30) days of receipt thereof, provide Landlord with a copy of such notice and thereafter Tenant shall at Tenant's sole cost diligently proceed to take all actions necessary to correct such violation. Tenant agrees to indemnify and hold Landlord harmless from and against all causes, claims, demands, losses, liabilities, costs and expenses (including without limitation attorney's fees) incurred, directly or indirectly, by Landlord as a result of or in connection with Tenant's failure to comply with any of the provisions of this Paragraph.

C. The provisions of the immediately preceding sentence shall not apply to any such claims, demands, etc., resulting from any acts or omissions of Landlord, its contractors, agents or employees, or for any environmental contamination or condition in existence prior to the Delivery Date.

Landlord-Friendly Form Language

A. Hazardous Materials Use.

(a) Except as expressly permitted herein, Tenant shall not cause, permit or allow the generation, use, treatment, storage, emission, spill, release, discharge, installation, introduction or disposal of Hazardous Materials (each, a "Hazardous Materials Event") on or about the Premises or the Shopping Center. Notwithstanding such prohibition, Tenant may use, store and sell (provided Tenant is permitted to sell such items in accordance with its Permitted Use) consumer products containing small quantities of Hazardous Materials which products are: (i) necessary and customary in the conduct of Tenant's business; and (ii) of a type customarily utilized in or by retail stores and households (such as aerosol cans containing insecticides, paints, cleaning supplies, etc.), provided that Tenant complies with all Environmental Laws applicable to such Hazardous Materials, including, but not limited to, Environmental Laws concerning the handling, use, storage, sale and disposal of Hazardous Materials. Tenant shall not cause, permit or allow any Hazardous Materials to contaminate the Premises, Shopping Center or the environment.

(b) Tenant shall not install any underground or above-ground storage tanks in or about the Premises without Landlord's consent, and only in accordance with plans approved in writing by Landlord.

(c) Landlord or its designee may enter upon the Premises to assess the environmental condition and Tenant's compliance with this Section []. Tenant shall not conduct any sampling, testing or drilling to locate any Hazardous Materials in, under or about the Premises without Landlord's Approval thereof and Landlord's Approval of the contractors or other parties to be utilized by Tenant to conduct any sampling, testing or drilling.

(d) If Tenant or any of Tenant's Parties breaches any of the duties and obligations under this Section [], or if contamination of the Premises, Building or Shopping Center or the atmosphere occurs through a Hazardous Materials Event (unless and only to the extent that Tenant can establish that the event in question was caused by a party other than Tenant or Tenant's Parties), then Tenant shall pay, defend, indemnify and hold harmless Landlord from any and all claims, causes of action, losses, liabilities, fines, penalties, damages, cost and expenses (collectively, "Environmental Claims") resulting from such breach or contamination, including all costs of investigation, remediation, cleanup, or detoxification and preparation of any plans, studies or reports required in connection therewith, compelled or required by governmental authority.

(e) Tenant will notify Landlord immediately of: (i) a Hazardous Materials Event; (ii) any discovery of Hazardous Materials on or near the Premises; or (iii) any notice of a governmental authority or private party alleging or suggesting that a Hazardous Materials Event may have occurred.

(f) If there occurs a Hazardous Material Event, Tenant shall not, without Landlord's Approval, undertake the abatement, containment or treatment of such Hazardous Materials. Landlord reserves the right to perform any abatement, containment, remediation or removal of Hazardous Materials and to perform the cleanup on behalf of and at the expense of Tenant. In such event, Landlord will submit copies of all invoices related to such work to Tenant and Tenant will reimburse Landlord, as Additional Rent, for the full costs within thirty (30) days after demand therefor. In the event that the cleanup extends beyond the Expiration Date, Tenant's obligation to pay Rent pursuant to the other provisions of this Lease will continue until the cleanup is completed and a final site closure letter from the applicable governmental authority indicating that no further action is required in connection with the environmental condition has been received by Landlord. Rent during such holdover period will be at the rate of Rent paid by Tenant immediately preceding the Expiration Date. No disturbance or interference with Tenant's use of the Premises resulting from the activities conducted pursuant to this Section [] will constitute an actual or constructive

eviction of Tenant from the Premises or entitle Tenant to an abatement of Rent due pursuant to this Lease.

