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Key Issues Litigated In Retail Leases

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By:

Thomas C. Barbuti, Esq.
Whiteford Taylor & Preston LLP
8830 Stanford Blvd.
Suite 400
Columbia, MD 21045
tbarbuti@wtplaw.com

Michael P. Hindelang, Esq.
Honigman LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226
mhindelang@honigman.com

KEY ISSUES LITIGATED IN RETAIL LEASES

1. Use Clauses.

Landlord's lease forms start out with a definition of a "permitted use" for the leased premises. Landlord's idea of a "permitted use" is a very narrow use and it provides that the premises may be used solely for the "permitted use" and for no other purpose whatsoever. Sometimes it adds "without the prior written consent of the landlord." Sometimes it adds "which consent will not be unreasonably withheld, delayed or conditioned."

Tenant's forms start out with a permitted use clause that permits tenant to use the premises for any lawful use. Sometimes it will say for any lawful retail use. Sometimes it will say for any lawful retail use not otherwise already restricted or excluded by leases of other tenants in the shopping center, which other restrictions must be listed verbatim.

Tenant's forms also add provisions regarding an "exclusive use" as well as provisions regarding certain "restricted obnoxious or non-desirable uses", in tenants opinion.

Use clauses often result in litigation. The litigation may be about the meaning of the terms used by either landlord or tenant. The litigation may also be about the extent of the restriction, i.e., does it apply to adjoining properties of landlord or other properties owned or controlled by landlord or by any entity in which landlord has a controlling interest.

Tenant is aiming for the broadest interpretation of its "exclusive use" clause and landlord is aiming for the most narrow interpretation of any "permitted use" clause or any "exclusive use" clause.

Courts will generally enforce reasonable restrictions on use, whether imposed by landlord on tenant's use of the premises, or by tenant with regard to landlord's remaining shopping center property, so long as such clauses are clear and concise and limited in their scope. For example, you cannot insert a radius clause of 10 or 20 miles, but you might get away with a radius clause of 3 miles. A tenant cannot eliminate all other retail uses, but it might

eliminate a particular store category or, more effectively, a tenant might be able to restrict other stores from selling a certain enumerated list of restricted items.

If a landlord is willing to grant an “exclusive” to a tenant it is likely that landlord will present tenant with a list of “exclusions” or “carve-outs” that landlord will require from the application of the “exclusive use” restriction such that other tenants may operate in competition to a certain use if (a) they are a department store, (b) they are located more than a certain number of feet from the demised premises, (c) they are an existing lease, or (d) they do not utilize more than a minimal amount of the floor area of their respective premises or achieve a certain percentage of their gross sales from the sale of the restricted merchandise.

Often the restriction is against a competing use by another tenant restricting only a “primary use”, without “primary” being well defined, or is a restriction against the use by another tenant for the restricted use, but with carve-outs for the incidental sales of certain items, which again may not be clearly and properly defined.

What are landlord’s remedies for breach by tenant of the use restrictions or the permitted use clause imposed on tenant by landlord? What are tenant’s remedies for a breach by landlord of the exclusive use or other obnoxious use restrictions imposed on landlord by tenant?

Unfortunately, all of the foregoing concepts are fertile grounds for litigation. Tenant is primarily interested in obtaining injunctive relief against a violation of a tenant’s exclusive use restriction. Generally it is much more difficult to obtain injunctive relief than it is to obtain damages .

In recent years, many landlords have attempted to avoid unlimited exposure to damages or injunctive relief with respect to the violation of a tenant’s exclusive rights by landlord or others in the shopping center. This normally takes the form of a rent abatement clause of probably 50% or so for a limited duration, usually a year or so, at which time tenant needs to elect whether to return to the payment of full rent or to terminate the lease and leave the shopping center. There may be a concern that such a limitation on damages is an unenforceable liquidated damages provision if it looks like a penalty. However, in a number of jurisdictions this remedy has been upheld as not a penalty but merely as a rental adjustment clause. In other words, landlord may have bargained for the right not to comply with an “exclusive” in exchange for some rent concession because clearly there must’ve been some economic value of rent attached to giving tenant the exclusive in the first place. Tenant should pay a higher rent if tenant is guaranteed some exclusivity, but if the exclusivity goes away then tenant would be protected by paying a lower rent or by terminating.

Obtaining injunctive relief to force a party to do something affirmatively is much harder to achieve than obtaining injunctive relief to require a party refrain from doing something.

Landlords try to draft restrictions so that they can be relieved of any liability if there is a “rogue tenant” who, notwithstanding the provisions in the tenant’s lease, violates an exclusive such that landlord is not liable in any respect so long as landlord uses reasonable efforts to enforce the restriction.

In many documents, landlords try to limit their exposure by stating that they shall not violate the use or they shall not sign a lease with another person permitting that person to violate the use. They prefer not to state that they will not permit any such activity in the center, merely that they will not agree to sign a lease that does not limit such activity. There is a question as to when a tenant may pursue a cause of action against another tenant for violating a use restriction which may or may not run with the land. If the violating tenant is not aware of the use restriction it may not be bound by the use restriction. If the restriction is not recorded, then other tenants and successors to the landlord may not be bound by the restriction.

2. Common Area Maintenance Expense.

Almost all shopping center leases provide that tenant shall reimburse landlord for the cost of maintaining the common area in the shopping center. The method of allocating common area maintenance expenses in a shopping center differs greatly from the method of allocating operating expenses or common expenses in office or industrial properties.

Generally, landlord starts with a clause that says tenant shall reimburse landlord for tenant’s “proportionate share” of all common area maintenance expenses including but not limited to...”. Landlord then adds a very exhaustive and broad list of all types of expenses that landlord expects to recover from tenant.

Tenant, on the other hand, if it has appropriate bargaining power, will insist upon a very narrowly defined concept of common area maintenance expenses and will usually have a laundry list of exclusions of expense items that it will not allow landlord to recover as part of CAM.

Most landlords and tenants agree that tenant's pro rata share or proportionate share of CAM is based upon a ratio that tenant's square footage of floor area in its premises bears to the entire square footage of the floor area in the shopping center. Oftentimes there is a clause allowing for an adjustment should those square footage calculations not be accurate at the onset of the lease or should there be later changes by way of addition or deletions to the shopping center. Tenants like to provide, however, that the denominator of the fraction will never be less than a minimum number of square feet of floor area. Some tenants go further and exclude any portions of the shopping center, like undeveloped land, from the maintenance areas that landlord shall maintain and be able to collect reimbursements with respect to from tenants.

Tenant's forms will also often provide that floor area for purposes of common area expenses do not include maintenance of certain areas of the shopping center that are to be occupied by landlord for administrative, janitorial or promotional purposes.

Landlords, on the other hand, used to be able to include in the calculation of common area expenses that the denominator was only those areas that were actually "leased" by landlord and the denominator did not include vacant square footage. In this way, with respect to empty square footage, landlord would not bear a share of the cost of the common area maintenance expenses. If the denominator does not include any areas that are not leased, then the tenants are paying more than a basic standard pro rata share.

There are situations where the denominator does not include any of the outparcels or pad sites in the shopping center even though the outparcel users do benefit from the maintenance of the common areas. In these cases, it's important to make sure that the outparcel area tenants are doing all of the maintenance of the exterior portions on the outparcel upon which their use is situated, and that those areas are excluded from the overall total of common expenses for which landlord will be expecting to be reimbursed by the other in-line tenants. Sometimes that may be hard to allocate. In the case of snow removal, for example, if the same snowplow company is doing both the shopping center parking and the specific parking for an outparcel tenant, how should these costs be allocated?

In many older mall deals the major department store occupants did not make a pro rata contribution to common area maintenance expenses. They merely paid a flat rate each year, sometimes with a CPI adjustment, but more often not. In this situation tenants in the mall would be paying a larger burden for common area maintenance expenses since the department stores were not bearing their fair share.

At this point, most savvy tenants and landlords are able to formulate a reasonable and equitable sharing clause with respect to common area maintenance expenses. Many of the large big box occupants in a so-called power center, however, like to maintain their own parking areas, sidewalks, loading area, etc. and therefore are willing only to pay based on a reduced list of the common area expenses for any areas outside of the parking area for such big box tenant.

A major difference between typical shopping center projects and office projects or mixed use project is how the cost of managing the shopping center or other project is to be borne by landlord or tenant. Traditionally, common area maintenance costs in a shopping center did not include management fees to a landlord based on a percentage of gross revenue. A landlord's normal recovery for supervising the common areas was a 15% mark-up of the common area expenses, as an administrative or supervisory fee, to be paid to landlord. Of course the amount of management, admin or supervisory fees is the subject of negotiation and with the bigger tenants, landlord usually receives much less mark-up for those expenses and therefore the smaller tenants usually bear a larger than equitable share of those expenses. It has frequently been shown that the common area expenses are a separate profit center for a landlord.

Typical items excluded from common area expenses are items that are separately charged such as real estate taxes, insurance premiums and in some cases the water, sewer and/or electric utilities for the common area land. Additionally, if one or more of the larger tenants remains open 24 hours then the cost of certain expenses, especially the cost of lighting the parking lot during those afterhours, should be excluded from the general bucket of common area costs to be shared by all tenants on a pro rata basis. Only those tenants who are open and operating on a 24 hour basis should share ratably the cost of after-hours lighting, security or other maintenance items that are unique to after hour operations

Most importantly, one important exclusion from common area expenses should be any capital expenditures incurred by landlord to make improvements to the center. These exclusions are often litigated and the landlord likes, at a

minimum, to include capital expenditures made for purposes of a more efficient operation going forward, which would likely have the effect of reducing the costs to be borne by tenants on a pro rata basis.

For a few years many landlords seem to be providing for a fixed contribution to common area maintenance expenses, which fixed contribution would be increased on an annual basis based on a CPI or some fixed percentage increase. This type of approach expedited the negotiation and execution of leases because the parties did not spend inordinate amount of hours negotiating the inclusions and exclusions and the methods of calculating a common area maintenance expense. Now that we are in a time of more inflation, it is likely those fixed costs for common area maintenance expenses will no longer be offered.

In many leases where tenants had the ability, they would require that landlord agree to an annual percentage cap on most common expenses. Landlords traditionally were agreeing to a cap of 3 to 5%, provided that certain costs like snow removal, insurance, utilities and other uncontrollable costs would be calculated separately and not as part of the expense items to be capped.

It is not unusual to see cases involving the calculation and imposition of a common area expenses or the question of whether the landlord is maintaining the property in a so-called first class condition.

3. Assignment and Subleasing.

There are numerous cases, especially in a bankruptcy or workout context, where the concept of the assignment of a tenant lease or subleasing of the space is the focus of the litigation.

Historically, if the lease did not restrict or limit rights of assignment or subleasing, then tenant's rights under a lease were freely assignable and tenant had unfettered rights to sublet all or part of the space. However, as leases became more sophisticated, that quickly changed.

Generally, a landlord clause includes language in the lease that prohibits an assignment or subleasing in whole or in part. Sometimes the language is absolute. Sometimes it provides that it would be a question to be determined in the landlord's sole and absolute discretion. Sometimes the lease provides that it is prohibited unless the prior written consent of the landlord is first obtained. In many cases, as a concession during negotiations, landlord may agree to "not unreasonably withhold, delay or condition it's consent."

The question of whether landlord has a duty to be reasonable in considering a tenant's request for an assignment or subletting, and if it does have such a standard, whether landlord has reasonable grounds to refuse such a request, has been the subject of much litigation.

In many states today landlord has an implied duty to be reasonable in the course of administering all of the lease provisions, especially including the assignment and subletting provision. In many leases in those jurisdictions, landlord often attempts to include a laundry list of reasons where landlord would be deemed to be acting reasonably. Such reasons include that the proposed assignee or subtenant is already a tenant in the project, is of bad repute, has been in litigation with landlord or an affiliate in another project, or that the proposed assignee or subtenant does not have a tangible net worth at least equal to that of the tenant, either at the time the lease was executed or at the time the assignment or subletting is proposed, whichever is greater

Also an area often litigated involves whether landlord's restriction on assignment extends to the sale of a beneficial ownership interest in tenant entity. Oftentimes tenants are subsidiaries of other larger entities.

Many larger tenants that are publicly traded companies also have realized that they need to have a clause in the lease that provides a transfer of the ownership interests of tenant from one subsidiary to another, or from the subsidiary to the parent, or even a sale of the parent's ownership interests, would not trigger a recapture or anti-assignment clause in a lease.

Many leases today contain a recapture or termination right for landlord when a tenant discloses that it wishes to assign or sublet. This type of clause that provides landlord an opportunity to recover the space and recoup additional value and it also permits tenant to be released of further obligations under a lease may not have been as successful for it as it would have wished.

There are many times where the tenant will agree to such a recapture provision only upon the condition that landlord reimburse tenant for the unamortized cost of all tenant improvements made to the premises by tenant. At least one large tenant has taken the position that the price to the landlord for such a recapture has to be the highest of three different amounts. First, the amount may be the unamortized cost of the tenant improvements; second, any outstanding mortgage balance that the tenant may have to a leasehold mortgagee for its improvements to the

building or otherwise; and third, the fair market value, i.e., the appraised value of the remaining unexpired term of the lease and all renewals at the time the assignment is to be consummated.

Another issue with respect to assignment is upon assignment of a lease does the liability of the assignor tenant continue or can tenant negotiate for it to be released from any further liabilities under the lease. Landlords usually insist that the tenant's liability continue. However, larger tenants have been able to obtain a provision that an assignment would operate as a release of their future liability, provided the assignee has a certain level of tangible net worth and/or that the assignee has a certain number of successful stores in the same metropolitan or other geographic area.

Many bankruptcy cases address assignment of leases and it is very difficult to prohibit the assignment of the lease by a debtor-in-possession.

4. Repair Responsibilities.

Generally in most landlord lease forms, a landlord is only willing to accept responsibility for required repairs with respect to the structural portion of the building on the property and the roof. And landlord's duty to repair is not triggered until landlord has received an actual written notice from tenant specifying the need for repairs. The lease then provides that, except for the repairs for which landlord is expressly responsible, all other repairs to the premises are the responsibility of tenant, and that the failure of tenant to make repairs is a default under the lease. Generally, most tenants are not able to negotiate many changes to the repair clause in the lease. Larger tenants, however, are able to turn the tables and provide a specific list of the items that tenant will be responsible for repairing and then provide that all other repairs required will be made by landlord at landlord's cost and expense, and not as part of the common area maintenance cost.

Additionally, the repair clause in a retail lease may require that tenant obtain and keep in force an HVAC service contract which requires that the HVAC unit in the premises to be inspected and serviced by a reputable air-conditioning contractor, all at tenant's cost and expense.

Tenants often like to include a provision that landlords are responsible for sewer, water and other utility line repairs that are beyond the four walls of the premises. Landlords attempt to carve out certain exceptions, for example, if repairs are needed to sewer lines and were caused by obstructions placed in the facilities by tenant.

With respect to repairs, it may also be important to consider the indemnity provisions of the lease. Generally, landlord's lease forms require the tenant to indemnify the landlord for any repairs to any portion of the property, and any damages caused by any negligent acts and omissions of tenant, its contractors, agents and employees and customers.

While many leases do not require landlord to indemnify tenant for damages to tenant's property caused by the negligence of landlord, its agents contractors, etc., many state statutes and judicial decisions provide that an indemnity cannot protect a landlord from liability for damages due to its own negligence, and it will be responsible if tenant can prove landlord's negligence caused damages to tenant's property.

5. Alterations; Duties on Surrender.

As with many other issues, landlord's forms start out with the proposition that tenant shall not have the right to make any alterations to the premises without landlord's prior written approval. Landlord includes the requirements of that any plans and specifications must be prepared by a licensed architect or engineer, performed by a contractor acceptable to landlord and approved by landlord. Tenant is also required to obtain any permits required for such alterations.

Landlords have a standard provision which requires of the tenant to pay the landlord a supervisory fee for watching the installation of the alterations, and oftentimes it requires that tenant use a contractor designated by landlord.

Larger tenants are often able to obtain the right to make alterations, but not additions to the premises, provided the alterations are interior only, do not exceed a certain dollar limit depending on the size of the premises, and do not affect any of the structure or any of the systems of the building such as the HVAC serving the premises. Tenants will attempt to obtain a right to change the exterior appearance to tenant's standard prototype from time to time, but landlords resist that very strongly as landlord wants to maintain a uniform appearance in the shopping center.

Landlord also has a standard clause that requires tenant to surrender the premises back to landlord generally free of any alterations and in substantially the same condition as when the premises were received by tenant, including the repair or replacement of any HVAC system serving on the premises as well as removal of any alterations made by tenant during the lease term unless, at the time the alterations were made landlord, agreed not to require the removal of the alterations at the end of the lease term

Tenant's form lease with respect to alterations in general may be silent on the issue or provide that tenant has the right to make any alterations it desires in order to operate its business so long as the alterations comply with code.

Tenant's form lease also often provides that tenant will not be liable for the condition of the premises upon surrender of the premises except to leave it "broom clean," in the condition in which tenant was required to maintain it during the term of the lease, subject to repairs required of landlord and subject to ordinary wear and tear and damage by the fire or other casualty.

6. Holding Over.

A clause that is often overlooked in negotiating a lease is the landlord's typical "holding over clause". Tenants pay little attention to this clause. Generally a holding over clause is not necessary at all from a tenants perspective. If the clause is not in the lease, and tenant remains in possession after the end of the term, but continues to pay the rent, the general rule of law is that the lease continues on a month-to-month basis upon the same terms and conditions. There used to be a risk that a lease would renew for a longer period if the lease were a year-to-year lease or a term of five years, but that is generally not followed in most jurisdictions today.

Landlord's form leases today generally start with the proposition that if tenant remains in possession after the expiration of the term, that the lease will continue on a month-to-month basis at an increased rent equal to double the rent paid during the last month of the lease term unless otherwise agreed by the parties. Tenants will often try to negotiate that so-called rent down to 150% or 130%, but tenants rarely focus on the risks with respect to "holdover" damages.

Landlord's position is that adjustment in the rent is just a rent adjustment clause and does not compensate landlord for the damages that landlord may suffer if it is unable to deliver the premises in a timely manner to a replacement tenant. A delay in putting in an already secured replacement tenant could cause landlord to lose the whole lease with the replacement tenant. In that event, landlord would have a substantial claim for damages against the existing tenant.

In negotiations with larger tenants, the larger tenants may negotiate for a clause that provides tenant would not be liable to landlord for rent changes or for damages above and beyond the minor increase in the rent to say 110% of the rent during the last month of the term, and also require for some slippage in vacating the premises such as 60 to 90 days and only after landlord has provided at least 60 to 90 days' notice would the tenant then be liable for increases in rent or other damages.

7. Exercise of Options/Renewals.

Landlord's forms often do not provide Tenant with a right to either renew or extend the lease, but upon request of a prospective tenant, a renewal or extension option may be added. These options are fertile grounds for litigation.

Basically an option to "renew" is to start a new lease for an additional period of time, based on the terms and conditions of the existing lease with adjustments primarily in the area of increases in rent and perhaps some other adjustments. An option to "extend" is basically an agreement to use the same lease and extend the "lease term" for one or more extension terms, again with an increase in rent or some other modifications which are usually spelled out in the original lease documents.

Landlords like to receive extended periods of "prior unconditional written notice" as to whether Tenant wants to stay in the premises, which periods are usually between 9 to 12 months. The calculation and determination of the date by which an option must be exercised is of critical importance to both parties. Many cases deal with whether tenant properly and timely exercised it's option and, if it did not it, should tenant be entitled to an equitable extension based on certain facts and circumstances. However, many cases specifically provide that the exercise of an option must be done precisely in accordance with the document creating the option, "time being of the essence", even if "time being of the essence" is not specifically stated in connection with the exercise of the option.

Many tenants have started adding provisions to their lease that landlord must send tenant a reminder notice advising tenant that the option right is about to expire if tenant does not act by a certain date. Under such reminder notice, requirements, if tenant does not extend and if the landlord neglected to send the option notice usually in the lease provides then the lease continues automatically until a certain number of days after tenant receives a written notice from landlord that tenant needs to exercise its option to extend or renew.

Aside from the basic determination of whether or not the exercise was timely, there are often challenges based on whether or not the exercise was sent strictly in accordance with any requirements in the lease regarding the delivery of notices and information to be provided at the time of tenant purports to exercise the option. If tenant fails to include this other information, then the option exercise fails. However, there is one case in Maryland where it was determined that tenant's obligation to provide evidence of its financial net worth was not a condition to the exercise option but merely was a covenant to provide information. Tenant provided such information two weeks later and the court determined that that was not a sufficient material violation of the requirements for the exercise of the option, and allowed the tenant to continue as a tenant.

Even if a notice of exercise is ineffective for failing to meet the strict requirements in the Lease, and equitable interest may be recognized and the lease protected against forfeiture where tenant has in good faith made substantial improvements to the premises with the intent to renew the lease, landlord is not harmed by the delay in the notice, and tenant would suffer substantial loss if the lease were not renewed.

8. Damages.

Landlord's form leases limit landlord's exposure to the landlord's interest in the real estate, sometimes called Landlord's equity interest. The leases typically provide that no other assets of the landlord are subject to attachment by a tenant's claim for damages.

This clause is a holdover from prior years. Basically, today most landlords are single purpose business entities and therefore don't have any assets of any significance other than the real property subject, of course, to any existing mortgages. The limitation on landlord's exposure to damages may have been inserted in leases primarily to facilitate financing so that a mortgagee, who had to foreclose on the property, and step in and continue as landlord, would not be exposed to damages other than whatever equity the mortgagee had invested in the property from time to time.

Landlord's form leases also include a provision that upon any breach of the lease by tenant, landlord shall have the right to terminate the lease or recover possession without terminating lease, and tenant shall remain continually liable for rent due and payable under the lease, including all pass-through charges, for the remaining term of the lease. Landlords attempt to fashion this remedy as liquidated damages, i.e. a reasonable estimate of the amount the damages that the landlord might suffer, as agreed to by the parties at the inception of the lease, and just add up the monthly payments forecast to be due. Tenants have resisted this approach and have asked the courts to provide that the tenant cannot be liable for all of the remaining rent. At a minimum, tenants assert that the amount of damages should be reduced to present value, and after an extended period of time damages are too speculative and should be offset by any rents landlord likely will receive after it regains possession of the premises

Many states still provide that landlord has no duty to mitigate damages as landlord would if it were just a contract and not a real estate conveyance document. As a result, landlords believe they are entitled to sit and do nothing and continue to require tenant pay the rent and other charges monthly, or they can terminate the lease, recover possession and still hold the tenant liable for the entire amount of rent, not reduced to present value, without giving the tenant any credit for amounts that landlord might recover from subsequent users.

Many leases now contain a compromise clause with respect to tenant's damages after a material breach, where landlord recovers possession of the premises, to be the difference in the rent reserved under the lease, including all pass-throughs, minus the reasonable rental value at the time of the breach that landlord could achieve by reletting the premises, and with that delta being reduced to present value at some agreed-upon cap rate.

Maryland has a case in the last 10 years or so that seems to provide that landlord does have a duty to use reasonable efforts to mitigate damages. Interestingly, Maryland also has a decision from the Circuit Court for Montgomery County which held that the calculation of future rent as liquidated damages was a penalty as it was not reasonably related to the amount of damages the landlord likely would suffer and, therefore, was unenforceable. Landlord was awarded only minor damages for one or two years after the tenant's breach.

Many larger tenants are now able to include a limitation on landlord's remedies if the lease entitles landlord to recover possession and landlord does take possession. Also, large tenant's lease forms provide that there's no

right to accelerate the future rent and other charges for the entire remaining term of the lease. Additionally, if landlord recovers possession, tenant's form provides that it is no longer liable for lost rent by landlord. In many circumstances, tenants also attempt to limit their exposure and avoid liability for any costs incurred by landlord to relet the premises, by retrofitting the space or by paying commissions to real estate brokers to find new tenants, etc.

I. TENANT FORMS – EXCLUSIVES; OBNOXIOUS RESTRICTIONS; PERMITTED USE.

I. A. Tenant A.

4. (A) Landlord agrees that the Shopping Center shall not be used (a) for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or (b) for any entertainment purposes such as a bowling alley, skating rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club, massage parlor, sporting event, sports or game facility, off-track betting club (c) or for any establishment which sells or displays pornographic materials or (d) for any establishment which sells or displays used merchandise or second hand goods. No restaurants or establishments selling food prepared on premises for consumption on or off premises shall be located in the Shopping Center *[outside of the area labeled "Permitted Restaurant Area" on the Lease Plan and any restaurants located therein shall not exceed _____ () square feet per restaurant or an aggregate of _____ () square feet]*. (Collectively the uses described herein are referred to as the "Prohibited Uses".)

(B) Landlord agrees that, from the date hereof until expiration of the term of this lease, no other premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of furnishings for the home including the following categories of items: linens and domestics, window treatments, floor coverings, bathroom items, bedding, furniture, wall décor, housewares, table top goods, glassware, flatware, cookware, kitchen utensils, giftware and/or closet, shelving and storage items and home accessories ("homegoods"). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of homegoods. The foregoing sale or display of more than fifteen thousand (15,000) square feet of homegoods (the "Protected Merchandise") is defined herein as a "Competing Use".

(C) In addition to all other remedies available to Tenant at law and in equity for a breach of the covenants contained in Paragraphs (A) and (B) of this Paragraph 4, if an occupant or tenant in the Shopping Center engages in a Competing Use or a Prohibited Use, Tenant shall be entitled to any of the following remedies on a non-exclusive basis: (i) Tenant may pay the lesser of two percent (2%) of Gross Sales or minimum rent (collectively, "Alternate Rent") until such Competing Use or Prohibited Use ceases, except that Landlord shall have three (3) months to attempt cure before Tenant may pay Alternate Rent when Landlord has not consented to the Competing Use, (ii) Tenant may terminate this lease if the Competing Use or Prohibited Use continues for more than one hundred fifty (150) consecutive days by giving thirty (30) days' notice to Landlord or (iii) Tenant may seek injunctive relief to enjoin or restrain such occupant or tenant from engaging in a Competing Use or a Prohibited Use. Notwithstanding anything to the contrary contained herein, so long as Landlord is using its best efforts to diligently enforce the restrictions contained in this Paragraph 4 against any tenant or occupant engaged in the Competing Use or a Prohibited Use in violation of its lease, Tenant's termination right under this Paragraph 4(C) shall be stayed.

5. The Demised Premises shall not be used in violation of any provision of any other lease existing on the date hereof of space in the Shopping Center which shall give the tenant thereunder an "exclusive" without the consent of such tenant, provided the use prohibited by such "exclusive" is then being conducted under such lease, and provided such exclusive is fully set forth in Schedule F attached hereto. Landlord warrants and represents that except for the exclusives set forth on Schedule F, there are no other exclusives or use restrictions which would in any manner be applicable to the Demised Premises. Landlord will indemnify and hold Tenant harmless from and against any losses, costs, liability, damages, fees or expenses of claims suffered or claimed to be suffered as a result of any breach of or any inaccuracies in the representation and warranties set forth in the preceding sentence.

I.B. Tenant B.

(a) **Prohibited Uses.** No portion of the Shopping Center, including the demised premises, shall be occupied or used, directly or indirectly, for any of the uses ("Prohibited Uses") identified on Exhibit F attached hereto.

EXHIBIT F. Prohibited Uses The following uses shall be Prohibited Uses in the Shopping Center: 1. flea market; 2. swap shop or "outlet store" selling merchandise that is used, damaged or discontinued; 3. bowling alley; 4. arcade; 5. game room; 6. skating rink; 7. billiard room; 8. massage parlor; 9. adult book store; 10. bar, tavern, pub or restaurant occupying more than two thousand five hundred (2,500) square feet of space, or having an entrance within two hundred (200) feet of the entrance to the demised premises (provided that this restriction shall not apply to Tenant's coffee bar in its intended or any future format); 11. ballroom, dance hall, discotheque; 12. beauty shop, barber college; 13. theater having a customer entrance or exit within three hundred (300) feet of the entrance to the demised premises; 14. health club having a customer entrance or exit within three hundred (300) feet of the entrance to the demised premises; 15. offices (other than a full service bank office, savings and loan association office or credit union); 16. place of instruction, reading room or any operation catering primarily to students or trainees rather than to customers; 17. funeral parlors; 18. facility for the sale of paraphernalia for use with illicit drugs; 19. off-track betting parlor; 20. carnival, amusement park or circus; 21. new or used car dealership; 22. gas station; 23. auto repair shop

(b) **Tenant's Exclusive Use.** Except for the demised premises, during the term of this Lease Landlord will not lease, rent or occupy, or permit any premises in the Shopping Center or any property contiguous with or adjacent to the Shopping Center (which shall include property that would be contiguous with or adjacent to the Shopping Center except for an intervening road, street, alley, highway or waterway) that is owned or leased by Landlord (or any person(s) or entity(ies) affiliated with or controlled by Landlord or of which Landlord or any principal(s) of Landlord is a member, shareholder or partner) to be used or occupied for:

(i) the sale of (A) books, (B) periodicals, (C) video products and/or (D) music products (in any current or future format of such enumerated items) unless the subject matter of such items is directly related and ancillary to the primary use of such other tenant's premises (e.g., a computer store which sells books or periodicals dealing with computer products), and not more than the lesser of (1) 200 square feet of surface display area, or (2) five percent (5%) of the total gross leasable area of such tenant's premises is devoted to the retail display of such related items; or

the operation of a café or a "coffee bar" featuring, nonexclusively, hot and cold coffee and tea beverages in any format, whether as an incidental or primary use.

(c) **Specific Remedies.** If Landlord violates the terms of Article 24(b), then Tenant may, without waiver of Tenant's other rights or remedies under this Lease or at law, exercise either or both of the following remedies after providing notice of such breach to Landlord:

(ii) If Landlord has not cured such breach within ten (10) business days after Tenant's notice, then Tenant may pay reduced Annual Rent in the amount of fifty (50%) percent of the amount listed on Exhibit C until Landlord has cured such breach.

(iii) If Landlord has not cured such breach within sixty (60) days after Tenant's notice, then Tenant may terminate this Lease.

I.C. Tenant C.

Section 9.1. (a) Use.

Except for the Noxious Uses and subject to Landlord's rights to terminate this lease and recapture the demised premises as set forth in Sections 7.8, 9.6, 9.7 and 9.8 of this lease, the demised premises may be used for any lawful retail purpose. No part of the demised premises shall be used for any purpose or business, which is noxious or unreasonably offensive because of the emission of noise, smoke, dust or odors (the "Noxious Uses"). In addition, the demised premises shall not be used in a manner that would violate any of: the existing exclusives or restrictions set forth in Exhibit K during the remainder of the term of the lease and extensions thereof identified in Exhibit K for the existing exclusive in question; but nothing contained herein shall prohibit the violation of any existing exclusive or restriction if the tenant who has the benefit thereof cannot enforce such exclusive against Landlord because such tenant shall not be operating in its premises in the Shopping Center the business for which it has been granted the exclusive use provision in question or otherwise. The foregoing provisions of this Section

constitute the sole restrictions applicable to the use of the demised premises. Notwithstanding the foregoing, if Tenant obtains a written waiver from any such then existing Shopping Center tenant whose lease contains a binding exclusive or restriction, unless said tenant has a percentage rent clause in its lease, Tenant shall be allowed to use and occupy the demised premises for such exclusive or restricted use or purpose. Landlord represents and warrants to Tenant, and Tenant has materially relied on such representation and warranty as an inducement to enter into this Lease, that there are no exclusives or restrictions for use or purpose or for the development of the Shopping Center, including, without limitation the use and/or reconfiguration of the Common Facilities in existence as of the date hereof, except only for those exclusives or restrictions specifically enumerated on Exhibit K annexed to this Lease.

Nothing contained in this lease shall be deemed or construed to impose any affirmative obligation on Tenant to make any particular use of the demised premises, or any use thereof at all; and nothing in this lease shall be deemed or construed to require Tenant to open for the conduct of any business during any particular hours, or on any particular days, or at all, or to restrict Tenant's business activities outside the demised premises. Notwithstanding the foregoing, nothing contained in this second paragraph of this Section 9.1 (a) shall be deemed to nullify Sections 7.8 (A), 9.6, 9.7 and 9.8 of this lease.

Section 9.2. Restrictions on Other Premises.

Section 9.2 (a) (i). Except as specifically provided to the contrary below, the other premises in the Shopping Center shall only be used for lawful retail purposes. It is expressly understood and agreed, however, that so long as such leases shall not expire or be terminated, the use of the premises described in Exhibit L attached hereto shall be governed by the "use" clauses set forth in said Exhibit during the terms of said leases ("Existing Uses"), as they may be extended, and (except as set forth below with respect to a prohibition of a replacement lease for the Natural Market premises at the Shopping Center) during the terms of replacement leases for said premises with the same or any similar tenants, but Landlord may not enlarge the premises demised under such lease and devoted to such uses unless it shall make the use of the enlarged premises in question comply with the following provisions of this Section 9.2. It is expressly understood and agreed, however, that any replacement leases for the Natural Market premises in the Shopping Center shall be governed by the following provisions of this Section 9.2. Notwithstanding the foregoing exception for Existing Uses, Landlord shall not: (x) modify or amend any such existing lease or extensions or renewals thereof containing the Existing Use(s), (y) consent to a change of use under any such existing lease or extensions or renewals thereof containing the Existing Use(s), or (z) grant consent to a sublease or assignment under any such existing lease or extensions or renewals thereof containing the Existing Use(s), where Landlord's consent is required in any of the foregoing instances, so as to permit the violation of any of the restrictions contained in this Section 9.2 of this lease.

Section 9.2 (a) (ii). Insofar as the provisions of this Section 9.2 relate to Landlord's Adjacent Land, the provisions of this Section 9.2 shall not apply to uses being conducted on any premises that hereafter shall be included in Landlord's Adjacent Land at the time such premises become included in Landlord's Adjacent Land; but Landlord shall not agree to the enlargement of any of the premises to which this Section 9.2 (a) (ii) applies or to the extension of the period during which such premises may be used unless Landlord shall make the use of such premises or such enlarged premises comply with the following provisions of this Section 9.2.

Section 9.2 (b). Commencing on the Commencement Date and continuing until seven hundred thirty (730) days after Delivery of Possession and thereafter, subject to Section 9.2(a)(ii) and the second sentence of Section 9.2 (a) (i), during such time as any part of the demised premises shall be used or occupied for the conduct of a Food Supermarket Business, Landlord shall not lease, use or permit to be used any other portion of, or premises in, the Shopping Center or Landlord's Adjacent Land for the conduct of a Food Supermarket Business or for the sale of any food products for off-premises consumption (whether by humans or animal), except that Landlord may permit the sale of food items and the conduct of businesses principally engaged in food sales, as follows:

Section 9.2 (b) (i). snack bars in variety stores, junior department stores and department stores may sell take-out orders, ready for immediate consumption, of soups, sandwiches, hot and cold beverages and individual servings of items which are also being sold (on the same premises) for on-premises consumption, but not frozen foods; and

Section 9.2 (b) (ii). an ice cream store business of the kind now operated under the name "Friendly" or "Baskin Robbins," and a frozen yogurt business of the kind now operated under the name "TCBY" may be operated in the Shopping Center and may sell ice cream and ice cream products and frozen yogurt and frozen yogurt products for off-premises consumption; and

Section 9.2 (b) (iii). a candy store business may be operated in the Shopping Center and may sell bulk and packaged candies and nuts for off-premises consumption; and

Section 9.2 (b) (iv). a package liquor store business may be operated in the Shopping Center and may sell alcoholic beverages for off-premises consumption only, and, as an ancillary part of its business, may sell cocktail

ingredients, such as syrups and carbonated beverages, and cocktail snacks, such as pretzels, potato chips and nuts, for off-premises consumption only; and

Section 9.2 (b) (v). a variety store, a junior department store, or department store business may sell food items for off-premises consumption, provided, however, that not more than a total of 2,500 square feet of selling space, or (if less) a total of 5% of the total floor area of the premises used for such business, shall be used for the sale (including display) and storage of food items; and provided further that in no event shall any such food items sold in said store premises include any "*Completely Prohibited Food*," which, for the purposes of this lease, shall mean each and all of the following – perishables (including, without limitation, milk and/or other dairy products, excluding, however, same that are so-called "individual or "single serving" size, and, with respect only to "all for a dollar" type of business of the kind operated, as of the date of this lease, under the name "Dollar Tree" [reference herein to a "Dollar Tree" all for a dollar type retail store shall be deemed to include a comparable all for a dollar type retail business operating under another name] further excluding an area not to exceed eight (8) lineal feet of same, in the aggregate), fruit, vegetables, and/or other produce; baked goods or bakery items (other than pre-packaged baked goods and items baked off-premises for on-premises consumption and other than those that are sold in a bakery department or a bakery café that is operated incidentally and ancillary to a business operated primarily as a restaurant [by way of example, but without limitation, a "Panera Bread" restaurant, an "Atlantic Bread" restaurant, or an "Au Bon Pain" restaurant]); meat, poultry, fish and delicatessen items; and all prepared and unprepared frozen foods; and

Section 9.2 (b) (vi). a pet shop may devote not more than 200 square feet of selling space for the sale and display of dog and/or cat foods, individually or in the aggregate.

Section 9.2 (c). Commencing on the Commencement Date and continuing until seven hundred thirty (730) days after Delivery of Possession and thereafter, subject to Section 9.2(a)(ii) and the second sentence of Section 9.2 (a) (i), during such time as any part of the demised premises shall be used or occupied for the conduct of a drug store, or for a pharmacy, or for the sale of health and beauty aids, Landlord shall not lease, use, or permit to be used any other portion of or other premises in the Shopping Center or Landlord's Adjacent Land for:

Section 9.2 (c) (i). the conduct of a drug store, or for a pharmacy, or for a health and beauty aid business;

or

Section 9.2 (c) (ii). the sale, display or advertising of drugs, medicines, rubber goods or hospital or "sickroom" supplies or equipment [except that "patent" and "proprietary" medicines which may, by law, be sold in stores which do not contain a prescription department and which do not employ a registered pharmacist on the premises may be sold in premises in the Shopping Center or Landlord's Adjacent Land which contain not less than 20,000 square feet of floor area and which are used for the business of a department store, junior department store or variety store (if otherwise permitted), but the total amount of floor area devoted to the sale, storage and display of such "patent" and "proprietary" medicines by any one (1) such business conducted in the Shopping Center or Landlord's Adjacent Land shall not exceed 2,500 square feet]; or

Section 9.2 (c) (iii). the conduct of a business consisting principally of the sale of perfumes, cosmetics, vitamins, "patent" or "proprietary" medicines (described above) or "sundries" of the types commonly sold in drug stores, or of any combination of the foregoing, whether operated on a discount or limited price or regular price basis, and whether on a self-service or service basis; or

Section 9.2 (c) (iv). the conduct of a business consisting principally of the sale of greeting cards, gift wrapping and "party goods," so-called, provided, however, that one such business in a premises not to exceed three thousand-six hundred (3,600) feet of floor area shall be permitted.

Section 9.2 (c) (v). Notwithstanding anything to the contrary contained in Sections 9.2 (c) (i), 9.2 (c) (ii) and 9.2 (c) (iii), however, Tenant agrees that:

(a) stores selling only their own private label cosmetics and personal care products of the kind now operated by "Aveda," "Bath and Body Works" and "The Body Shop" shall not be prohibited; and

(b) stores selling hair care products only to hair care salons and licensed hair care professionals shall not be prohibited; and

(c) one (1) so-called high end "skin care salon", such as an "Elizabeth Grady" salon providing consultation and clinical analysis, treatments by professional estheticians and make-up artists, and a prescribed home care program to promote the achievement and maintenance of the healthiest skin for people, shall be permitted to sell full priced brand name skin care beauty products, provided that such products are sold incidentally to and ancillary of the a business operated primarily as a skin care salon (reference herein to an "Elizabeth Grady skin care salon" shall be deemed to include a comparable skin care salon business operating under another name); and

(d) one (1) specialty high end perfumarie, for the sale at retail of full priced brand name perfume products such as a "Sephora" retail store (reference herein to a "Sephora" retail store" shall be deemed to include a comparable high end perfumarie business operating under another name); and

(e) one (1) so-called "hair salon" shall be permitted to sell hair care products, provided that such products are either private label products or are full priced brand name hair care products that are typically sold in hair salons, and further provided that same are sold incidentally to and ancillary of a business operated primarily as a hair salon.

Section 9.2 (d). Intentionally omitted.