Big-Box Anchor

Landlord, at Landlord's sole cost, has delivered to Tenant an environmental assessment report for the Premises and the balance of the Shopping Center Land analyzing the existence or likelihood of existence of any Hazardous Materials and compliance by such land with all Environmental Regulations (the "Environmental Report"). The Environmental Report shall (i) be certified to Tenant, and (ii) updated to a date after the Effective Date of this Lease, and (iii) comply with the U.S. EPA's final rule defining "all appropriate inquiry" for environmental due diligence necessary to allow Tenant to qualify for the defenses to liability in CERCLA, which may be satisfied by compliance with the terms and provisions of ASTM Standard 1527-05 (or the most current ASTM Standard 1527 then in effect and which is expressly acknowledged by the U.S. EPA's final rule to satisfy its "all appropriate inquiry" due diligence standard. Tenant hereby acknowledges receipt of the Environmental Report. Landlord represents and covenants to Tenant that, to the best of Landlord's knowledge, the Premises and balance of the Developer Tract do not contain any Hazardous Materials (except as may be disclosed in the Environmental Report and that Landlord's Work does not and shall not contain any Hazardous Materials and that all requirements with respect to Environmental Regulations have been and will be complied with and satisfied in connection with Landlord's Work. If it is determined at any time during the Terms that there are Hazardous Materials on, upon or within the Shopping Center or any other environmental conditions not caused by Tenant or its agents, contractors or employees, in violation of any Environmental Regulations or which result in action by either local, state or federal environmental agencies, then, if in Tenant's good faith business judgment such violation and/or action materially impairs Tenant's ability to conduct business upon the Premises and Tenant ceases to operate from the Premises as a direct result thereon, all rent and charges payable by Tenant hereunder shall abate during such period as Tenant's ability to so operate is materially impaired. Landlord will have the right to remediate at its sole cost and expense in accordance with all applicable government laws and regulations provided however that in the event such remediation is not completed within nine months after the date the Hazardous Material is discovered, then, provided Tenant was entitled to cease to operate from the Premises and did in fact cease to operate from the Premises pursuant to the immediately preceding sentence for such nine-month period, Tenant shall have the right terminate all of its rights and obligations hereunder by giving 30 days written notice to Landlord at any time after the expiration of such nine-month period and so long as such condition continues and provided further that Tenant shall have the right but not the obligation to complete any required remediation in accordance with all applicable laws and regulations and Landlord will reimburse Tenant the cost therefor in which case Tenant shall not have the right to terminate this Lease as set forth herein.

Except for Excluded Materials (hereinafter defined), Tenant shall not, without the prior written consent of Landlord, cause or permit knowingly or unknowingly, any Hazardous Materials to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at the Premises or the Shopping Center. As used in this Lease, the term "Excluded Materials" shall mean Hazardous Materials that meet all of the following four criteria:

- (a) the storage, disposal or presence of such Hazardous Materials on, in or under the Premises or any part of the Shopping Center does not constitute a violation of applicable laws or regulations;
- (b) the Hazardous Materials are present in (i) paints, glues, photocopy equipment, supplies, photographic chemicals and supplies, building materials, maintenance supplies, cleaning agents and solvents, (ii) inventory held for sale at retails, (iii) oil, gasoline or other fluid deposits released from passenger cars or maintenance vehicles parked at the Shopping Center, or (iv) fertilizer, herbicides, insecticides, and pesticides applied by Tenant within the Premises;
- (c) the Hazardous Materials are in quantities commonly stored, found or maintained for similar uses by Tenants in retail shopping centers; and
- (d) the Hazardous Materials are not used for manufacturing purposes.

Should Landlord consent in writing to Tenant brining, using, storing or treating any Hazardous Material(s)

in or upon the Premises or the Shopping Center or if Tenant is allowed to bring, use, store or treat hazardous Materials in or upon the Premises pursuant to this Section, Tenant at its sole cost and expense shall strictly obey and adhere to any and all Environmental Regulations, which in any way regulate, govern or impact Tenant's possession, use, storage, treatment or disposal of said Hazardous Material(s).

Landlord shall forever defend, completely indemnify and hold harmless Tenant, its mortgagees, affiliates and their respective directors, shareholders, officers, and agents (the "Tenant Indemnitees") from and against, and shall reimburse Tenant and the Tenant Indemnitees for, any and all liabilities, losses, costs, damages, demands, fines, expenses, suits, judgments, injunctive relief, claims, injuries to person, property or natural resources, actions or causes of action arising in connection with the release of Hazardous Materials by any person or source within or otherwise affecting the Shopping Center other than from a Tenant Contamination Source (i.e., Hazardous Materials brought on the Premises by a Tenant Indemnitee) whether foreseeable or unforeseeable, known or unknown, material or immaterial, regardless of when such release shall have occurred or when the presence of any Hazardous Materials shall have been discovered. The environmental indemnity of Landlord under this Section includes, without limitation: (a) all costs of removal, remediation of any kind and disposal of Hazardous Materials; (b) all costs of determining whether the Premises are in compliance, and of causing the Premises to be in compliance, with all applicable federal, state or local laws, rules, ordinances or regulations governing Hazardous Materials; (c) all costs associated with claims for damages to persons, property or natural resources arising from a release of Hazardous Materials which Landlord is responsible for under this Section; and (d) the Tenant Indemnitees' attorneys' and consultants' fees arising from a release of Hazardous Materials for which the Landlord is responsible under this Section. The obligations of the Landlord hereunder shall survive the termination of this Lease. The rights of Tenant hereunder shall be in addition to any other rights and remedies of Tenant at law, in equity or by statute.