Section 9.2 (e). Commencing on the Commencement Date and continuing until seven hundred thirty (730) days after Delivery of Possession and thereafter, subject to the second sentence of Section 9.2 (a) (i), during such time as any part of the demised premises shall be used or occupied for the sale of live or cut flowers and/or live plants, Landlord shall not lease, use, or permit to be used any other portion of, or other premises in, the Shopping Center or Landlord's Adjacent Land for the sale of live or cut flowers and/or live plants; provided, however, that:

Section 9.2 (e) (i). a general merchandise store containing more than one hundred thousand (100,000) square feet of ground floor area may sell live (but not cut) flowers as well as plants and other horticultural products; and

Section 9.2 (e) (ii). a home improvement store of the kind now operated by "Lowe's," "Home Depot," "Sears Hardware" or "True Value" and which contains more than thirty-five thousand (35,000) square feet of ground floor area may sell live (but not cut) flowers as well as plants and other horticultural products.

Section 9.2 (f). Commencing on the Commencement Date and continuing until seven hundred thirty (730) days after Delivery of Possession and thereafter, subject to Section 9.2(a)(ii) and the second sentence of Section 9.2 (a) (i), during such time as any part of the demised premises shall be used or occupied for a business which provides film or photo processing or developing services (including so-called "one hour" film developing services), Landlord shall not lease, use, or permit to be used any portion of, or other premises in, the Shopping Center or premises on Landlord's Adjacent Land for the operation of a business which provides film or photo processing or developing services of any type; provided, however, that this Section 9.2 (f) shall not apply to any general merchandise store containing more than one hundred thousand (100,000) square feet of ground floor area, and one (1) full-line camera store in the Shopping Center of the kind now operated by "Ritz Camera" may provide film or photo processing or developing services as part of the operation of said camera store.

Section 9.2 (g). Commencing on the Commencement Date and continuing until seven hundred thirty (730) days after Delivery of Possession and thereafter, subject to Section 9.2(a)(ii) and the second sentence of Section 9.2 (a) (i), during such time as any part of the demised premises shall be used or occupied for the operation of a bank, Landlord shall not lease, use, or permit to be used any portion of, or other premises in, the Shopping Center or premises on Landlord's Adjacent Land for use as a bank and/or for banking services; provided, however, that two (2) banks may be operated in the Shopping Center (in addition to any bank operated within the demised premises).

Section 9.2 (h). In order to insure that the parking areas of the Shopping Center shall not be overburdened and to preserve the character of the Shopping Center as an active center of retail trade offering a variety of goods and services capable of attracting the widest possible spectrum of shoppers, Landlord agrees that commencing on the Commencement Date and continuing until seven hundred thirty (730) days after Delivery of Possession and thereafter, subject to the second sentence of Section 9.2 (a) (i), during such time as at least the Minimum Square Footage of the floor area of the demised premises is used or occupied for the conduct of a "retail business," so-called, no other part of or other premises in the Shopping Center shall be used for any one or more of the following:

Section 9.2 (h) (i). for the conduct of a business operation which regularly or with significant frequency sells merchandise of the types or qualities now commonly known as "odd lot," "close out," "clearance," "discontinued," "cancellation," "second," "factory reject," "sample," "floor model," "demonstrator," "obsolescent," "over-stock," "distressed," "bankruptcy," "fire sale" or "damaged"; provided, however, that nothing contained in this Section shall be deemed to prohibit the operation in the Shopping Center of stores under the following trade names, as such stores are operated on the date hereof: TJ Maxx, Marshall's, Fashion Bug, Dots, A.J. Wright, Loehmann's, Ocean State Job Lot, and Men's Wearhouse; or

Section 9.2 (h) (ii). for any purpose or business which is noxious or unreasonably offensive because of the emission of noise, smoke, dust or odors, or

Section 9.2 (h) (iii). for any purpose other than the conduct of a "**retail business**," so-called, which term shall mean, banks, finance company businesses, consumer mortgage companies, travel agencies, premises which sell and provide facilities so that their customers may paint and fire ceramics, service and self-service dry cleaning and laundry businesses, shoe repair shops, barber shops, beauty shops, and real estate brokerage, stock brokerage and insurance brokerage businesses, as well as ordinary retail businesses selling and/or leasing merchandise; provided, however, that the Shopping Center may also contain one (1) tax consultant office which does not contain more than three thousand five hundred (3,500) square feet of floor area and one (1) so-called learning center, such as by way of example only, "Sylvan Learning Center" type facility which does not contain more than three thousand five hundred (3,500) square feet of floor area; or

Section 9.2 (h) (iv). for the operation of a motel, hotel, lodging or other temporary or permanent living facility; or

Section 9.2 (h) (v). for a restaurant business or alcoholic beverage business ("**bar**") of any kind, including, without limitation (A) a "car-hop" or "carry-out" restaurant business whose customers consume food items sold for off-premises consumption while such customers are occupying vehicles parked on the Common Facilities of the Shopping Center, and (B) a banquet hall business which serves its guests on a special, catered basis as distinguished from a restaurant business open to the public at large on a random basis, and (C) a restaurant-bar business which serves alcoholic beverages for on-premises consumption to customers who do not consume the beverages in question as a part of their meals; but this Section 9.2(h)(v) shall not limit the operation of a restaurant (D) that does not sell alcoholic beverages or (E) which serves alcoholic beverages for on-premises consumption to customers who consume such beverages as part of their meals; or

Section 9.2 (h) (vi). for any "**amusement operation**," so-called, which term shall mean and include any activity consisting wholly or in substantial part of the furnishing of entertainment or amusement facilities, regardless of whether as a business or as a part or aspect of a business (including, without limitation, off-track betting parlors, movie theaters, "penny arcades," so-called; amusement games or devices (electronic or otherwise), "discos," so-called; so-called "strip shows," and live entertainment of any kind); or for a massage parlor, so-called (provided that, however, so called "pampering" massages shall be permitted to be offered as a service ancillary to a business operated primarily as a full service beauty salon or beauty spa, further provided that related activities and all such massages shall: (i) be conducted in compliance with and not in violation of all applicable present and future statutes, laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal, governmental authorities (including, without limitation, those relating to criminal conduct, safety and/or health); (ii) be administered by a person, who at all times during the massage is fully clothed, so as not to be "topless" or otherwise in a state of dress that would expose one's private body areas; and (iii) not involve any salacious, lewd, obscene or sexual exposure, behavior, touching, nor activity of any kind or manner whatsoever) or the business of the sale of so-called "adult" material such as, without limitation, magazines, books, movies, video software and photographs; or

Section 9.2 (h) (vii). for any automobile or truck sales, storage, service, fueling, washing, or repair operation; or

Section 9.2 (h) (viii). for any business using outdoor space in its regular operations, such as lumber yards, boat sales yards and the like; or

Section 9.2 (h) (ix). for any office or storage operations except office and storage operations which are a part of the conduct of a retail business in the Shopping Center.

Section 9.2 (i). or the purposes of this Article, (i) the "floor area" of any premises (including the demised premises) shall include the ground coverage of any "garden shop" or "outdoor selling area" (regardless of whether enclosed or covered) which is or may be used in the conduct of business by the occupant of such premises, and (ii) "selling space" shall be measured to the interior faces of adjoining walls and to the exterior lines of adjoining aisles.

II. LANDLORD'S FORMS---PERMITTED USE; OBNOXIOUS USE RESTRICTIONS.

II.A. Landlord A.

7. RESTRICTIVE CLAUSE. Tenant covenants that it will not own, operate or maintain, or directly or indirectly have any affiliation, investment or interest in, or other business or financial association with, any retail commercial store or establishment for retail sales or merchandise display, which is similar to or in competition with the business conducted in the Premises within a radius of five (5) miles from the site of the Premises, except those in operation as of the date hereof as listed on the Exhibit attached, if any. For so long as Tenant shall own or have any interest in such other permitted locations, any change in the name, size, location, or the type of business conducted upon such other locations (within the radius above described) shall be deemed to be a breach of this Lease. In any such event, in addition to any other remedy available to it, Landlord shall have the right to require that any and all amounts received by Tenant in respect to sales and transactions made from any such other location operated in violation of this Article shall be included as Gross Sales hereunder for the purposes of calculating Percentage Rent due pursuant to Article 5 hereof, to the same extent as though such sale or transaction had been made on or from the Premises.

13. USE OF PREMISES. The Premises shall be used and occupied by Tenant solely for the purpose of _____ and for no other purpose whatsoever and Tenant further agrees to conduct its business in the Premises under the name or trade name of _____. The Premises shall not be used for any illegal purpose or in violation of any law or regulation of any governmental body, or in any manner to (i) create any nuisance or trespass; (ii) annoy or embarrass Landlord or any other tenant of the Shopping Center; (iii) vitiate any insurance carried by Landlord; (iv) alter the classifications or increase the rate of any insurance on the

Premises; (v) allow any noise or odor to emanate from the Premises; or (vi) violate the Certificate of Occupancy issued for the Premises.

14. CONDUCT OF TENANT'S BUSINESS. Tenant shall open for business in the Premises on or before the expiration of the Abatement Period, and shall thereafter continuously, actively and diligently operate its said business on the whole of the Premises, in a high quality and reputable manner, from at least _____ to _____ each day of each week including Sundays, if applicable law permits the Shopping Center to be open on Sundays. Tenant shall maintain a full staff of employees and a full and complete stock of merchandise at all times, shall use a cash register or other similar device for transacting sales, and shall maintain displays of merchandise in the display windows, if any, and keep such display windows and Tenant's store signs well lighted from at least dusk to 11:00 p.m. each day so as to maximize the Gross Sales produced by Tenant's business. Tenant shall warehouse, store and stock only such goods, wares and merchandise as Tenant intends to offer for sale at retail, in or from the Premises, and as permitted under this Lease. Tenant will not place or maintain any merchandise, refuse or other articles in any vestibule or entry of the Premises, on the sidewalks or corridors adjacent thereto or elsewhere on the exterior of the Premises or obstruct any driveway, corridor, sidewalk, parking area, mall or any other common area. Tenant will not conduct or permit to be conducted any auction, fictitious fire sale, going out of business sale, bankruptcy sale or other similar type sale in or connected with the Premises. In any and all of its printed or visual advertising in relation to the Premises, Tenant shall use the insignia or other identifying mark, if any, of the Shopping Center, as designated by Landlord from time to time. Tenant agrees that actual damages to Landlord resulting from a failure of Tenant to operate in the Premises in accordance with the provisions of this Lease (including, without limitation, damages resulting from the adverse impact on the sales and percentage rental payable to Landlord by other tenants of the Shopping Center), will be difficult to ascertain, and therefore, at Landlord's option, in addition to all other rights and remedies available to Landlord for breach of this Lease, Tenant shall pay to Landlord for the failure of Tenant to observe and perform the covenants of this Article 14 (in addition to Minimum Rent and other amounts otherwise payable by Tenant) liquidated damages in an additional amount equal to one hundred percent (100%) of the Minimum Rent and the Percentage Rent, if any, otherwise payable hereunder for each month during which such breach occurs, since the parties hereto agree that it is difficult, if not impossible, to ascertain precisely the damage caused to Landlord by a breach of the obligations contained in this Article, and that this provision for liquidated damages represents a fair and reasonable provision by the parties.

II.B. Landlord B.

9. Use of Premises.

(A) The Leased Premises will be used only for the Permitted Use [defined elsewhere], and for no other use or purpose. Landlord has not made any representations as to whether the Permitted Use is permitted by the municipality, or whether the Leased Premises is zoned for such use. Without limitation of the foregoing, no sale or dispensing of lottery tickets, other gaming tickets, or alcoholic beverages shall be permitted.

(B) Neither Tenant, nor any stockholder owning more than five (5%) percent of Tenant if Tenant is a corporation, nor any person, corporation, partnership, trust, other firm or entity which controls or is controlled by Tenant or is under common control with Tenant, nor any subsidiary of Tenant, nor any business organization affiliated with Tenant (including but not limited to any so-called "parent company" of Tenant), nor any guarantor of this Lease, will, directly or indirectly, conduct business at, or sell from, any other place situated within a radius of three (3) miles of the Leased Premises any merchandise or services which Tenant is permitted to sell or engage in any business which Tenant is permitted to conduct in the Leased Premises. In addition to, and not in exclusion of, any remedy available to Landlord for breach of the foregoing covenant, so long as this covenant is being breached, Tenant's annual Base Rent shall be increased by twenty-five (25%) percent and, in addition, one-half (1/2) of all of the "Gross Sales" (see Article 4(B)) realized in or from such other place shall be added to the Gross Sales of the Leased Premises for the purpose of computing the Percentage Rent under this Lease, with the same effect as though such other Gross Sales had actually been realized from the Leased Premises; but if Tenant has ceased conducting business at the Leased Premises then, in addition to the twenty-five (25%) percent Base Rent increase, all the "Gross Sales" realized from such other place shall be attributed to the Leased Premises.

(C) Tenant's Business Operations. Tenant shall keep the Leased Premises open and operated continuously for business not less than from 10:00 A.M. to 9:00 P.M. each day for at least six (6) days a week. Tenant will continuously operate its business therein with diligence and in a manner calculated to produce maximum Gross Sales, fully staffed with personnel at the Leased Premises, and at all times fully stocked with seasonal merchandise. Tenant agrees for its part: no auction, fire, bankruptcy, going out of business or similar sale will be conducted or advertised; no merchandise will be kept, displayed or sold or business solicited in the Shopping Center outside the Leased Premises; no nuisance will be permitted; nothing shall be done which is unlawful, offensive or contrary to any law, ordinance, regulation or requirement of any public authority, or which may be injurious to or

adversely affect the quality of the Leased Premises or the Shopping Center; no part of the Leased Premises (especially the electric and plumbing systems, the floor and walls) will be overloaded, damaged or defaced; no emission of any objectionable odors, sounds or vibrations will be permitted. Tenant shall procure all licenses and permits required for the use or occupancy of the Leased Premises and the business being conducted therein; the storefront, show windows and signs will be repaired, kept clean, in good condition and lighted; all merchandise and other property will be delivered to or removed from the Leased Premises only by the rear entrance; all garbage, waste and refuse will be kept stored temporarily inside the Leased Premises and then regularly removed at Tenant's expense and, if Landlord opts, only by a contractor designated by Landlord, provided its price is competitive. Tenant will comply with the requirements of law and any requests of governmental agencies or Landlord in its recycling program, if any. Tenant will cooperate with Landlord and other tenants of the Shopping Center in promotions and advertising, and will become a dues-paying member of any merchants' association (or similar organization) of which fifty (50%) percent or more of the tenants are members; or alternatively will become a participant of and shall pay its prorata share (based on Tenant's relative store size) of any expenses incurred by a marketing or promotion fund program now or hereafter established by Landlord, if any. Tenant shall comply with all environmental statutes, regulations or ordinances now or hereinafter enacted by government authorities. Tenant shall not permit the release, emission, disposal, dumping or storage of hazardous wastes (as defined in any such laws) into the septic tanks, sewers, or other waste disposal facilities of the Shopping Center or anywhere in the Shopping Center, or permit same to be brought into the Leased Premises at any time, and the provisions of this sentence shall survive the expiration of the Lease Term. Tenant shall keep the Leased Premises free of rodents, vermin, insects and other pests, and provide regular exterminator services at its own expense, and, if Landlord opts, only by an exterminator designated by Landlord provided its price is competitive. Tenant agrees that nothing will be done or omitted which may either prevent the obtaining by Landlord or other tenants of insurance on any part of the Shopping Center or on any personal property thereon, or which may make void or voidable any such insurance, or which may create any extra premiums for any insurance carried by Landlord or other tenants. Tenant will comply with all requirements and recommendations of Landlord's and Tenant's insurance companies and any rating bureau or similar organization, including maintaining and servicing fire extinguishers.

(D) Tenant agrees to: stock only merchandise Tenant intends to offer for sale at retail at the Leased Premises; use for office or other non-selling purposes only incidental space required for Tenant's retail business conducted at the Leased Premises; not sell goods, solicit business or distribute advertising matter in the Common Areas; not permit preparation of food or any cooking, baking or frying in the Leased Premises. Tenant shall keep the sidewalks, curbs and ramps (if any) adjacent to the Leased Premises (and also all delivery areas, ramps, loading areas and docks used exclusively by Tenant) in good and safe condition and free from snow, ice, and rubbish. Tenant will not make or suffer any waste of the Leased Premises. Landlord shall not be liable for the act of any other tenant or person who may cause damage to or who may interfere with Tenant's use or occupancy of the Leased Premises or Tenant's business.

II.C. Landlord C.

Section 6.01

(a) **Permitted Use:** The premises shall be used and occupied during the term hereof for the following purposes, and none other:

["PERMITTED USE"]

(b) **Special Restrictions:** In order to specify particular uses and practices which, if engaged in by Tenant, would be in violation of other leases in, or recorded agreements pertaining to, the Center or of exclusive use privileges which Landlord has, will, or may desire to grant, or which constitute businesses or practices which Landlord may desire to prohibit or control, Tenant shall not, at any time during the term: (1) maintain or permit any vending machines on the premises; (2) sell any additional merchandise or conduct any business or perform any additional service on the premises which would violate or be in conflict with any restrictive use covenant or exclusive use privilege at any time binding upon Landlord, but this item (2) shall not be deemed to preclude the use allowed under Section 6.01(a) hereof; or (3) use, or allow to be used, all or any part of the premises for any of the following:

Tenant shall bear all risks of violation of any provision of this Section 6.01(b) and shall defend, indemnify and save Landlord harmless from all damages and expenses (including counsel and expert fees) resulting from any such violation.

Section 6.02 Continuous Occupancy

(a) At the commencement of the term of this Lease Tenant shall occupy the premises and promptly open for business, at which time the premises shall be fully fixtured, fully stocked and fully staffed. Tenant acknowledges that it has been informed that its obligation to open for business promptly at the commencement of

the term has been and will be relied upon by Landlord in dealing with other tenants in the Center, and failure of Tenant to open for business as above specified may cause substantial damages to Landlord. Tenant shall defend, indemnify and save Landlord harmless from any damages which may be claimed against Landlord and shall indemnify Landlord for any losses suffered because of Tenant's failure to comply with its obligations under the first sentence of this Section 6.02(a).

(b) Throughout the term, Tenant shall continuously conduct in the premises, with a full stock of merchandise and full staff of personnel, the business permitted under Section 6.01(a) on all business days and during such hours as are kept by a majority of the tenants in the Center (excluding the Tenant hereunder), but in any event Tenant shall be open for business from 10 a.m. to 6:30 p.m., Monday through Saturday. Tenant acknowledges that its obligation to continuously and actively conduct business in the premises in the manner prescribed in this Section 6.02(b) is for the purpose of enhancing the business activity and public patronage of all stores in the Center in order to produce for Landlord the maximum possible percentage rents from all stores in the Center as well as from the premises and to enhance the leaseability of floor space in the Center; and Tenant acknowledges that failure on its part to comply with the provisions of this Section 6.02(b) would cause Landlord substantial damages which might be difficult or susceptible of exact proof. Accordingly, the parties have agreed that if Tenant fails to comply with the provisions of this Section 6.02(b), then Landlord shall not be required to prove its actual damages for breach of this Section 6.02(b) but in lieu thereof Tenant shall pay Landlord, as liquidated damages, an additional monthly rent equal to the monthly minimum rent payable under Section 4.01 hereof, which liquidated damage payments shall continue from the date of breach until such breach is cured or until the end of the then current term of this Lease, whichever is first. Said liquidated damages shall be paid monthly, concurrently with the monthly payments of minimum rent reserved under this Lease. Nothing in this Section 6.02(b) shall be construed as a limitation upon landlord's right to obtain specific performance of Tenant's obligations to continuously conduct business in the manner herein specified or to recover any other provable monetary damages. A breach by Tenant of its obligations under subsection (a) of this Section 6.02 shall also constitute a breach of this subsection (b) and entitle landlord not only to its claims under subsection (a) but also to liquidated damages under this subsection (b) for so long as the breach of this subsection continues.

Section 6.03 Permitted Name.

Tenant shall conduct business on the premises in the name of _____ and under no other name or trade name unless and until the use of some other name is approved in writing by Landlord.

III. Tenant's Forms--Common Area Maintenance.

III.A. Tenant A.

7. Landlord, at all times, shall: (a) keep in good repair and condition the Pylon Sign(s) and all Common Areas of the Shopping Center and all directional signs therein, (b) keep the Common Areas suitably paved and marked for parking and traffic flow, (c) keep all Common Areas free of refuse and obstruction and free of snow and ice to the extent required by the business operations of the stores within the Shopping Center, (d) keep the Common Areas properly drained, and (e) provide the following services at all times when the Demised Premises shall be open for business and for one (1) hour thereafter: (i) keep the Pylon Sign(s) and the Common Areas adequately lighted and (ii) provide electricity to Tenant's, and any other lessees', panels permitted on the Pylon Sign(s) pursuant to Paragraph 3 of this Schedule B.

10. As partial reimbursement to Landlord of the cost to Landlord of (a) performing the obligations of Landlord set forth in Paragraph 7 of this Schedule B (the "CAM Costs") and (b) the premiums paid to insurance companies for the insurance required under Sections 10.3 and 10.4 and Paragraph 11 of this Schedule B (the "Insurance Costs"), Tenant shall pay Landlord for each year included in the term of this lease an amount equal to the product of "Tenant's Fraction" (defined in Section 6.1) and the CAM Costs and Insurance Costs during said year. The amounts payable by Tenant under this Paragraph 10 shall be payable monthly, on account, at the times minimum rent is payable hereunder, in equal monthly installments of one-twelfth (1/12th) of one hundred five percent (105%) of the annual amount actually payable by Tenant under this Paragraph 10 for the immediately preceding calendar year with the amount of any excess payment on account by Tenant hereunder being adjusted within ninety (90) days after the close of each year by Tenant withholding any such excess from the next succeeding monthly payments thereafter becoming due on account hereunder, and the amount of any deficiency in monthly payments on account hereunder by Tenant being paid by Tenant within ninety (90) days after receipt by Tenant of the evidence required of Landlord under the immediately following sentence. Landlord shall submit to Tenant evidence of such cost to Landlord and evidence of calculation of Tenant's Fraction in such detail as Tenant may require and said deficiency shall not be due and payable until such evidence has been furnished to Tenant. Should Landlord fail to provide Tenant with such evidence within sixty (60) days of Tenant's written request therefor, Tenant may thereafter

continue to pay at the rate in effect for the prior calendar year until such time as Landlord provides Tenant with the requested evidence, and Tenant shall not be deemed to be in default under this Lease, nor shall Tenant incur any other liability to Landlord, on account of such reduced payment. Landlord shall be responsible for providing Tenant with such reconciliation documents for the entire preceding calendar year regardless of whether or not Landlord owned the Shopping Center during such time period. Tenant's failure to pay any amount pursuant to this section shall not be deemed a default pursuant to Article XIII provided Tenant pays any amount which it does not in good faith dispute. At any time before or after the making of such payments, Tenant shall have the right to audit or cause to be audited Landlord's invoices, books and records pertaining to the CAM Costs, Insurance Costs and Real Estate Taxes due under Article VI of this lease and backup relating to calculation of Tenant's Fraction and if such audit fails to substantiate the amount of charges imposed or to be imposed by Landlord on Tenant, then Tenant shall be entitled to a reduction or refund. If such audit shows that the charges imposed by Landlord on Tenant with respect to CAM Costs [and Insurance Costs] were overstated by more than four percent (4%), Landlord shall promptly reimburse Tenant for the actual cost to Tenant of such audit. At Tenant's election, any such refund or reimbursement shall be paid in cash to Tenant or credited by Tenant against its next monthly installment(s) hereunder. If there has been an overcharge and a resulting overpayment by Tenant, such amount shall promptly be reimbursed by Landlord to Tenant; and if such reimbursement does not occur within thirty (30) days after Landlord has been given notice of the overcharge established by such audit or inspection, then Tenant shall have the right to offset the amount of such overcharge from rent and other charges thereafter accruing until, in such fashion, such overcharge shall have been recovered in full. For the first year included in the term the monthly payment on account by Tenant under this Paragraph 10 shall be _____ Dollars and _____ Cents (\$_____). Tenant's charges under this Section 10 (i) shall not exceed _____ Dollars and _____ Cents (\$_____) per square foot of the Demised Premises during the first year of the term of this lease and (ii) shall not increase by more than three percent (3%) per annum on a non-cumulative basis. As the number of square feet of floor area may change during any year, Tenant's Fraction may change during said year and the amount payable by Tenant for said year pursuant to the provisions of this Paragraph 10 shall reflect such changes in square footage. The amount payable hereunder shall not include any item not specifically set forth in Sections 10.3, 10.4, Paragraph 7 or 11 of this Schedule B, including, without limitation, the amounts set forth in the following sentence. For purposes of clarification, the amount payable hereunder shall not include: (a) any amounts reimbursable to Landlord by insurance companies, (b) any amounts expended for repairs or replacements of the Common Areas required prior to the first anniversary of the Commencement Date, (c) any amounts expended for repairs or replacements of the Common Areas required as the result of settling, (d) any amounts allocable to any so-called management or administrative costs, charges or fees or overhead however designated, or (e) any amounts allocable to any so-called capital expenditures.

11. Landlord shall maintain with respect to the Common Areas from the date the Demised Premises are delivered to Tenant until expiration of the term of this lease a policy or policies of commercial general liability insurance in amounts of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury and property damage and Three Million Dollars (\$3,000,000.00) aggregate limit per location. Such policies of insurance to include Tenant as an additional insured thereunder and be issued for periods of not less than one (1) year by insurance companies with an A.M. Best rating of B+ or better and a financial size of at least VII (or a comparable rating by another national rating organization if A.M. Best is no longer in existence) and authorized to do business in the state in which the Demised Premises are located. Landlord shall deliver such policies to Tenant at least fifteen (15) days prior to the Commencement Date and each renewal policy at least ten (10) days prior to the expiration of the policy it renews. In lieu of delivering any policy of insurance to Tenant, Landlord may deliver to Tenant a certificate of the company issuing such policy. All such insurance policies shall provide that such policies shall not be canceled without at least ten (10) days prior written notice to Tenant.

III.B. Tenant B.

(a) **Common Area Maintenance.** Landlord shall be responsible for all maintenance, replacement and repair of the Common Areas, common pylon or monument sign structures, and common facilities, including, without limitation, sweeping, striping and snow and ice removal, necessary to maintain all driveways, sidewalks, street and parking areas, and all other Common Areas, in a first-class condition, free of all settling, chuck holes, fissures and cracks, clear of standing water, and in a safe, sightly and serviceable condition (collectively "Common Area Maintenance").

(b) **Tenant's Contribution to Common Area Maintenance.** Effective on the Rent Commencement Date, and as Additional Rent, Tenant shall pay to Landlord on the first day of each month, Tenant's Proportionate Share of the costs of only those items of Common Area Maintenance that are described in this Article 15(c) ("CAM Expenses"), provided such CAM Expenses were incurred and paid by Landlord within the period for which the statement is rendered. The amount of Tenant's payments towards CAM Expenses shall be based upon Landlord's reasonable estimate of Tenant's Proportionate Share of CAM Expenses, subject to annual reconciliation as

provided in Article 15(e). The CAM Expenses for which Tenant must contribute its Proportionate Share shall be limited to commercially reasonable amounts incurred and paid by the Landlord for (i) cleaning, sweeping, snow and ice removal, drainage and re-striping of the parking areas, streets, sidewalks, service drives and driveways; (ii) maintenance, repair and upkeep of Common Areas, including parking areas, and planted or landscaped areas; (iii) maintenance, repair and replacement of bulbs and light standards with respect to the parking lot lighting, and the cost of lighting the parking lot and other Common Areas if Tenant's parking lot lighting is not metered directly into Tenant's meter; (iv) commercial general liability and all risk property damage insurance (excepting all risk property damage insurance if Tenant is insuring the demised premises pursuant to Article 20(a)(ii)), as required by Article 20(b); [and] (v) wages and salaries of persons directly and actually performing services described in clauses (i) through (iii) above **[Optional:** and (vi) a management or administrative fee of five percent (5%) of the CAM Expenses (excluding utility costs and insurance premiums)]. Tenant's Proportionate Share of CAM Expenses for the first Lease year shall not exceed _____ (\$_____) per square foot of gross leasable area per annum. Thereafter, Tenant's Proportionate Share of CAM Expenses in any Lease year will not exceed Tenant's Proportionate Share during the previous Lease year by more than four percent (4%). Landlord shall maintain accurate and complete records with respect to CAM Expenses, and shall use commercially reasonable efforts to minimize such expenses.

(e) **Specific Exclusions.** Notwithstanding anything contained in Article 15(c), CAM Expenses shall not include, without limitation:

- (i) The cost of initially constructing and installing, or reconstructing and reinstalling, any portion or all of the Shopping Center, the Common Areas, or any expansion or replacement thereof;
- (ii) The cost of capital improvements or replacements or any other expenditure that, pursuant to generally accepted accounting principles, is deemed to be a capital expense, or payments on account of future capital expenses or accounts or funds maintained entirely or in part for the purpose of funding future capital improvements;
- (iii) Any cost to repair a Common Area element incurred during the one (1) year construction warranty period following initial construction of such element;
- (iv) Depreciation;
- (v) Interest, late charges, and penalties on any CAM Expenses;
- (vi) Attorneys' fees and costs;
- (vii) The cost of any tenant improvements or other improvements, or other services or other Common Area costs, which are performed by or incurred by Landlord for the benefit of some, but not all, tenants of the Shopping Center;
- (viii) Expenses of maintenance, repair and insurance of any Outlot Area that is separately maintained, insured, or paid for by the users of such Outlot Area;
- (ix) Common Area costs which are self-insured (including retentions or deductibles) or are reimbursed by insurance proceeds (or would have been so reimbursed had Landlord maintained full replacement cost insurance) and/or condemnation awards;
- (x) Any and all expenses incurred in procuring, retaining, negotiating, amending, extending, administering, or terminating leases with any existing or prospective tenants, including without limitation advertising, brokerage, architectural, engineering, and legal fees;
- (xi) Any amounts payable under mortgages, deeds of trust, or ground leases encumbering all or any part of the Shopping Center;
- (xii) Any costs or expenses incurred by Landlord in securing any governmental approvals to construct or operate the Shopping Center, whether pursuant to a development agreement or otherwise, including, without limitation, any impact fees, development fees, dedications, or other fees or charges paid to any governmental authority in connection with any such construction or operation;
- (xiii) Any costs and expenses of investigating, removing, maintaining or monitoring any Hazardous Material (as defined in Article 34), or any costs and expenses of complying with Applicable Laws;
- (xiv) Costs attributable to enforcing leases against tenants in the Shopping Center, such as attorney's fees, court costs, adverse judgments, and similar expenses;
- (xv) Costs that are reimbursable to Landlord by tenants as a result of provisions contained in their specific lease, such as excessive use of utilities;
- (xvi) Costs incurred due to violations of any of the terms and conditions of any leases in the Shopping Center;
- (xvii) Except as expressly provided in Article 15(c), management or administrative fees, overhead or profit;
- (xviii) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;
- (xix) Rentals and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature;

- (xx) Advertising and promotional expenditures, including, without limitation, wages and salaries of persons managing or administering such expenditures;
- (xxi) Costs incurred in operating and maintaining the Shopping Center's parking facilities if the Landlord charges for parking;
- (xxii) Wages, salaries or other compensation paid to any employee above the grade of building manager;
- (xxiii) The cost of correcting any violations of Applicable Laws in the Shopping Center;
- (xxiv) Costs attributable to repairing items that are covered by warranties;
- (xxv) Any costs attributable to holiday decorations; and
- (xxvi) The cost or rental value of vacant space in the Shopping Center, or space provided for maintenance, management, administrative, or security functions.

(f) **Reconciliation of Payments.**

(i) Within sixty (60) days following the end of each calendar year of the term of this Lease, Landlord shall furnish to Tenant a detailed statement showing the total costs of Common Area Maintenance for the calendar year just expired, and the amount of Tenant's Proportionate Share of CAM Expenses payments made by Tenant during such calendar year, together with copies of all back-up billings, invoices and any other documentation to evidence the Common Area Maintenance costs. If the annual statement and required supporting documentation are not provided within such sixty (60) day period, Tenant may suspend payment of future billings until such information is provided. If Tenant's Proportionate Share of CAM Expenses for such calendar year exceeds Tenant's payments so made, then Tenant shall pay the deficiency to Landlord within thirty (30) days following receipt of any statement that Tenant does not dispute. If Tenant's payments exceed Tenant's Proportionate Share of CAM Expenses, as shown on such statement, then such excess shall be applied against Rent next becoming due under this Lease, or if such overpayment is with respect to the last calendar year during the Lease term, then such excess shall be refunded to Tenant within thirty (30) days following receipt of such statement.

(ii) Within thirty-six (36) months following receipt of an annual statement of expenditures, Tenant may have Landlord's records of Common Area Maintenance costs associated with that annual statement reviewed by Tenant or its agent. If Tenant in good faith contends the annual statement indicates noncompliance with the provisions of this Article, then Tenant will give Landlord notice within the three (3) year period described above of the amount of the overpayment, and Landlord shall pay such amount within thirty (30) days with interest thereon at the Default Rate specified in Article 38, unless Landlord in good faith contests such amount. If Landlord in good faith contests such amount, then either Landlord or Tenant shall have the right, upon notice to the other, to initiate the following dispute resolution procedure: Tenant and Landlord shall endeavor to reconcile such dispute within thirty (30) days following the notice from Tenant. If the parties are unable to resolve such dispute, then they shall jointly select a third, independent party who shall make a final and binding decision within thirty (30) days after being selected. The third party's fee shall be paid by the party against whom such decision is rendered (or proportionately by the parties, based on the decision regarding the disputed costs, if the decision includes elements in favor of and against each party). The cost of Tenant's review shall be borne by Tenant unless Tenant's review (or the decision of the arbitrator, if applicable) that discloses that the amount of CAM Expenses that Landlord invoiced to Tenant and Tenant paid to Landlord exceeds the product of (A) the actual amount of CAM Expenses properly allocable to Tenant multiplied by (B) one hundred three (103%) percent (a "Material Discrepancy"), in which event Landlord shall pay to Tenant upon demand the reasonable expenses of the review and the amount of Tenant's CAM Expenses overpayment (together with interest on the CAM Expenses overpayment at the Default Rate from the end of the calendar year with respect to which the overpayments were made to the date paid). If a review by Tenant discloses a Material Discrepancy for the year being reviewed, then Tenant shall have the right to review Landlord's records of Common Area Maintenance costs for the three (3) calendar years immediately preceding the calendar year in which the Material Discrepancy occurred.

III.C. Tenant C.

Section 6.1. Common Facilities.

As consideration for Landlord's performance of its obligations with respect to the Common Facilities (defined in Section 8.1), commencing on the Rent Commencement Date, Tenant shall pay to Landlord Tenant's pro rata share of the "Common Facilities Maintenance Expenses". The term "Common Facilities Maintenance Expenses" shall mean and be limited to only those reasonable expenses actually incurred by Landlord (net of proceeds from other sources, i.e., discounts, rebates, or the proceeds of warranty or insurance claims, or contributions by parties other than occupants of the Shopping Center) in the performance or discharge of the following activities upon the Common Facilities:

- (i) Removal of water, snow and ice.
- (ii) Maintenance of lighting equipment.

- (iii) Cleaning.
- (iv) Repainting the lines and wheel stops designating vehicular parking and traffic flow.
- (v) Repair and maintenance of the pavement, sidewalk, curbing and substrata (together with any Replacements thereof, subject to, in accordance with and as limited by Section 6.2 of this lease).
- (vi) Repainting of signs on light poles.
- (vii) Charges for electricity for illumination.
- (viii) Maintenance of landscaping, including irrigation systems.
- (ix) Trash removal related to the Common Facilities generally (i.e. trash removal expenses attributable to other tenants of the Shopping Center shall be excluded), if required.
- (x) Maintenance of any entrance and/or exit signage and any pylon sign advertising the Shopping Center (and the cost of electricity therefore), (but only if the sole identification panel thereon is the name of the Shopping Center or if Tenant or anyone claiming under Tenant has an identification panel thereon), but in no event shall said costs include the cost of maintaining any other tenant identification panel(s) thereon.
- (xi) Premiums paid by Landlord for commercial liability insurance upon the Common Facilities in amounts not greater than those required to be carried by Landlord pursuant to Section 12.4 of this lease, notwithstanding any greater limits that Landlord is required to carry in accordance with Section 4.01 (b) of the Prime Lease.
- (xii) Police, security and traffic control services, if and to the extent Landlord reasonably deems the same necessary.
- (xiii) Other activities which are consistent with the custom and practice employed by the shopping center industry in first class shopping centers similar to the Shopping Center in the Baltimore Metropolitan Area. Tenant's pro rata share of the Common Facilities Maintenance Expenses shall be computed by multiplying the whole of the Common Facilities Maintenance Expenses for the applicable Lease Year by Tenant's Building Fraction. Tenant's payments for the first Lease Year and thereafter until adjusted in accordance with the provisions set forth in this Section shall be paid in equal monthly installments of \$_____ in advance on the first day of each month and pro rata for any fraction of a month, but the amount of such payment allocable to the partial month, if any, following the Rent Commencement Date shall be paid in arrears on the first rent day. Within one hundred twenty (120) days after the end of each Lease Year during the term hereof, Landlord shall furnish to Tenant a statement in reasonable detail setting forth the computation of Landlord's Common Facilities Maintenance Expenses pursuant to this Section 6.1. Upon Tenant's written request, Landlord shall furnish to Tenant photocopies of bills and other relevant material confirming Landlord's statement of Common Facilities Maintenance Expenses. Within ninety (90) days after receipt by Tenant of Landlord's statement [or if Tenant has requested such confirmatory material, within sixty (60) days after receipt by Tenant of such confirmatory material], there shall be an adjustment between Landlord and Tenant, with payment by Tenant to Landlord or repayment by Landlord to Tenant, as the case may require, to the end that Landlord shall receive Tenant's pro rata share of the Common Facilities Maintenance Expenses. Payments under this Section for the second and subsequent Lease Years shall be made monthly on the basis of one hundred and ten (110%) of Tenant's actual pro rata share for the preceding Lease Year, when such amount becomes known, with an adjustment after costs for the current Lease Year are known, as hereinabove provided.

Section 6.2. Replacements.

Notwithstanding the foregoing, the cost of Replacements (defined below) to the Common Facilities shall be excluded from the Common Facilities Maintenance Expenses to be shared by Tenant pursuant to Section 6.1, except only as follows: the cost of Replacements shall be included within Common Facilities Maintenance Expenses with respect to Replacements made after the initial ten (10) Lease Years of this lease, and, the costs for Replacements shall also be included in Common Facilities Maintenance Expenses with respect to Replacements made more frequently than once every ten (10) Lease Years thereafter, provided that and only if Landlord shall provide Tenant with reasonable notice prior to commencing any such Replacement project, and additionally provided that any such Replacement costs shall be amortized over the applicable ten (10) year period (as opposed to the period for their useful life) in equal annual or monthly installments, unless such costs are not more than Ten Thousand Dollars (\$10,000.00), in which case the entire cost may be included in the Common Facilities Maintenance Expenses for such calendar year). "**Replacements**" shall mean replacements or repairs of a structural or capital nature.

Section 6.3. Landlord's Records.

Landlord shall keep, in an office at the Shopping Center, or elsewhere in the continental United States, for at least the period required by the Internal Revenue Service, complete and accurate books and records with respect to all of the Common Facilities costs for such period and Tenant shall have the right, upon not less than ten (10) days' notice in writing to Landlord, at any time during such period to have such books and records audited and/or inspected for any Lease Year, but, with respect to any such Lease Year, only within the five (5) years following the furnishing to Tenant of the statement setting forth the computation of Landlord's Common Facilities Maintenance

Expenses for such Lease Year pursuant to Section 6.1 of this lease. Such audit or inspection shall be performed during Landlord's usual business hours and without interference with the conduct of business at the place where the audit is made. Tenant shall provide Landlord with a complete copy of the auditor's or inspector's report.

In the event that such audit or inspection discloses that Tenant paid an amount in excess of its proper contribution, Landlord shall refund to Tenant the excess promptly upon receipt of the auditor's or inspector's report and if Tenant's payment was in excess of two (2%) of its proper contribution, Landlord shall also reimburse Tenant for Tenant's reasonable third party costs for the audit or inspection. In the event that such audit or inspection discloses that Tenant paid an amount less than its proper contribution, Tenant shall pay to Landlord the deficiency promptly after the completion of the auditor's or inspector's report. Tenant shall not be deemed in default of non-payment of Common Facilities charges during such time as it contests the same in good faith.