Tenant shall forever defend, completely indemnify and hold harmless Landlord, its mortgagees, affiliates and their respective directors, shareholders, officers, and agents (the "Landlord Indemnitees") from and against, and shall reimburse Landlord and the Landlord Indemnitees for, any and all liabilities, losses, costs, damages, demands, fines, expenses, suits, judgments, injunctive relief, claims, injuries to person, property or natural resources, actions or causes of action arising in connection with the release of Hazardous Materials by Tenant or its contractors or agents or employees whether foreseeable or unforeseeable, known or unknown, material or immaterial, regardless of when such release shall have occurred or when the presence of any Hazardous Materials shall have been discovered. The environmental indemnity of Tenant under this Section includes, without limitation: (a) all costs of removal, remediation of any kind and disposal of Hazardous Materials; (b) all costs of determining whether the Premises are in compliance, and of causing the Premises to be in compliance, with all applicable federal, state or local laws, rules, ordinances or regulations governing Hazardous Materials; (c) all costs associated with claims for damages to persons, property or natural resources arising from a release of Hazardous Materials which Landlord is responsible for under this Section; and (d) the Landlord Indemnitees' attorneys' and consultants' fees arising from a release of Hazardous Materials for which the Tenant is responsible under this Section. The obligations of the Tenant hereunder shall survive the termination of this Lease. The rights of Landlord hereunder shall be in addition to any other rights and remedies of Landlord at law, in equity or by statute.

Big-Box Ground Lease

(a) Landlord warrants and represents that, to Landlord's actual knowledge, and based solely on any environmental site assessments in Landlord's possession and delivered to Tenant and except for matters disclosed in any environmental site assessments or reports in Tenant's possession or any matters otherwise known to Tenant, the Premises, including, but not limited to, the land, the soil, groundwater and soil vapor in, on, under, at, upon or about the Premises and the remainder of the Shopping Center (collectively, the "Property") does not now nor has it ever contained any hazardous, toxic materials, Tanks or polychlorinated biphenyls or Hazardous Substances or any other substances defined by the appropriate governmental authority as a hazardous waste in violation of applicable law. Landlord shall not cause or permit such substances (included, but not limited to, Hazardous Substances) or the contents of any Tanks to be release, discharged or deposited onto or within the bounds of the Property in violation of applicable law. Landlord warrants and represents that, to Landlord's actual knowledge, except as set forth in this Section and except for matters disclosed in any environmental site assessments or reports in Tenant's possession or any matters otherwise known to Tenant: (i) the Property does not contain any Hazardous Substances in violation of applicable law or in excess of concentrations applicable to the Premises (as this term is

hereinafter defined) or Tanks; (ii) Landlord is not subject to any existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation or ordinance pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of Hazardous Substances, air emissions, and other environmental matters; (iii) any handling, transportation, storage, treatment, or use of Hazardous Substances that has occurred in, on, under or upon the Property to date has been in compliance with all applicable federal, state, and local laws, regulations and ordinances; and (iv) no leak, spill, release, discharge, emission, or disposal of Hazardous Substances has occurred in, on, under or upon the Property to date.

(c) Landlord further warrants and represents that, to Landlord's actual knowledge no Hazardous Substance or Tanks will be present in, on, under or upon the Property in violation of applicable law from and after the date of this Lease or otherwise used or permitted by Landlord to be used in, on, under or upon the Property by Landlord, except as provided in subsection (d), below and except for matters disclosed in any environmental site assessments or reports in Tenant's Possession, or any matters otherwise known to Tenant.

If during the Inspection Period Hazardous Substances to Tanks are determined to be present on the Property other than as set forth in subsection (d) below, or in compliance with applicable law, then Landlord and Tenant shall enter into a mutually acceptable agreement regarding the removal or other lawful remediation of such Hazardous Substances or Tanks, provided, however, if the parties have not entered into such agreement either Landlord or Tenant may terminate this Lease upon written notice to the other party received before the expiration of the Inspection Period and this Lease shall be of no further force or effect. If Tenant does not terminate the Lease upon written notice to the Landlord received before the expiration of the Inspection Period, then Tenant shall be deemed to have accepted the Premises in its present "as is" condition as to Hazardous Substances only.