IV. LANDLORD'S FORMS---COMMON AREA MAINTENANCE.

IV.A. Landlord A

8. ANNUAL OPERATING COSTS. Tenant agrees to pay to Landlord on the first day of each month, in advance, during the term hereof, as Additional Rent, without notice or demand therefor and without any deduction whatsoever, an annual operating cost charge equal to one-twelfth (1/12th) of its Proportionate Share (as hereinafter defined) of the Annual Operating Costs (as hereinafter defined) of the Shopping Center. Tenant shall initially pay an estimated minimum annual charge of \$_____ per year, in equal monthly installments of \$_____ each. At any time during each twelve (12) month period, Landlord may retroactively re-estimate Tenant's proportionate share of Landlord's Annual Operating Costs and may bill Tenant for any deficiency which may have accrued during such twelve (12) month period and thereafter Tenant's monthly installments shall also be adjusted. Within one hundred eighty (180) days (or such additional time thereafter as is reasonable under the circumstances), following each September 30th of each year, Landlord shall deliver to Tenant a statement of Landlord's Annual Operating Costs for such twelve (12) month period and the monthly installments paid or payable shall be adjusted between Landlord and Tenant, and Tenant shall pay Landlord or Landlord shall credit Tenant's account (or, if such adjustment is at the end of the term, Landlord shall pay Tenant), as the case may be within fifteen (15) days of receipt of such statement, the amount of any excess or deficiency in Tenant's Proportionate Share of Landlord's Annual Operating Costs paid by Tenant to Landlord during such twelve (12) month period. Failure of Landlord to provide the statement called for hereunder within the time prescribed shall not relieve Tenant of its obligation hereunder. The obligation to pay Annual Operating Costs accruing during the term shall survive the expiration or other termination of this Lease.

(a)(i) Tenant's share of Annual Operating Costs ("Tenant's Proportionate Share") for each full or partial fiscal year selected by Landlord during the Term shall be computed by Landlord by multiplying the amount of Annual Operating Costs by a fraction obtained by dividing the total number of square feet of space contained in the Premises by the total leasable retail area contained within all buildings in the Shopping Center from time to time, exclusive of any free-standing buildings the tenants of which are required by the terms of their leases to maintain common areas adjacent to their facilities.

(ii) If Landlord elects to assume responsibility for the HVAC Equipment pursuant to paragraph 17(a) of this Lease, then Tenant's Proportionate Share of Annual Operating Costs shall also include the costs and expenses incurred by Landlord with respect to the HVAC Equipment, which shall be determined by multiplying the total amount of Annual Operating Costs incurred by Landlord with respect to HVAC Expenses in the Shopping Center by a fraction obtained by dividing the total number of square feet of space contained in the Premises by the total leasable area contained within all other premises in the Shopping Center, from time to time, for which Landlord has, or has assumed, the responsibility of maintaining HVAC Equipment.

(b) Annual Operating Costs means the total cost and expense incurred by Landlord in maintaining public liability insurance, fire insurance with extended coverage, workers' compensation insurance, property damage or other insurance on the Shopping Center with such policies and companies and in such limits as selected by Landlord and in managing, operating, repairing, replacing and maintaining the Shopping Center, roof and the Common Facilities (as hereinafter defined), including all amounts charged by Landlord for any such services and work provided directly by Landlord and all amounts charged by other persons or entities, whether or not related to Landlord, and specifically including without limitation, the costs of gardening and landscaping; management, maintenance and service contracts; repairs; line painting; regulation of traffic; utilities; sanitary controls; removal of snow, trash, rubbish, garbage and other refuse; depreciation on equipment and machinery used in such maintenance, the cost of personnel to implement such services; servicing and maintaining the fire sprinkler system; legal, management and accounting fees; cleaning,

maintaining, repairing and replacing the Common Facilities; and in providing security protection; at Landlord's option, reserve funds for the replacement of roof and parking lot facilities and for the HVAC Equipment if Landlord elects to assume responsibility for the HVAC Equipment, as provided in Article 17; and an administrative fee equal to fifteen percent (15%) of Annual Operating Costs. It is understood and agreed that management fees may be charged by Landlord or any other person or entity on the basis of a specified percentage of the gross receipts derived from the Shopping Center or on any other basis, provided that, in the case of management fees charged by Landlord, such fees shall not exceed the greater of five percent (5%) of gross receipts or the customary management fees charged for similar properties in the same geographic area.

(c) Common Facilities means all areas provided by Landlord, from time to time, for the common or joint use and benefit of the occupants of the Shopping Center and their employees, agents, servants, customers and other invitees, including, without limitation, management offices, community rooms, parking areas, parking decks, access roads, driveways, retaining walls, landscaped areas, truck serviceways, sidewalks, parcel pickup stations and, to the extent Landlord elects to service, repair, maintain and/or replace HVAC Equipment (as defined in Article 17) in the Shopping Center, all such HVAC Equipment for which Landlord has, or has assumed, responsibility.

(d) Landlord shall not be liable in any such case for any inconvenience, disturbance, loss of business or any other annoyance arising from the exercise of any or all of the rights of Landlord in this Article 8.

IV.B. Landlord B.

8. Common Area.

(A) Subject to subparagraph (C) below, Tenant and its employees, agents, and customers shall have the non-exclusive right to the use or benefit of the Common Area to the extent and in the manner reasonably designated by Landlord. Except as otherwise specified in this Lease, Landlord agrees to make all necessary repairs and maintenance to the Common Area outside Tenant's Maintenance Area to keep same in good condition, including without limitation sweeping and removal of snow, ice and refuse, and landscaping maintenance.

(B) "**Common Area**" is hereby defined as the areas, equipment and facilities of the Shopping Center or of any other land or property made available by Landlord for the safety, benefit or convenience of tenants or their employees, subtenants, customers or invitees, including (as illustrations and not in limitation): parking areas, driveways, truck serviceways, sidewalks and curbs; entrances and exits from the adjacent streets; traffic lights, traffic islands, landscaped areas; meter rooms outside individual stores; fencing; lighting facilities; sprinkler system serving landscaped areas or buildings; sewage system outside tenants' stores; roofs, gutters and downspouts and the exterior of outside walls (excluding storefronts) of buildings (without implying Tenant may use the roofs or outside walls); directional or safety signs; Landlord's pylon signs (but not individual tenant panels) and sign panels which identify the Shopping Center. Tenant acknowledges that the Common Area may also be used by occupants and/or invitees of properties adjoining the Shopping Center, whether or not owned, leased or managed by Landlord.

(C) Landlord reserves the right at any time and from time to time to change or reduce or add to the Common Area outside Tenant's Maintenance Area. Common Area, other than Tenant's Maintenance Area, shall be under the exclusive control and management of Landlord (including the hours that parking area lights are kept on). Tenant and its employees shall park their vehicles only on the Leased Land. Landlord shall have the right to tow improperly parked vehicles at Tenant's expense and/or levy an assessment against Tenant of Forty (\$40.00) Dollars per day for each vehicle. Tenant shall not permit trucks or delivery vehicles used by it to be parked in the Common Area except where Landlord permits. Landlord may close parts of the Common Area for such time necessary in its opinion to prevent a dedication or accrual of rights in other persons, or to discourage non-customer parking. Landlord shall not be obligated (although it may do so at its option) to keep the Common Area illuminated to any extent after 10:00 P.M. or on any Sunday or legal holiday.

(D) **Common Area Rent.** In the manner hereinafter described, Tenant shall pay its share of "Yearly Common Area Costs" (hereinafter defined). On the first day of each month in advance, Tenant shall pay to Landlord, as additional Rent (herein called "**Common Area Rent**") one-twelfth (1/12th) of Tenant's annual share of Landlord's estimated Yearly Common Area Costs, based on Landlord's estimates. Tenant's annual share shall be determined by multiplying the Yearly Common Area Costs by a Fraction ("**Tenant's Fraction**"), the numerator of which is the Floor Area of Tenant's Building, and the denominator of which is the total square foot ground floor area which is

leasable for space (on the first day of the month in question) inside all the buildings of the Shopping Center. For a portion of a calendar month at the beginning of the Lease Term, Tenant's Common Area Rent shall be prorated for that month.

(E) "Yearly Common Area Costs" shall mean and include all costs and expenses incurred by Landlord during each twelve (12) month period selected by Landlord for repair, replacement, painting, maintenance, protection and operation of the Common Area and for insurance carried by Landlord with respect to the Shopping Center, and insurance-related costs and expenses, including (by way of examples and not in limitation) costs or expenses relating to: parking areas, sidewalks and the like; storm water and sewage drainage and sanitary control; removal of snow, ice and refuse (including use of trash compactors); gardening and landscaping; roof repairs; insuring buildings and improvements and insuring for bodily injury and property damage liability, including but not limited to insurance premiums, administrative costs, fees, losses within deductibles and/or self-insured retentions for All-Risk Property Insurance including Flood and Earthquake, Boiler & Machinery, Loss of Rents, Crime, General and Umbrella liability, Workers Compensation, Automobile, and such other coverages and limits as Landlord in its sole discretion deems reasonable in the circumstances, all at the fair premiums (which may be at the manual rates applicable to the Shopping Center), as if the Shopping Center was the only property owned by Landlord (but notwithstanding the foregoing, such insurance may be obtained through blanket policies as long as Landlord makes a reasonable allocation of premiums to the Shopping Center, which allocation may be based, *inter alia*, upon a uniform per square foot rate for all or substantially all property owned by Landlord and affiliates); controlling or eliminating puddling or flooding; lighting (including electric cost and maintenance, repair or replacement of fixtures, poles and replacement of bulbs); depreciation of property owned or rental paid for maintenance machinery and equipment; taxes or fees payable by Landlord for any pylons, equipment or other facilities; costs of security patrols, directing parking and policing the Common Areas, compensation to personnel engaged in managing the Common Areas and implementing services related thereto; plus fifteen (15%) percent of the Yearly Common Area Costs as a fixed administrative fee for Landlord. Landlord may cause any services such as sweeping, snow removal, repairs, etc. to be provided by independent contractors, and the fees paid shall be part of Yearly Common Area Costs.

(F) After the end of each accounting period, Landlord shall furnish a statement of the actual Yearly Common Area Costs. If the statement shows that the aggregate of Tenant's monthly estimates paid by Tenant during such year was less than Tenant's Common Area Rent payable, Tenant shall pay the balance due to Landlord within ten (10) days after receipt of the statement; and if the statement shows that the aggregate paid exceeded the Common Area Rent payable, Landlord shall either refund the excess or credit Tenant's next accruing Common Area Rent. Tenant's failure to give Landlord written notice of any objection to the statement within ninety (90) days after the statement is sent shall constitute a waiver of any objection or inquiry Tenant may have about the statement or for any examination of Landlord's records. Tenant acknowledges Landlord has not made any warranty, agreement or representation of any kind as to the actual dollar amount of Yearly Common Area Costs or Tenant's dollar share thereof.

IV.C. Landlord C.

Section 7.01

(a) **Tenant's Right to Use Common Areas:** During the term of this Lease, customers of Tenant shall be entitled to the non-exclusive use, free of charge, but in common with others, of (1) the automobile parking areas (herein called "parking areas") from time to time made available by Landlord for the common parking of all Center tenants and their patrons; (2) the entrances and exits thereto and the driveways thereon, for vehicular and pedestrian ingress and egress only (which parking areas, entrances, exits and driveways are sometimes herein collectively called "vehicle areas"); (3) the pedestrian walkways in the Center, for pedestrian ingress and egress only; and (4) any enclosed mall or enclosed pedestrian walkway in the Center (herein called "the mall"), for pedestrian ingress and egress only. All of the facilities described in (1), (2), (3), and (4) are herein sometimes collectively called "common areas." Tenant and its contractors, agents (other than premises employees), licensees, invitees and suppliers may use any of the vehicle areas for ingress and egress, and may use the parking areas for parking of non-commercial vehicles and may load and unload commercial vehicles in the parking area at the service door to the premises and shall thereafter promptly remove such vehicles; and may use any delivery driveway designated by the Landlord for access to the premises for deliveries, pickups and other services to the premises, but no other driveways. All such uses shall be subject to such rules and regulations as may be prescribed from time to time by Landlord; and Landlord shall have exclusive management and control over the common areas. The provisions of this Lease pertaining to a mall shall be of no force and effect if or so long as there is no mall in the

Center and nothing in this Lease shall be construed to mean that Landlord is required to build a mall or that construction thereof is a condition of this Lease.

Section 7.02 Maintenance of Common Areas

Landlord shall, subject to Section 7.03, provide illumination of the common areas for the tenants of the Center during such after-dark hours as tenants occupying more than fifty percent (50%) of the rented retail floor space in the Center are open for business, and shall keep the common areas in reasonable repair; and Landlord shall substantially clear ice and snow from the vehicle areas to permit substantial use thereof for the intended purpose, with reasonable diligence under the circumstances.

Section 7.03 Maintenance Contribution

As a contribution to the Landlord's costs of operating and maintaining the common areas and the facilities thereon located or appurtenant thereto, Tenant shall pay Landlord: a pro rata share of all costs and expenses of maintaining and operating the common areas of the Center (including all areas, structures and facilities within the Center not made available for leasing and all areas, structures and facilities adjacent to or outside of the Center used in connection with the Center or for which Landlord has responsibility for maintenance or maintenance cost under governing law or private agreement) proportionately as the square footage of the premises bears to the square footage of all leased ground floor space in the Center (exclusive of floor space leased to tenants who maintain portions of the Center vehicle areas). Such operating and maintenance costs shall include, but not be limited to, all of the costs set forth on Exhibit 3 hereto, and shall be determined by Landlord and billed no less often than annually for such fiscal year as Landlord may adopt for such purpose, except that Landlord may temporarily adopt a longer or shorter accounting period for a specified period following the opening of the Center. Payments shall be made in monthly installments starting at the beginning of the term, concurrently with minimum rent payments, based on estimated costs projected by Landlord from time to time, except that until Tenant is otherwise advised, Tenant's initial monthly installments shall be \$_____ per month for contributions for common areas. The monthly installments paid by Tenant shall be adjusted within thirty (30) days after Landlord determines its actual costs for any fiscal period, to reflect Tenant's actual share of such costs, at which time Tenant shall pay any balance owing on its annual contribution, or shall be refunded any excess, as the case may be; except that the monthly payments made at the above specified rate shall also be adjusted (prospectively and retroactively) to conform to any cost projection adopted by Landlord before the initial accounting period ends.

Exhibit 3 Common Area Costs Operating and maintenance costs of the common areas shall mean, for the purposes of Section 7.03 of the Lease, the total costs and expenses incurred in operating and maintaining the common areas and any appurtenances thereto and facilities thereon (or in or on unpaved outdoor areas of the Center or in adjacent public streets or rights of way), including but not limited to the following: 1. Gardening, landscaping, and maintenance of grass, trees, and shrubbery; 2. All premiums for all insurance on the vehicle areas and on any equipment and systems in or pertaining to the vehicle areas, including but not limited to public liability insurance, property damage insurance, automobile insurance, sign insurance, and fire and extended coverage insurance; 3. Watchman service and other security; 4. Personal property taxes on equipment and systems in, pertaining to, or used in maintaining and operating the vehicle areas and other outdoor areas; 5. Maintenance, repair, replacement, and cleaning of: paving, utility conduits, pumping stations and force mains (on and/or off site) utilized for sanitary sewer and water service in the Center, vehicle area lighting facilities, drainage facilities and other utility conduits and facilities in the vehicle areas or in unpaved areas of the Center or public streets or private easements, roofs and buildings of the Center, Center signs and wiring, retaining walls, curbs, gutters, fences, sidewalks, canopies, steps, escalators, elevators and ramps on, to, or from the vehicle areas and other outdoor areas of the Center or public streets; exclusive of the cost for a replacement of an asset (or part) for which a depreciation allowance is included hereunder if such replacement cost may not be treated as an expense deduction under Internal Revenue Service Regulations; 6. Utility charges and other costs of lighting of the vehicle areas and Center signs and operating pumping stations, force mains and other like facilities; 7. Vehicle area line painting and removal of snow and ice; 8. Collection and removal of trash from the vehicle areas and other outdoor areas of the Center; 9. Depreciation of all machinery and equipment used in maintaining and operating the vehicle areas (including cleaning and snow removal equipment), and of Center signs, traffic signals, sewer pumping stations and force mains (on and/or off site), which depreciation shall be calculated on a straight line basis and on lives based upon the Internal Revenue Service guidelines from time to time extant; 10. Power and fuel for operating vehicles and equipment used for cleaning, maintenance and snow removal; 11. Salaries of personnel directly engaged in operating, cleaning and maintaining the vehicle areas (including security personnel and parking

attendants), and all related payroll charges and taxes; and 12. A charge for overhead equal to fifteen percent (15%) of all of the foregoing costs and expenses.

V. TENANT'S FORMS---Assignment and Subletting

V.A. Tenant A.

(h) **Assignment and Subletting.** Tenant may, without Landlord's consent, assign this Lease, or sublet (or enter into concession or license agreements with respect to) the whole or any part of the demised premises. If Tenant assigns its interest in this Lease, then Tenant shall remain liable and responsible for Tenant's obligations under this Lease; provided, however, if Tenant's assignee (or a guarantor thereof) has an audited net worth equal to or greater than One Hundred Million Dollars (\$100,000,000) (the "Minimum Net Worth"), then Tenant (and Tenant's guarantor, if any) shall be released from any further liability under this Lease from and after the effective date of such assignment. If such assignee does not have the Minimum Net Worth as of the effective date of such assignment, but such assignee attains the Minimum Net Worth thereafter, then Tenant (and Tenant's guarantor, if any) shall be released from any further liability hereunder from and after such subsequent date.

(i) **Tenant's Right to Re-enter the Demised Premises.** If Tenant assigns this Lease, then Landlord, when giving notice to an assignee, shall also serve a copy of such notice upon _____, Inc. or its successor (for purposes of this Article 23] only, "Original Tenant"), and no notice shall be effective unless a copy of such notice is also served on Original Tenant. With respect to any notice of default, Original Tenant will have the same period after receipt of such notice to cure such default as Landlord provides to Tenant under this Lease. If this Lease terminates or this Lease and the term hereof ceases because of a default of such assignee after an assignment of this Lease is made, then Landlord will promptly give Original Tenant notice thereof. Original Tenant shall have the option, to be exercised by notifying Landlord within fifteen (15) days after receipt by Original Tenant of Landlord's notice, to cure any and all defaults and become tenant under, and to execute, a new lease for the remainder of the term of this Lease (including any properly exercised Option Period) upon all the same terms as then remain under this Lease, as it may have been amended by agreement between Landlord and Original Tenant. If any default of an assignee is incapable of being cured by Original Tenant, then, notwithstanding the failure to cure same, Original Tenant will nevertheless have the foregoing option to enter into a new lease within the foregoing fifteen (15) days period. The new lease will commence on the termination date of this Lease.

V.B. Tenant B.

Notwithstanding any assignment of Tenant's interest in this lease, or any subletting of the whole or any part of the Demised Premises, Tenant shall remain primarily liable for the performance of all agreements of Tenant hereunder, except as expressly otherwise provided in Section 13.3. No consent from Landlord shall be necessary with respect to any such assignment or subletting.

13.3 After any assignment of Tenant's interest in this lease Landlord shall not exercise any rights or remedies under this Article XIII on account of any default in payment of any rent or other sum of money unless Landlord shall give notice to the tenant named herein, as well as the tenant in possession, of such default and the opportunity to cure each such default within the period of time after such notice as is provided in Section 13.1 above. After such notice, if the term of this lease shall be terminated pursuant to the provisions of this Article XIII or pursuant to bankruptcy, the tenant named herein shall not be liable for the payment of any rent or for the performance or observance of any agreements or conditions to be performed or observed after the date of such termination unless about the time of such termination Landlord shall have offered to the tenant named herein a lease of the balance of the term of this lease upon the provisions of this lease contained.

V.C. Tenant C.

Section 9.1 (b). Assignment/Subletting

Section 9.1 (b). Subject to Landlord's right to terminate this lease and recapture the demised premises as set forth in Section 9.8 of this lease, Tenant shall have the right to assign this lease and to sublet (and to grant occupancy rights and licenses of any kind with respect to) the whole or any part of the demised premises or of the term for, subject to Landlord's right to terminate this lease and recapture the demised premises as set forth in Section 9.7 of this lease, any purpose permitted pursuant to this Article IX. No assignment or subletting shall in any way impair the continuing liability of Tenant hereunder, subject to the terms of this Section 9.1(b); provided, however, that if Tenant, at any time after Tenant satisfies its obligation pursuant to Section 7.8 (A) of this lease, shall assign this lease to an assignee (x) whose net worth, as determined in accordance with International Financial

Reporting Standards ("**IFRS**"), generally accepted accounting principles, or other nationally or internationally recognized accounting standards consistently applied as used by Tenant or its direct or indirect parent entity (the "**Accounting Standards**"), shall be at least One Hundred Million Dollars (\$100,000,000.00), or (y) whose debt obligations are considered "investment grade" by the so-called "Wall Street financial community," then in either situation effective upon the date on which said assignee shall assume liability for the performance of Tenant's obligations hereunder, each of Tenant and the guarantor of Tenant's financial obligations hereunder shall be released of and from all liability thereafter accruing hereunder and/or under the guaranty given in connection with the execution of this lease.

Section 9.1 (c) (i). If Tenant assigns this lease, and if, after the effective date of such assignment, (i) this lease is terminated or cancelled for any reason under circumstances pursuant to which Tenant shall remain liable hereunder (including, without limitation, the default of such assignee or any future assignee), or (ii) the lease shall be rejected by such assignee or any future assignee under any applicable federal or state bankruptcy or reorganization statute, Landlord shall promptly give written notice thereof to The Stop & Shop Supermarket Company LLC (The Stop & Shop Supermarket Company LLC or its successor being hereinafter referred to as the "**Original Tenant**"), together with a statement of any and all sums which at the time of such notice would be due under this lease but for such termination or rejection, and of all other defaults (if any) under this lease then known to Landlord. The Original Tenant shall have the option, to be exercised by written notice to Landlord within sixty (60) days after receipt of such notice, to require Landlord to enter into a new lease (the "**New Lease**") of the demised premises with the Original Tenant or its designee (which shall be an affiliate of the Original Tenant). If the Original Tenant notifies Landlord of the exercise of its option to enter into a New Lease hereunder, and if this lease has not yet been terminated as a result of such default or rejection, Landlord agrees to terminate this Lease.

Section 9.1 (c) (ii). If the Original Tenant notifies Landlord of the exercise of its option to enter into a New Lease hereunder, Landlord shall, as promptly as possible after receipt of the Original Tenant's notice exercising such option, enter into such New Lease with Tenant or its designee. Such New Lease shall be effective on the date of termination of this lease and shall be for the remainder of the term of this lease, and at the Rent and upon all agreements, terms, covenants and conditions of this lease, including, without limitation, all applicable rights of renewal or extension. Upon the effective date of such New Lease, the Original Tenant or its designee shall cure all unfulfilled monetary defaults of the tenant under this lease and undertake to cure all non-monetary defaults relating to the condition of the demised premises or the tenant's repair or maintenance obligations hereunder that are susceptible of being performed by the Original Tenant or its designee.

In consideration of the agreement by the Original Tenant or its designee to cure all unfulfilled monetary defaults and to undertake to cure all non-monetary defaults in accordance with the immediately preceding paragraph, Landlord hereby assigns to the Original Tenant or its designee (as the case may be) all rights, claims, actions, and causes of action (the "**Landlord Claims**") that Landlord might have against any assignee of Tenant and/or any future assignee. In confirmation of same, upon the written request of the Original Tenant or its designee made at any time on or after the effective date of the New Lease, Landlord will execute and deliver to the Original Tenant or its designee an appropriate agreement assigning or otherwise transferring to the Original Tenant or its designee all of the Landlord Claims; provided, however, that this clause shall be self-operative, and in the event that either the Original Tenant or its designee shall not request said agreement, or if Landlord shall fail to deliver said agreement, no further instrument or document shall be necessary to effectuate said assignment.

Section 9.1 (c) (iii). Notwithstanding the foregoing, if Landlord delivers to the Original Tenant, together with Landlord's notice under Section 9.1 (a) (i) above, a release of the Original Tenant and all subsequent holders of the lessee's interest in this lease as to all liability under this lease, as same may have been amended, the Original Tenant shall not have the foregoing option.

Section 9.8 Assignment and Subletting Recapture Provisions.

Section 9.8 (a). Except with respect to a "Permitted Transfer", for which no approval or consent of Landlord is required and for which no "Trigger Notice" is required, in the event Tenant (or any assignee or subtenant permitted under this lease) is then operating a Food Supermarket Business or any "Non Terminated and Non Recaptured Change of Use Business" (as defined in Section 9.7 (d) of this lease) in not less the Minimum Square Footage in the demised premises, Tenant (or any assignee or subtenant permitted under this lease) shall have the right to assign this lease or to sublet the whole or any part of the demised premises or of the term to another entity ("Successor Occupant"), but only upon written notice ("Trigger Notice") to Landlord advising Landlord that Tenant desires to assign this lease or sublet the whole or any part of the demised premises or of the term to Successor Occupant and specifying the identity of the Successor Occupant. Upon a Trigger Notice pursuant to this Section 9.8(a), the provisions of Sections 9.8(a) – 9.8(d) shall be applicable. Notwithstanding anything herein to the contrary, the provisions of Sections 9.8(b) - 9.8(d) of this lease shall not be deemed to require Tenant to keep the

demised premises (or any portion thereof) open for the conduct of a Food Supermarket Business or any business, nor shall such Sections apply to the operation by Tenant or any assignee or subtenant of a Non-Supermarket Use, so long as a Food Supermarket Business or a Non Terminated and Non Recaptured Change in Business is being operated in not less than the Minimum Square Footage in the demised premises.

Section 9.8(b). In the event that Tenant shall give a Trigger Notice under Section 9.8(a), Tenant shall give such Trigger Notice and Landlord shall have the right, by written notice to Tenant ("Termination Notice") given at any time during the one hundred eighty (180) day period following the Trigger Notice, to terminate this lease ("Termination Right"), effective ("Effective Date of Termination") on the 180th day following the giving of such Termination Notice, unless Tenant, within thirty (30) days after Tenant's receipt of the Termination Notice, shall deliver written notice to Landlord rescinding the Trigger Notice, in which event Landlord's Termination Notice shall be void and of no force and effect; provided, however, Tenant shall only have the right to rescind the Trigger Notice and void Landlord's termination notice by rescinding the Trigger Notice as aforesaid on one (1) occasion during any four (4) year period.

Section 9.8 (c). If Landlord validly exercises its Termination Right, then this lease shall terminate and expire as if the Effective Date of Termination were originally fixed for the termination and expiration date of this lease, and, except as set forth below, neither party shall have any further rights or obligations hereunder after the Effective Date of Termination. Such Termination Notice from Landlord, in order to be effective, shall be accompanied by: (i) a certification by Landlord's attorney (which certification is confirmed in writing by Tenant's leasehold title insurer as to matters of record or of which such title insurer has actual notice) that the consent or approval of no other party (whether assignee, mortgagee or otherwise) is required in order to release Tenant from its obligations under this Lease, and that no other entity has the benefit of a conditional, collateral or other assignment of the lessor interest in this Lease, or, in the alternative, specifying the identity of those parties whose consent or approval is required, and (ii) if any such consents are required, the consent or approval to such termination of each such party so certified by Landlord's attorney and confirmed as aforesaid. Such consent or approval shall be in recordable form and in form reasonably satisfactory to Tenant and Tenant's title insurer. In the event this Lease is terminated by Landlord pursuant to this Section 9.8, all of the terms, provisions, covenants and conditions of Section 9.6 (b) of this lease shall apply.

Section 9.8 (d). If Landlord does not validly exercise its Termination Right under this Section 9.8, such Termination Right under this Article IX shall expire and be of no further force or effect as to such Successor Occupant only and such Successor Occupant shall be deemed to be a "Non Terminated and Non Recaptured Successor Occupant", and Tenant or such Non Terminated and Non Recaptured Successor Occupant shall have the right, from time to time to use the demised premises and/or grant occupancy rights and licenses of any kind with respect thereto for any lawful retail use which is also a Food Supermarket Business or a Non Terminated and Non Recaptured Change in Business, but subject to Section 9.1, without Landlord's consent or approval; provided, however, that Tenant shall be obligated to give a Trigger Notice upon each successive assignment or subletting which is not a "Permitted Transfer".

Section 9.8(e). Permitted Transfer. A "Permitted Transferee" shall be permitted without the consent or approval of Landlord and for purposes of this lease shall any assignment of this Lease or sublease of the demised premises, in whole or in part, to mean any one of the following:

1. To a related entity. A related entity is defined as (1) any person, firm, corporation, partnership, association or other business entity which directly or indirectly, through one or more intermediaries, controls is controlled by or is under common control with Tenant, (2) any parent, subsidiary, division or affiliate of Tenant.
2. To another Food Supermarket Business (i) in accordance with government action or regulation, or (ii) to gain approval of a governmental authority as a component of a plan of divestiture or other plan.
3. To any successor to Tenant (or of an operating division thereof) by merger, consolidation, or operation of law, or the purchaser of all or substantially all of the assets of Tenant (or any operating entity of Guarantor) in Maryland, Virginia and Washington, D.C.
4. To any entity arising from Tenant being involved in a leveraged buy-out or arising from a merger, consolidation or reorganization of Tenant or Tenant being reconstructed as a publicly held company subsequent to a leveraged buy-out.
5. To another Food Supermarket Business.
6. To typical subtenants, licensees, or concessionaires each of whom operate in conjunction with Tenant's operations within the demised premises for so long as Tenant is operating a Food Supermarket Business.
7. To another user operating a lawful retail business in that portion of the floor area of the Building comprising that portion of the floor area of the Building which is equal to or less than the difference remaining after subtracting the Minimum Square Footage from the total square footage of the Building.

8. To a lawful retail user operating as other than a Food Supermarket Business in that portion of the floor area of the Building which is equal to or less than the difference remaining after subtracting the Minimum Square Footage from the total square footage of the Building, with Landlord's consent, not to be unreasonably withheld, conditioned or delayed.

If Landlord does not validly exercise its Termination Right under this Section 9.8, then Landlord shall be deemed to have consented to an assignment of the lease, or a sublease of the demised premises, in whole or in part, to the Successor Occupant identified in the Trigger Notice.

VI. LANDLORD'S FORMS—Assignment and Subletting

VI.A. Landlord A.

15. ASSIGNMENT; SUBLETTING. (a) Neither Tenant, nor any of its permitted successors or assigns, shall transfer, assign, mortgage, encumber, or, by operation of law or otherwise, pledge, hypothecate, or assign all or any of its interest in this Lease, or sublet or permit the Premises, or any part thereof, to be used by others, including, but not by way of limitation, concessionaires or licensees of Tenant, without the prior written consent of Landlord, in each instance, which consent Landlord may withhold in its sole and absolute discretion, for any reason or for no reason. Any such subletting or assignment shall be referred to as a "Transfer", and the person to whom Tenant's interest is transferred shall be referred to as a "Transferee".

(b) The prohibition against any Transfer without the prior written consent of Landlord shall apply, without limitation, to the following circumstances, each of which shall be deemed a Transfer; (i) if Tenant or any guarantor of this Lease is a corporation (other than a corporation, the outstanding voting stock of which is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934), and if shares of such corporation are transferred by sale, assignment, bequest, inheritance, operation of law or otherwise (including, without limitation, a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency or other proceeding), so as to result in or make possible a change in the present control of such corporation; (ii) if Tenant or any guarantor of this Lease is a partnership, any change in control or ownership of such partnership; (iii) any transfer by sale, assignment, bequest, inheritance, operation of law or other disposition of all or substantially all of the assets of Tenant or any guarantor which results in or makes possible a change in the present control of the business of Tenant or any such guarantor; (iv) any other change in ownership of Tenant, any guarantor of this Lease or the business operated by Tenant; or (v) any subletting or assignment which occurs by operation of law, merger, consolidation, or reorganization or any change of Tenant's corporate or proprietary structure. In no event may Tenant assign this Lease, or sublease the Premises, if Tenant is in default under this Lease.

(c) In the event that Tenant desires to effect a Transfer hereunder, Tenant shall give Landlord written notice (the "Transfer Notice") thereof. To be effective, the Transfer Notice shall be accompanied by Tenant's check, payable to the order of Landlord, or Landlord's Agent, in an amount equal to the greater of (i) \$1,000.00 or (ii) one percent (1%) of the Minimum Rent to compensate Landlord for the cost of reviewing the proposed Transfer and specify the proposed Transferee, and the proposed terms of the Transfer, and contain such information about the proposed Transferee, its experience, its financial situation, its methods of operation, its contribution to the tenant mix of the Shopping Center, and its impact on the Shopping Center, as a prudent businessman would require in making the Transfer decision. Tenant specifically agrees to apprise Landlord of any adverse or negative information in its possession concerning the proposed Transfer and the proposed Transferee. The Transfer Notice shall also contain a certificate by Tenant (or an officer or general partner of Tenant if Tenant is a corporation or partnership) of all "Transfer Consideration" (as defined below) payable in connection with the proposed Transfer. Within sixty (60) days of the receipt of the Transfer Notice Landlord shall, by written notice to Tenant, elect: (i) to permit the proposed Transfer; (ii) to terminate this Lease; (iii) to sublet with the right to further sublet from Tenant for the balance of the term of this Lease (a) all of the Premises, or (b) only so much of the Premises as Tenant proposed to Transfer, at the same rental as Tenant is obligated to pay to Landlord hereunder; or (iv) to deny consent to the proposed Transfer, in which event Tenant shall continue to occupy the Premises and comply with all of the terms and conditions hereof. In the event that Landlord fails to give Tenant written notice of its election hereunder within the specified sixty (60) day period, Landlord shall be deemed to have denied its consent to the proposed Transfer.

(d) If this Lease is Transferred, the Transferee shall assume by written instrument all of Tenant's obligations under this Lease and such Transferee, at least thirty (30) days prior to the effective date of the Transfer, shall deliver to Landlord the proposed sublease, assignment and assumption agreement or other instrument evidencing the

Transfer and the Transferee's undertaking to perform Tenant's obligations under this Lease. All of such documents shall be subject to Landlord's prior written approval. After any Transfer of this Lease, Tenant shall continue to be liable hereunder, and shall not be released from performance hereunder. In addition to the Rent reserved hereunder, Tenant shall pay to Landlord all monies, property and other consideration of every kind whatsoever paid or payable to Tenant in consideration of or related to such Transfer and for all property transferred to the Transferee, as all or part of the consideration including, without limitation, fixtures, other leasehold improvements, furniture, equipment and furnishings (collectively, all of the foregoing monies, property and other consideration shall be referred to as the "Transfer Consideration"), but excluding bona fide consideration paid for transfer of Tenant's property. Following a Transfer of this Lease, Landlord shall not be required to send the named Tenant any notice of default by the approved Transferee.

(e) Any Transfer without Landlord's consent, whether as a result of any act or omission of Tenant, or by operation of law or otherwise, shall not be binding upon Landlord, and shall confer no rights upon any third person. Each such unpermitted Transfer shall, without notice or grace period of any kind, constitute a default by Tenant under this Lease. The acceptance by Landlord of the payment of Rent following any Transfer prohibited by this Article 15 shall not be deemed to be a consent by Landlord to any such Transfer, an acceptance of the Transferee as a tenant, a release of Tenant from the performance of any covenants herein contained, or a waiver by Landlord of any remedy of Landlord under this Lease, although amounts actually received shall be credited by Landlord against Tenant's rent obligations. Consent by Landlord to any one Transfer shall not constitute a waiver of the requirement for consent to any other Transfer. No reference in this Lease to assignees, concessionaires, subtenants or licensees shall be deemed to be a consent by Landlord to the occupancy of the Premises by any such assignee, concessionaire, subtenant or licensee. Notwithstanding anything in this Article or any decision of any court to the contrary, it shall be deemed reasonable for Landlord to refuse consent to a Transfer if, at the time Landlord's consent is requested, other premises in the Shopping Center suitable for that prospective Transferee's use are (or soon will be) available.

(f) If Tenant is a corporation, limited liability company or partnership, Tenant represents that the ownership and power to vote its entire outstanding capital stock or partnership interests belongs to and is vested in the persons listed on Exhibit C. The foregoing provisions of this paragraph (f) shall not apply to a publicly held entity described in clause (i) of paragraph (b) of this Article 15.

VI.B. Landlord B.

18. Assignment And Subletting.

(A) Transfer. Tenant shall not, whether voluntarily or by operation of law or otherwise: (i) assign, mortgage, pledge, hypothecate, or otherwise transfer or encumber any of its interest in this Lease or the Leased Premises, in any manner, nor (ii) sublet, license or permit occupancy by any other person of any portion of the Leased Premises (all of the foregoing are collectively called a "**Transfer**"), without obtaining on each occasion the prior written consent of Landlord, which consent Landlord may deny, regardless of commercial reasonableness. Any transfer of (i) any corporate stock of; (ii) any partnership interest in; or (iii) any membership interest in Tenant, or a merger, consolidation or liquidation of or by Tenant, either voluntarily or by operation of law, shall be deemed a Transfer and require Landlord's consent as stated herein.

(B) Transfer Process.

(i) In the event Tenant desires to engage in a Transfer, Tenant shall give Landlord written notice ("**Transfer Notice**") containing the following: (1) the name and address of the proposed assignee, subtenant or occupant (the "**Proposed Transferee**"); (2) if the Proposed Transferee is a corporation, limited partnership, partnership, limited liability company or other business entity, the name and addresses of the principal officers, partners, members or shareholders of the Proposed Transferee (the "**Principals**"); (3) current financial and other information with respect to the financial ability, operating experience, and business reputation of the Proposed Transferee and its Principals sufficient for Landlord to evaluate the financial capabilities and business experience of the Transferee, its Principals and the proposed Transfer; and (4) true and complete copies of all the documents and agreements related to the Transfer, and (5) payment of Landlord's reasonable administrative and attorneys' fees in reviewing the proposed Transfer, which is currently \$1,500, subject to reasonable increases.

(ii) Within thirty (30) days after Landlord's receipt of the Transfer Notice, Landlord shall elect by written notice to Tenant ("**Landlord's Notice**") to either: (1) consent to the proposed Transfer to the Proposed Transferee; (2) deny its consent to such proposed Transfer; or (3) terminate this Lease.

(iii) In the event Landlord shall elect to terminate this Lease: (1) the Lease shall expire on the date which is specified in the Landlord's Notice, which date will not be less than sixty (60) days after the date of Landlord's Notice; (2) Tenant shall be released from all liability which accrues under the Lease after the latter of ("**Release Date**") (1) the date Tenant surrenders possession of the Leased Premises to the Landlord in the condition required by this Lease, or (2) the date set forth in Landlord's Notice to Tenant that it has elected to terminate this Lease (other than indemnities and obligations of Tenant which expressly survive termination of this Lease, as set forth herein).

(C) Any assignment of this Lease shall not be deemed valid or accepted by Landlord unless prior to the assignment, Tenant shall pay all Rent which accrues under the Lease through the Release Date. Additionally, any Percentage Rent due for the elapsed portion of the Lease Year in which the proposed assignment is to occur (for this purpose, the "Gross Sales Base" shall be reduced in the same proportion that the number of days in such elapsed portion of the Lease Year bears to three hundred sixty-five [365]). The computation of any Percentage Rent payable to Landlord for the unelapsed portion of that Lease Year shall be based on a "Gross Sales Base" reduced in the same proportion that the number of days in such unelapsed portion of the Lease Year bears to three hundred sixty-five (365).

(D) In any assignment the assignee must assume this Lease in writing on Landlord's form. Notwithstanding any Transfer, Tenant shall not be released (nor shall any of Tenant's constituents, partners, or members be released) from any obligations, liabilities or covenants under this Lease and shall continue to remain responsible for all liabilities and obligations under the terms of this Lease. In any Transfer the Leased Premises shall be used for the Permitted Use only. Landlord shall have the right to collect Rent from any assignee, subtenant or other occupant without releasing Tenant or waiving any right against Tenant for its default under this Article and without accepting the payor as a permitted Transferee.

(E) Under any circumstances, Landlord shall not be liable for any money damages to Tenant or Tenant's proposed assignee, transferee or subtenant for refusal to consent to any assignment or transfer of this Lease or transfer of Tenant's corporate stock or sale of Tenant's business or for refusal to consent to any subletting; Tenant's sole remedy shall be specific performance.

VI.C. Landlord C.