(d) The parties acknowledge and agree that Tenant handles certain environmentally regulated substances as part of their intended operations. Tenant shall handle, transport, store, and dispose of such substances in strict compliance with all governmental regulations related to same and shall hold Landlord harmless from any action or claim related to such substances.

(e) Prior to any termination or expiration of this Lease, or to any financing or sale of the Shopping Center, Landlord, or any prospective or existing secured lender with a lien on the Shopping Center, or any prospective buyer of the Shopping Center, shall be permitted to enter the Premises to obtain an environmental assessment of the Premises at its sole cost and liability to determine whether any Hazardous Substances have been released or spilled by Tenant, or otherwise exist at, under, in, or on the Premises, or emanate therefrom, in violation of any applicable laws. Tenant agrees that in the event that during the Term of this Lease, any Hazardous Substances shall be released upon the Premises, or the Shopping Center by Tenant, or by Tenant's agents, servants, employees, contractors or suppliers ("Release"), to notify Landlord immediately of any such Release or claim of Release, and after consultation and reasonable approval by Landlord, Tenant shall be responsible for the cleanup of the Release, as required by, and in full compliance with, applicable statutes, regulations and standards. No consent or approval of Landlord of any such cleanup, removal or remediation by Tenant shall in any way be construed as imposing upon Landlord any liability for the means, methods or manner of removal, containment or other compliance with applicable law for and with respect to the Release. All of the foregoing work is to be performed at Tenants' sole cost and expense in a good and workmanlike manner and otherwise in compliance with Section 2.2 hereof.

(f) Tenant shall indemnify and hold Landlord, its subsidiaries and affiliates, as well as any and all of the agents, servants, employees, members, or managers of any of them, harmless from and against any and all actions, petitions, orders, claims or demands made, brought or instituted by any and all private parties and/or any and all public agencies or authorities, together with any and all expenses, including attorney's fees, costs, losses, demands, liabilities or penalties assessed against or incurred by any of them, arising solely out of or in any way connected with any loss or damaged to person(s) or property resulting or claimed to result from the Release anywhere on the Shopping Center or on the Premises, by, for or on behalf of Tenant. This agreement shall extend to and be enforceable by Landlord's public liability, health disability and work's compensation insurer(s). In connection with Tenant's indemnification hereunder: (i) Tenant agrees to defend any such claim or demand brought, or any action, petition or order filed, against Landlord, its subsidiaries or affiliates, or against any or all of the agents, servants, employees, officers, directors, partners, members, beneficiaries or trustees of any of them, or in which any of the same may be impleaded, at its sole cost and expense, and (ii) Tenant shall pay, satisfy and discharge any final judgments, liens, orders or decrees from a court or administrative body of competent jurisdiction which may be recovered or filed against Landlord, its subsidiaries or affiliates, or any or all of the agents, servants,

members, managers or employees of any of them, arising out of any such successful claim, demand, action, petition or order.

(g) Landlord shall indemnify and hold Tenant, its subsidiaries and affiliates, as well as any and all of the agents, servants, employees, members, or managers of any of them, harmless from and against any and all actions, petitions, orders, claims or demands made, brought or instituted by any and all private parties and/or any and all public agencies or authorities, together with any and all expenses, including attorney's fees, costs, losses, demands, liabilities or penalties assessed against or incurred by any of them, arising solely out of or in any way connected with any loss or damaged to person(s) or property resulting or claimed to result from the Release anywhere on the Shopping Center or on the Premises, by, for or on behalf of Landlord or arising out of the action of any prospective or existing secured lender, or any prospective buyer of the Shopping Center's entrance onto the Premises. This agreement shall extend to and be enforceable by Tenant's public liability, health disability and work's compensation insurer(s). In connection with Landlord's indemnification hereunder: (y) Landlord agrees to defend any such claim or demand brought, or any action, petition or order filed, against Tenant, its subsidiaries or affiliates, or against any or all of the agents, servants, employees, officers, directors, partners, members, beneficiaries or trustees of any of them, or in which any of the same may be impleaded, at its sole cost and expense, and (z) Landlord shall pay, satisfy and discharge any final judgments, liens, orders or decrees from a court or administrative body of competent jurisdiction which may be recovered or filed against Tenant, its subsidiaries or affiliates, or any or all of the agents, servants, members, managers or employees of any of them, arising out of any such successful claim, demand, action, petition or order.

(h) The provisions of this Article shall survive the expiration or earlier termination of this Lease.