Section 8.01 Restrictions on Assignment

Tenant shall not assign this Lease or sublease all or any part of the premises, nor permit other persons to occupy or conduct business in said premises or any part thereof, nor grant any license, concession management contract or franchise for all or any part of the premises. Any assignment by operation of law, attachment or assignment for the benefit of creditors shall, at Landlord's option, be inoperative. If Tenant is a corporation, any transfer of any of Tenant's issued and outstanding capital stock or any issuance of additional capital stock, as a result of which the majority of the issued and outstanding capital stock of Tenant is held by a corporation, firm, or person or persons who do not hold a majority of the issued and outstanding capital stock of Tenant on the date hereof, shall be deemed a prohibited assignment under this Section 8.01. If Tenant is a partnership, any transfer of any interest in the partnership or any other change in the composition of the partnership which results in a change in the management of Tenant from the person or persons managing the partnership on the date hereof, shall be deemed a prohibited assignment under this Section 8.01.

Section 8.02 No Waiver

If Landlord at any time consents in writing to any assignment or sublease as defined in and prohibited by Section 8.01, in addition to any other consideration that may pass between the parties in connection therewith, (i) Tenant and any such assignee or sublessee shall be deemed to have covenanted not to make any further assignment or sublease contrary to the provisions of Section 8.01, and such covenant shall be deemed to have been made as of the date of such consent and shall take effect prospectively from the date thereof, and (ii) as a condition of giving such consent Landlord may require that certain provisions of this Lease be modified, including but not limited to, a requirement that the annual minimum rental hereunder be increased to a fair market rent.

Section 8.03 Other Requirements

If at any time or from time to time during the term of this Lease Tenant desires to assign this Lease or sublet the premises, in whole or in part, Tenant shall submit to Landlord a written statement, signed by Tenant, setting forth the following information:

- (a) The name and address of the proposed assignee or subtenant and the character of its business;
- (b) The proposed activities to be conducted in, and the proposed use to be made of, the premises by the proposed assignee or subtenant;
- (c) A full and complete outline of all the terms and conditions of the proposed assignment or subletting;
- (d) Such financial information and credit information pertaining to the proposed assignee or subtenant as is sufficient to enable Landlord to evaluate such proposed assignee's or subtenant's financial responsibility;
- (e) A representation that the proposed assignee or subtenant is not a tenant, subtenant, assignee or occupant of any other space in the Center; and
- (f) An agreement from Tenant in form and substance satisfactory to Landlord whereby Tenant agrees to indemnify Landlord against liability resulting from any claim made against Landlord by the proposed subtenant or assignee, or by any broker, claiming a commission in connection with the proposed assignment or subletting.

During a period of ninety (90) days after receipt by Landlord of the foregoing information Landlord may elect to (i) consent to such proposed subletting or assignment with or without conditions or (ii) refuse to consent to such assignment or subletting. Such election may be exercised by written notice served upon Tenant within such ninety (90) day period, but if no such notice is served, it shall be deemed that Landlord has elected to refuse to consent to the proposed assignment or subletting. Landlord's consent to any transfer, assignment, or sublease shall not be effective until one (1) fully executed copy of any written instrument of such transfer, assignment or sublease has been delivered to Landlord. Acceptance by Landlord of the payment of any rental, of whatever kind or character, following any assignment or other transfer prohibited by this Article shall not be deemed to be a consent by Landlord to any such assignment or transfer, nor shall the same be deemed to be a waiver of any right or remedy of Landlord under this Lease. Tenant agrees to pay Landlord all costs incurred by Landlord in connection with any actual or proposed assignment or subletting, including, without limitation, the costs of making investigations as to acceptability of a proposed assignee or sublessee, the reasonable administrative and overhead expenses of Landlord, and legal costs incurred by Landlord in connection with any requested consent.

VIII. TENANT'S FORMS---REPAIRS

VII.A. Tenant A.

2. Repairs and Maintenance.

(a) Demised Premises.

(i) Tenant shall make and pay for all maintenance, replacement and repair necessary to keep the demised premises in a good state of repair and in tenantable condition except for the following maintenance, repair or replacement, which shall remain Landlord's sole responsibility, without reimbursement from Tenant, in whole or in part:

- (1) all maintenance, replacement and repair to the **[Optional: heating, ventilation, and air conditioning unit or units serving the demised premises, which unit(s) shall at all times be operational so as to meet Tenant's requirements,]** roof, parapets, flashing, gutters, downspouts, canopies, floor slab, outer walls and structural portions of the building in which the demised premises are located, and which maintenance, replacement and repair is necessary to maintain the demised premises in a safe, dry, watertight, and tenantable condition and in good order and repair;
- (2) all maintenance, replacement and repair of exterior and underground (including in building slab) utility installations and electrical conduit and wire; repairs, maintenance and replacements that are occasioned by settlement of the demised premises, or a portion thereof, or caused by soil conditions that are not due to change in use of the demised premises by Tenant; and
- (3) any repair, maintenance or restoration required as a result of the act or neglect of Landlord or its agents, employees or contractors, or resulting from the failure of Landlord to perform in a timely manner its obligations under this Lease, including, but not limited to, replacing ceiling tile that is damaged due to roof leak.

(ii) Tenant will be responsible for all trash and garbage removal from the demised premises, and will properly dispose of all trash and garbage generated at the demised premises in Tenant's trash containers ("Tenant's Dumpsters") located within Tenant's dumpster pad, the location and dimensions of which are depicted on Exhibit B. Tenant will also be responsible for emptying Tenant's Dumpsters, and entering into a third party contractual arrangement for such purpose, unless Tenant elects to participate, at Tenant's sole option, in any Shopping Center trash removal program made generally available to tenants and occupants of the Shopping Center. Landlord will not permit or direct any other tenant or occupant of the Shopping Center to use Tenant's Dumpsters.

VII.B. Tenant B.

TENANT REPAIRS. 8.1 Tenant shall make all repairs, alterations and replacements to the property which Tenant is required to maintain, as hereinafter set forth, which may be necessary to maintain the same in as good repair and condition as the same are in on the Commencement Date, reasonable wear and tear and damage excepted and subject to Articles X and XI. Tenant shall make all repairs, alterations and replacements to the property which Tenant is required to maintain as hereinafter set forth which may be required by any laws, ordinances or regulations of any public authorities having jurisdiction provided however Landlord shall be liable for compliance with legal requirements applicable to the Demised Premises existing prior to the Commencement Date. Upon the expiration or other termination of the term of this lease, Tenant shall remove its goods and effects and those of all persons claiming under it and shall yield up peaceably to Landlord the Demised Premises with so much of the same as Tenant is obligated to maintain pursuant to the provisions of this Section 8.1 in as good repair and condition as the same were in on the Commencement Date, reasonable wear and tear excepted and subject to Articles X and XI. However, notwithstanding anything in this lease contained to the contrary, Landlord, not Tenant, shall make all repairs, alterations, and replacements to the property which Tenant is required to maintain which may be required as the result of repairs, alterations, replacements, other improvements or installations made by Landlord or Landlord's agents, unless done by Landlord pursuant to Section 14.1. The property which Tenant is required to maintain is the interior of the Demised Premises, including, without limitation, all glass and all utilities conduits, fixtures and equipment within the Demised Premises serving the Demised Premises exclusively, but excluding all property which Landlord is required to maintain as below provided. If at any time during the term Tenant shall make any repairs or replacements to the heating-ventilating-air-conditioning system serving the Demised Premises (the "HVAC") that are not customarily included in a regular service and maintenance contract, then Tenant shall be reimbursed by Landlord, upon demand, for an amount equal to the product of such cost multiplied by a fraction the denominator of which is one hundred twenty (120) and the numerator of which is one hundred twenty (120) minus the number of months between the date of the making of such repairs and/or replacements and the date of the termination of the term. Said reimbursement may be effected by Tenant's deducting the amount thereof from the final payments of rent due and payable hereunder. (If the term shall be extended subsequent to the making of any such repairs the "termination of the term" shall be deemed to be the termination of the term as so extended.)

LANDLORD'S REPAIRS. 8.2 Landlord shall make all repairs, alterations and replacements to the property which Landlord is required to maintain, as hereinafter set forth, which may be necessary to maintain the same in good repair and condition or which may be required by any laws, ordinances or regulations of any public authorities having jurisdiction, subject to Articles X and XI. However, notwithstanding anything in this lease contained to the contrary, Tenant, not Landlord, shall make all repairs, alterations and replacements to the property which Landlord is required to maintain which may be required as the result of repairs, alterations, replacements, other improvements or installations made by Tenant or any subtenant or concessionaire of Tenant or the agents of any of them, unless done by Tenant pursuant to Section 14.2. The property which Landlord is required to maintain is the foundation, the roof, the exterior walls, the roof drainage system, the canopy, the structural parts of the Demised Premises, and, to the extent located within the walls, ceilings or floors of the Demised Premises and not readily accessible by means of removable panels, access doors or the like, all wiring, plumbing, pipes, conduits and other utilities and sprinkler fixtures, plus all Common Areas of the Shopping Center, and, to the extent not included in the foregoing, all utilities conduits, fixtures and equipment serving the Demised Premises which serve other premises or are located within the Shopping Center but outside the Demised Premises, including, without limitation, slab-floors, windows and doors, but excluding all glass. In addition, Landlord shall make any repairs to the property Tenant is required to maintain which are required as a result of a defect in, or failure of repair of, the property Landlord is required to maintain.

SPECIAL REPAIRS. 8.3 Notwithstanding anything herein contained to the contrary, Landlord shall make all repairs, alterations and replacements (other than those required as the result of repairs, alterations, replacements, other improvements or installations made by Tenant or any subtenant or concessionaire of Tenant or the agents of any of them) to the property which Tenant is required to maintain which may become necessary during the first year of the term or which may be required during said first year by any laws, ordinances or regulations of any public authorities or insurance rating bureaus having jurisdiction. Notwithstanding anything in Section 8.1 contained to the contrary, Landlord agrees that any repairs, alterations or replacements that shall be required at any time during

the term of this lease as a result of movement of the building upon which the Demised Premises is located such as settling, or as the result of settling of the Common Areas, or as the result of defective materials or workmanship in the performance of Landlord's Construction Work or Landlord's failure to perform Landlord's Construction Work as required shall be made by Landlord. Landlord agrees that it will give to Tenant the benefit of all guarantees and warranties it may have from its contractors or materialmen or is required by Schedule C to have therefrom and that Tenant may enforce such guarantees and warranties either in Tenant's name or in Landlord's name

VII.C. Tenant C.

ARTICLE X - REPAIRS AND ALTERATIONS.

Section 10.1. Tenant's Repairs.

Tenant shall be responsible, at its sole cost and expense, for all repairs to the Building, structures, improvements and other property on the demised premises, except those: (1) which Landlord is required to make under Section 10.2 of this lease, (2) necessitated by fire, casualty, condemnation or reasonable use and wear, (3) which Landlord is required to make to Common Facilities pursuant to Sections 6.1 and 8.4 of this lease to the extent located on the demised premises with Landlord's approval, and (4) improvements located on the demised premises pursuant to Section 11.3 of this lease.

Section 10.2. Landlord's Repairs.

Landlord agrees to make all repairs (including replacements and alterations when necessary) to the Initial Work, Pad Work and Site Improvement Work which become necessary during the eighteen (18) month period following the Rent Commencement Date. In addition, Landlord agrees to make all repairs (including replacements and alterations when necessary) (a) to all wiring, plumbing, pipes, conduits, and other water, sewerage, utility and sprinkler fixtures and equipment (including, without limitation, all connections with and components of any private sewage system) serving the demised premises up to the point of entry into the Building, and (b) which become necessary at any time because of the settling of the Building or to keep the Building and any basement thereunder dry, or (b) which are at any time necessitated by any act, negligence, or default under this lease, of Landlord, Prime Landlord, or their respective agents, employees, licensees or contractors, and any repair or replacement (including redecoration and cleanup work) to any part of the Building necessitated by a defect or condition Landlord is required to correct, and (c) to all portions of the demised premises which are also defined herein as Common Facilities (such as sidewalks). Landlord shall deliver to Tenant all warranties required pursuant to the Site Construction Documents (as said term is defined in Exhibit C hereto). Should Landlord fail to obtain any warranty required pursuant to the terms of this lease, Landlord shall reimburse Tenant for any expense incurred by Tenant by reason of Landlord's failure to obtain such warranty. Landlord hereby assigns to Tenant the benefit of all guarantees and warranties applicable to the demised premises to the extent Tenant has the obligation to maintain the same. To the extent same are only enforceable by Landlord, Landlord agrees to cooperate with Tenant and shall, without limitation, execute such documents and take such other action as Tenant shall deem necessary or proper in order to enforce the same. Notwithstanding anything to the contrary contained in this Section 10.2, Landlord shall not be obligated to make any repairs necessitated by (i) any act, omission, negligence or default of Tenant, its agents, employees, licensees or contractors or (ii) any design defect or defects in workmanship and materials in the construction of the Building.

Section 10.5. Major Replacements.

In the event the heating, ventilating and air conditioning system and equipment servicing the Building ("HVAC") or any component thereof, or any other system in, or other element of, the Building is in need of a repair or replacement of a capital nature (a "**Major Replacement**") or other capital improvement, Tenant may make the required Major Replacement or capital improvement, subject to the following: If such Major Replacement or other capital improvement is necessary during the five (5) year period immediately preceding the expiration or earlier termination of this lease, then Tenant may notify Landlord of the need therefor, and Landlord shall have the option of agreeing to reimburse Tenant for the unamortized portion of the cost thereof as of the date of expiration or earlier termination of this lease. The cost of any such Major Replacement and/or capital improvement shall be deemed amortized on a straight-line basis over a five (5) year period commencing upon the date of installation or completion thereof, as the case may be. If Landlord has so elected, it is understood and agreed that Landlord's payment obligation hereunder shall survive the expiration or termination of this lease. Landlord shall advise Tenant within ten (10) days of receipt of such notice from Tenant whether Landlord has elected to reimburse Tenant, as aforesaid. If Landlord either (a) elects not to reimburse Tenant, as aforesaid, or (b) fails to advise Tenant of Landlord's decision

within said ten-day period (which failure shall be deemed to be an election by Landlord not to reimburse Tenant), then, in either event, Tenant shall have option of (x) making the Major Replacement or other capital improvement (as the case may be), or (y) repairing the portion of the Building in need of such Major Replacement and/or capital improvement to the extent, if any, as Tenant shall elect in its sole discretion. In the event of the non-replacement or election not to perform another capital improvement by Tenant in accordance with the foregoing, Landlord hereby acknowledges and agrees that surrender of the Building at the expiration of the term of this lease with the Major Replacement or other capital improvement not having been made, and all consequences to the condition of the Building by reason of not making the same, shall be deemed to be reasonable or ordinary wear and tear as permitted by Section 10.1 and by Section 11.6 of this lease.

VIII. LANDLORD'S FORMS---REPAIRS

VIII.A Landlord A.

16. REPAIRS BY LANDLORD. Landlord agrees to make all necessary repairs during the term of this Lease or any extension thereof, to the roof of the Premises and all necessary structural repairs to the exterior walls and foundations, (exclusive of doors, door frames, door checks, other entrances, windows and window frames) provided such repairs are not made necessary through misuse of the same by the Tenant or the negligence of Tenant, its agents, servants, contractors or employees, and provided that Tenant shall give Landlord written notice of the necessity for such repairs. Landlord shall not be liable to Tenant for any damage caused to the person or property of Tenant, its agents, employees or invitees, due to the Premises or any part or appurtenances thereof being improperly constructed or being or becoming out of repair, or arising from the leaking, of gas, water, sewer or steam pipes, or from electricity, or from any other cause whatsoever. Tenant agrees to report immediately in writing to Landlord any defective condition in or about the Premises known to Tenant which Landlord is required to repair, and failure to so report shall make Tenant liable to Landlord for any expense, damage or liability resulting from such defects. Landlord hereby reserves the exclusive right at any time and from time to time to install, use, repair, inspect and replace pipes, ducts, conduits and wires leading through or located adjacent to the Premises and serving other parts of the Shopping Center in locations which do not materially interfere with Tenant's use thereof. Landlord's right hereunder may be exercised by Landlord's designees. If any excavation shall be made or authorized to be made upon land adjacent to the Premises, Tenant shall afford to the person causing or authorized to cause such excavation license to enter upon the Premises for the purpose of doing such work as Landlord shall deem necessary to preserve the building located upon the Premises from injury or damage and to support the same by proper foundations, without any claim for damages or indemnification against Landlord or diminution or abatement of rent. Landlord shall not be liable in any such case for any inconvenience, disturbance, loss of business or any other annoyance arising from the exercise of any or all of the rights of Landlord in this Article 16.

17. MAINTENANCE AND REPAIRS BY TENANT. Tenant covenants and agrees:

(a) That it shall maintain the interior of the Premises (including necessary and periodic repainting) together with all electrical, plumbing and sewage facilities (including free flow up to the main sewer line and grease traps, if any), heating, air conditioning and other mechanical installations therein, exterior and interior of all doors, door frames, door checks, other entrances, windows and window frames in good condition and surrender same at the expiration of the term, in the same good order in which they are received, damage by reasonable wear and tear and acts of God excepted. Landlord shall be under no liability for repair, maintenance, alteration or any other action with reference to the Premises or any part thereof, or repair, maintenance, alteration, replacement or any other action with respect to any exterior doors, plumbing, heating, electrical, air conditioning, or other mechanical installation therein. Tenant shall promptly repair at its own expense any damage (whether structural or otherwise) to the Premises caused by any construction or alterations performed by Tenant or bringing into the Premises any property for Tenant's use, or by the installation or removal of such property, regardless of fault or by whom such damage shall be caused, unless caused solely by the negligence of Landlord or its employees, officers or agents. Notwithstanding the foregoing, Landlord may, at its option, upon not less than thirty (30) days' notice, elect to assume responsibility for the mechanical portions of heating, ventilation and air conditioning equipment (the "HVAC Equipment") which serves the Premises and which is located on the roof or in another location outside the Premises, and the routine servicing thereof, in which event the costs and expenses incurred by Landlord in maintaining, repairing and/or replacing the HVAC Equipment shall become an Annual Operating Costs for purposes of Article 8 of this Lease, except that Tenant's Proportionate Share of expenses related to the HVAC Equipment shall be as set forth in paragraph 8(a)(ii).

(b) That it shall be responsible for the removal and disposition of Tenant's refuse and rubbish from the Premises and the Shopping Center. In order to facilitate the systematic and orderly removal of such refuse and rubbish, and in order to coordinate the hours during which such service is performed for the various tenants and the use of the loading areas, Landlord shall have the right, from time to time, to select one or more independent contractors for the removal of refuse and rubbish. Upon request by Landlord, Tenant agrees to employ the contractor designated for the area in which the Premises is located for the removal of refuse and rubbish. Landlord agrees that the rate to be charged for such service shall be computed upon sound business practices and consistent with industry practice. The removal and disposition of Tenant's refuse and rubbish as aforementioned shall be subject to constant supervision and approval by Landlord. If at any time Landlord in its sole discretion, determines that removal and disposition is less than satisfactory, Landlord or its agent or an independent contractor selected by Landlord may contract to have removal and disposition completed to its satisfaction. Any charges under such circumstances shall be Tenant's responsibility due within ten (10) days as Additional Rent. Tenant shall not permit the unsightly accumulation or placing of rubbish, trash, garbage, debris, boxes, cans or other articles of any kind or description whatsoever in the Premises, or in the area immediately surrounding the Premises, or in any other part of the Shopping Center. Tenant shall store all rubbish, trash, garbage, debris, boxes, cans or other such items, in fireproof containers approved by Landlord during such time that elapses between removals from Premises.

VIII.B Landlord B.

13. Tenant's Maintenance Area, Maintenance, Repairs.

(A) Tenant's Maintenance Area. Tenant shall repair, maintain, replace and keep in good condition the entire Tenant's Maintenance Area including, but not limited to, all parking areas (including, without limitation, repaving), lighting fixtures and poles, sidewalks and curbs, driveways, traffic islands, fencing, landscaped areas, truck serviceways, exits, entrances, sewers drainage pipes, and conduits. Tenant shall keep the parking areas, sidewalks, and service areas in Tenant's Maintenance Area clean and free from all trash, ice, and snow. Tenant shall not permit the accumulation of any garbage, rubbish, or other waste in Tenant's Maintenance Area or the area adjacent thereto. Landlord shall have absolutely no maintenance, repair or replacement responsibility whatsoever for Tenant's Maintenance Area, such responsibility being solely that of Tenant. Tenant shall adequately light Tenant's Maintenance Area as appropriate.

(B) Tenant shall not place, install or construct any barrier, fence or other obstruction on the Leased Premises or Tenant's Maintenance Area which shall prevent or impair the free flow of pedestrian or automotive traffic between the Leased Premises or Tenant's Maintenance Area and the rest of the Shopping Center without the prior written consent of Landlord. Tenant may not eliminate any drives or parking spaces located adjacent to the Leased Premises. Landlord and/or the tenants, subtenants, licensees or occupants of the rest of the Shopping Center, their employees and invitees, shall have the right to park and use the parking areas and non-building areas located on that part of the Leased Premises referred to as Tenant's Maintenance Area, and Tenant's customers at the Leased Premises and invitees at the Leased Premises shall have the right to park in the balance of the Common Area of the Shopping Center as same may be adjusted from time to time. Notwithstanding anything contained in this Lease to the contrary, after 15 days prior written notice (except in case of an emergency or possibly dangerous condition), Landlord shall have the right (but not the obligation) to repair, maintain or replace any portion of Tenant's Maintenance Area if Tenant, in Landlord's reasonable judgment, fails to adequately perform such responsibilities and Tenant shall reimburse Landlord for the cost thereof.

(C) Tenant's Maintenance and Repairs. Tenant shall repair, replace and maintain the entire Leased Premises and Tenant's Maintenance Area, Tenant's Building and all other improvements located on the Leased Land including, but not limited to, all required structural repairs, replacements and maintenance. Without limiting the generality of the foregoing, Tenant shall repair, replace and maintain Tenant's Building and all other structures and improvements located on, in or under the Leased Land (including, without limitation, the outside walls, foundations, roofs, gutters, downspouts, all wiring, plumbing, heating, air-conditioning systems) and also including all utility lines, connections, apparatus, meters and equipment which serve the Leased Premises and Tenant's Maintenance Area exclusively, whether the same is located inside or outside the Leased Premises and Tenant's Maintenance Area (and all components thereof), and all storm, sanitary, sewer and drain disposal systems and easements constructed on or serving the Leased Land, in a condition of good order, repair, appearance and cleanliness, and at all times in compliance with all requirements of all applicable laws, including structural and non-structural repairs and all replacements when appropriate. Landlord shall have absolutely no maintenance, repair or replacement

responsibility whatsoever for the Leased Premises or Tenant's Maintenance Area, or systems and easements on or serving the Leased Land, such responsibility being solely that of Tenant.

VIII.C Landlord C.

Section 9.01 Repairs by Landlord.

Subject to delays which are caused by labor disputes, inability to obtain materials or labor on reasonable terms, delays excusable under the AIA General Conditions from time to time in force, or any cause whatsoever not due to the fault of Landlord (including Tenant's failure to furnish information as hereinafter provided), Landlord shall make all necessary repairs to the roof and necessary structural repairs to the exterior walls of the premises (excluding, however, all doors, door frames, storefronts, windows and glass), provided that Tenant gives Landlord written notice of the necessity of such repairs and that the need for such repairs is not due to any act or omission of Tenant, its agents, servants or contractors.

Section 9.02 Repairs by Tenant.

Saving and excepting the repairs for which Landlord is responsible under Sections 9.01 and 19.01, Tenant shall keep the premises, and all systems, equipment and facilities in the premises, including, but not limited to, electrical, mechanical, plumbing and HVAC systems, in good condition and repair, and shall make all replacements required to maintain said status of repair. Tenant shall also keep in good condition and repair the common areas within forty (40) feet of the wall in which the premises service door is located, and Tenant shall keep said area clean.

Section 9.03 Quality of Work and Warranties.

All repairs and replacements made by the parties shall be equal in quality to the original construction. Landlord shall assign to Tenant the benefits of all warranties received from contractors in connection with the original construction of the premises.

IX. TENANT'S FORMS—ALTERATIONS; SURRENDER

IX.A. Tenant A.

(a) **Tenant's Permitted Alterations.** Tenant may, at Tenant's expense, and from time to time, make such alterations, additions or changes, structural or otherwise, in and to the demised premises as it may deem necessary or desirable; provided, however, Tenant shall obtain Landlord's prior written consent to exterior or structural alterations, additions, or changes, which consent shall not be unreasonably withheld or delayed; and provided, further, that Landlord shall not withhold its consent to any such structural alterations, additions, or changes if the structural integrity of the building in which the demised premises is located will not be impaired by such work, and Landlord shall not withhold its consent as to exterior alterations if such exterior alterations are similar in quality, finish, and architectural style as to the existing exterior of the buildings in the Shopping Center. The phrase "exterior or structural alterations, additions, or changes" shall not include moving non-load bearing partitions, relocating building entry doors, minor plumbing and electrical work, modifying and rearranging fixtures, or similar changes. At Tenant's sole cost, Landlord shall cooperate with Tenant in securing building and other permits or authorizations required from time to time for any work permitted hereunder.

3. CONDITION OF PREMISES AT TERMINATION.

At the expiration or earlier termination of the Lease term, Tenant will surrender the demised premises, together with alterations, additions and improvements then a part thereof, in good order and condition, except for the following: (a) ordinary wear and tear, (b) repairs required to be made by Landlord, and (c) loss or damage by fire, the elements or other casualty. All furniture and trade fixtures installed in the demised premises at the expense of Tenant, or other occupant, will remain the property of Tenant, or such other occupant, and at the expiration or earlier termination of the Lease term, Tenant will remove all such furniture and trade fixtures and repair any damage caused by such removal, ordinary wear and tear excepted.

IX.B. Tenant B.

ALTERATIONS. 9.1 Tenant agrees that any repairs, alterations, replacements, other improvements or installations made by Tenant to or upon the Demised Premises shall be done in a good and workmanlike manner and in conformity with all laws, ordinances and regulations of all public authorities having jurisdiction, that materials of good quality shall be employed therein, that the structure of the Demised Premises shall not be endangered or impaired thereby, that any exterior alterations to the Demised Premises shall not be inconsistent with any uniform architectural design of the exterior of other stores then existing in the Shopping Center, and that, except for signs, satellite antennae and heating, air-conditioning and utilities equipment Tenant is permitted to erect and maintain pursuant to the provisions of this lease, neither the perimeter of the Demised Premises nor the height of the Demised Premises shall be increased without the written consent of Landlord. However, the immediately preceding sentence shall not prohibit Tenant from revising and/or altering the cosmetic fascia of the storefront of the Demised Premises so long as such cosmetic fascia of the storefront is not thereby made inconsistent with the uniform architectural design of storefronts, if any, then existing in the Shopping Center. Tenant agrees that Tenant shall not, except as specifically provided in other provisions of this lease, make any alterations to the foundation, roof, exterior walls, gutters, downspouts, canopy, storefront, or any structural parts of the Demised Premises, without first submitting plans and specifications therefor to Landlord. Landlord shall have the right to disapprove of the same if, and only if, the same violate any of the preceding provisions of this Section 9.1. Failure of Landlord to give notice of approval or disapproval of such plans and specifications within thirty (30) days after receipt thereof shall be deemed approval. All salvage in connection with any work done by Tenant pursuant to provisions of this Section 9.1 may be disposed of by Tenant. It is agreed and understood that, upon expiration of the term of this lease, Landlord shall accept possession of the Demised Premises as altered pursuant to the provisions hereof without any obligation upon Tenant to restore the Demised Premises to their former condition.

9.3 All repairs, alterations, replacements, other improvements or installations made to or upon the Demised Premises which are so attached to the realty that the same shall be by law deemed to be a part of the realty shall (subject, however, to the provisions of Section 9.1 above and the provisions of the following sentence) be the property of Landlord and remain upon and be surrendered with the Demised Premises as a part thereof upon the termination of the term of this lease. Notwithstanding the foregoing, all trade fixtures, lighting fixtures, heating equipment, air-conditioning equipment (other than ducts), the Equipment and signs, whether by law deemed to be a part of the realty or not, installed at any time or times by Tenant or any person claiming under Tenant (at the sole cost and expense of Tenant or such other person without any contribution from or reimbursement by Landlord and which are not replacements of property installed by Landlord) shall remain the property of Tenant or persons claiming under Tenant and may be removed by Tenant or any person claiming under Tenant at any time or times during the term of this lease or any occupancy by Tenant thereafter. Tenant shall repair any damage to the Demised Premises occasioned by the removal by Tenant or any person claiming under Tenant of any property from the Demised Premises, except for necessary holes and other openings and unavoidable damage to plaster, sheetrock and painted surfaces resulting therefrom.

SURRENDER:

Upon the expiration or other termination of the term of this lease, Tenant shall remove its goods and effects and those of all persons claiming under it and shall yield up peaceably to Landlord the Demised Premises with so much of the same as Tenant is obligated to maintain pursuant to the provisions of this Section 8.1 in as good repair and condition as the same were in on the Commencement Date, reasonable wear and tear excepted and subject to Articles X and XI.

IX.C. Tenant C.

Section 10.3. Alterations.

Section 10.3 (a). So long as Tenant is in compliance with all laws and regulations and obtains any requisite permits and approvals from governmental authorities, Tenant may, at its election and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the demised premises and the buildings and improvements from time to time thereon, as it may deem desirable, including the demolition (provided that Tenant shall be obligated to complete, in every instance, subsequent construction of all replacement structures) of any building(s) and improvements(s) and/or structure(s) that now or hereafter may be situated or erected on the demised premises (all salvage value thereof to be and remain the property of Tenant). In the event Tenant demolishes any buildings or improvements on the demised premises, Tenant agrees to remove all debris relating to such demolition and Tenant further agrees that if Tenant demolishes any building on the demised premises and does not commence the reconstruction of any new building

thereon for a period of six (6) months or more, then: (1) within thirty (30) days following written notice from Landlord requesting the same, but subject to delays caused by seasonal weather conditions or causes set forth in Section 19.5, Tenant, at its cost and expense, shall pave or landscape the demised premises unless and until such time as Tenant commences reconstruction of any buildings, or (2) absent such notice specified in clause (1) immediately preceding, as soon as is reasonably practicable following written notice from Landlord requesting the same, but subject to delays caused by seasonal weather conditions or causes set forth in Section 19.5, Tenant shall, at its cost and expense, construct a building of at least the size of the "Prime Lease Replacement Building". For purposes hereof, the Prime Lease Replacement Building shall mean the construction and completion on the demised premises of a tenantable new building not less than 55,000 square feet of ground floor area.

Section 10.3 (b). Tenant shall also have the right without the necessity of obtaining the consent or approval of Landlord (except as expressly provided to the contrary hereinbelow) or Prime Landlord to apply for any and all (i) variances, special permits, zoning changes (provided that such variances, special permits and zoning changes shall not modify the use to be other than retail or uses commonly found in retail shopping centers, are permissive, and do not prevent a reversion of a prior right or use), or (ii) other federal, state or municipal permits, approvals and the like for the construction of improvements and alterations, as permitted in this lease, in Tenant's name or if required in the name of Landlord or Prime Landlord, and Landlord shall cooperate with Tenant and shall execute and deliver, upon request of Tenant, such instrument or instruments, applications, agreements and any other document, embodying the approval of Landlord, as may be required by any public or quasi public authority for the purpose of obtaining any such license, permit or approval. Landlord shall cause Prime Landlord to cooperate with Tenant and execute and deliver, upon request of Tenant, such instrument or instruments, applications, agreements and any other document, embodying the approval of Prime Landlord, as may be required by any public or quasi public authority for the purpose of obtaining any such license, permit or approval. Any conditions imposed on the Shopping Center (as opposed to those imposed solely on the demised premises) as a condition to any such approval which Tenant shall be willing to accept shall, however, be (I) subject to Landlord's prior written consent, which Landlord shall not unreasonably withhold, condition or delay, and (II) performed by Tenant at its sole cost and expense. Notwithstanding clause (I) of the preceding sentence, Landlord may withhold such consent with respect to any condition which shall materially diminish the number of parking spaces within the Shopping Center and/or the curb cuts and/or main driveways thereof as shown on the Site Plan or which shall require parking variances (other than variances, if any, for the elimination of parking spaces reasonably required in order to build within the Ground Leased Land).

Section 11.6. Yield-Up.

At the end of the term, Tenant shall peaceably yield up the demised premises to Landlord, and Tenant shall not be required to remove or undo any installation, erection, alteration or addition made in, on or to the demised premises, however. Tenant will deliver the demised premises and any improvements in so-called "broom clean" condition, free of debris and free of all occupancies, tenancies, liens and encumbrances (except for any liens and encumbrances set forth on Exhibit B and those additional encumbrances that Tenant is permitted under this lease to encumber the demised premises, except for any Leasehold Mortgage) and shall deliver any improvements in good order and repair to the extent required of Tenant in this lease, reasonable wear and tear and the provisions of Article XV excepted. Nothing herein contained shall require the demised premises to be, at the end of the term, in the same condition as they were in at the Commencement Date, or at any time during the term hereof.

X. LANDLORD'S FORMS – ALTERATIONS; SURRENDER

X.A. Landlord A.

20. ALTERATIONS AND TENANT IMPROVEMENTS. (a) Tenant shall make no alterations or changes, structural or otherwise, to any part of the Premises, either exterior or interior, without Landlord's written consent, except as otherwise provided herein. In the event of any such approved changes, Tenant shall have all work done at its own expense. Request for such consent shall be accompanied by plans stating in detail precisely what is to be done. Tenant shall comply with all building codes, regulations and laws now or hereafter to be made or enforced in the municipality, county and/or state in which said Premises are located and which pertain to such work. Any additions, improvements, alterations and/or installations made by Tenant to the Premises (except only movable office furniture and fixtures) shall become and remain a part of the Premises and shall, at Landlord's option, become Landlord's property upon the termination of Tenant's occupancy of said Premises; provided, however, that if Landlord gives written notice to Tenant at the expiration or other termination of this Lease to such effect, it may require Tenant to

restore said Premises to the condition in which the Premises are required to be on the later of (i) the end of the Abatement Period, or (ii) the date Tenant opens for business, at Tenant's sole cost and expense. Tenant shall keep the Premises and all other parts of the Shopping Center free from any and all liens arising out of or in connection with any work performed, materials furnished or obligations incurred by or on behalf of Tenant, and agrees to bond against or discharge any mechanics', materialmen's or other such liens within ten (10) days after written request therefor by Landlord. Tenant shall hold Landlord harmless from and against all expenses, liens claims or damages to either property or person which may or might arise by reason of the making of any such additions, improvements, alterations and/or installations.

(b) Subject to the provisions of the preceding paragraph 20(a), any improvements made by Tenant shall immediately become the property of Landlord and shall remain upon the Premises in the absence of agreement to the contrary. Tenant further will not cut or drill into or secure any fixture, apparatus, or equipment of any kind to any part of the Premises without first obtaining Landlord's written consent. Tenant agrees to accept delivery of the Premises in an "as is" condition. Upon delivery of the Premises to Tenant, Tenant shall, and hereby agrees at its sole cost and expense, to remodel, refurbish and redecorate the interior thereof, including the making of all interior improvements, alterations and changes to the Premises including, but not limited to, new ceiling, new lighting, new flooring, new wall coverings and new storefront, necessary to place same in a first class, modern and attractive condition and to enable Tenant to properly use the Premises for the purposes set forth in this Lease.

(c) All work to be performed by Tenant hereunder shall be in accordance with detailed plans and specifications for same to be prepared by Tenant and submitted to Landlord, within fifteen (15) days after the date Landlord delivers the fully executed Lease agreement to Tenant, for Landlord's written approval. If Tenant fails to provide Landlord with detailed plans and specifications for its work within the period provided in the preceding sentence, then any Abatement Period provided for in Article 3 shall be reduced by two (2) days for each day Tenant is late in delivering its plans and specifications to Landlord. If no Abatement Period is provided for in Article 3, then Landlord shall be entitled to collect from Tenant, as liquidated damages with respect to such default of Tenant in addition to Minimum Rent and other amounts payable hereunder, as Additional Rent, an amount equal to one-fifteenth (1/15) of the monthly amount of Minimum Rent then payable under this Lease, for each day Tenant delays in submitting its plans and specifications to Landlord in accordance with this Article 20. It is expressly agreed that Tenant shall not commence any such work until said plans and specifications have been approved by Landlord. All work to be performed by Tenant shall be performed in a good and workmanlike manner, in accordance with all rules, regulations, codes and ordinances of any local, municipal, state and/or Federal authorities having jurisdiction thereof. Permits, licenses or approvals required for said work from such authorities shall be obtained by Tenant at its sole cost and expense.

(d) Tenant agrees that it shall fully complete the remodeling of the Premises as above set forth before the expiration of the Abatement Period. Tenant expressly agrees to protect, indemnify and save Landlord harmless from any liability to any person or estate for damage to person or property occurring, during the work proposed hereunder, whether before or after the commencement of the term of this Lease. It is expressly understood and agreed that any such alterations, changes or improvements shall in no way harm the structure of the Premises or diminish the value of same or of the Shopping Center. At any time after the expiration of the fifth (5th) anniversary of the Lease Date, and at any time after the end of each succeeding five (5) year period thereafter (if any), Tenant shall, within thirty (30) days after receipt of a written request from Landlord, commence and thereafter diligently pursue, in accordance with the provisions of this Article 20 and the other provisions of this Lease, all work required to remodel, redecorate and refurbish the Premises to the same condition as described in paragraph (b) above for the work to be performed by Tenant at the time of initial delivery of the Premises to Tenant.

(e) Landlord's approval of Tenant's plans and specifications under this Article 20 or any other provisions of this Lease is solely for the purpose of ascertaining whether Tenant's proposed alterations will have an adverse impact on the structural components or Common Facilities of the Shopping Center and to insure the aesthetic and architectural harmony of the Tenant's proposed alterations with the remainder of the Shopping Center. No approval of plans by Landlord shall be deemed to be a representation or warranty by Landlord that such plans or the work provided for therein will comply with applicable codes, laws or regulations or be in conformance with any insurance or other requirements which affect the Premises or the Shopping Center, or that the Premises are structurally adequate to support the work shown on such plans, and Tenant shall have the sole responsibility of complying with all such requirements notwithstanding Landlord's approval of Tenant's plans.

21. NOTICE OF NON-LIABILITY. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT, AND THAT NO MECHANICS' OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE ESTATE OR INTEREST OF LANDLORD IN AND TO THE PREMISES OR THE SHOPPING CENTER. WHENEVER AND AS OFTEN AS ANY LIEN ARISING OUT OF OR IN CONNECTION WITH ANY WORK PERFORMED, MATERIALS FURNISHED OR OBLIGATIONS INCURRED BY OR ON BEHALF OF TENANT SHALL HAVE BEEN FILED AGAINST THE PREMISES OR THE SHOPPING CENTER, OR IF ANY CONDITIONAL BILL OF SALE SHALL HAVE BEEN FILED FOR OR AFFECTING ANY MATERIALS, MACHINERY OR FIXTURES USED IN THE CONSTRUCTION, REPAIR OR OPERATION THEREOF, OR ANNEXED THERETO BY TENANT, TENANT SHALL FORTHWITH TAKE SUCH ACTION BY BONDING, DEPOSIT OR PAYMENT AS WILL REMOVE OR SATISFY THE LIEN OR CONDITIONAL BILL OF SALE WITHIN TEN (10) DAYS OF LANDLORD'S WRITTEN REQUEST THEREFOR.

52. SURRENDER OF PREMISES. At the expiration of or earlier termination of the term of this Lease, Tenant shall peacefully surrender the Premises to Landlord, in the same condition as the Premises were required to be in upon the expiration of the Abatement Period, ordinary wear and tear excepted to the extent the Premises is not required to be repaired and/or maintained by Tenant. Tenant shall surrender all keys for the Premises to Landlord and shall notify Landlord in writing of all combinations of locks, safes, and vaults, if any in the Premises. If the Premises are not surrendered as and when aforesaid, Tenant shall indemnify and hold Landlord harmless from and against all claims, loss or liability (direct, indirect, foreseeable or unforeseeable) resulting from the delay by Tenant in surrendering the Premises including, without limitation, any claims made by any succeeding occupant based upon Landlord's inability to deliver the Premises to any such succeeding occupant. Tenant shall comply with the provisions of Article 22 hereof respecting the removal of trade fixtures. Tenant's obligations to observe and perform the covenants set forth in this Article 52 shall survive the expiration or earlier termination of this Lease.

X.B. Landlord B.

(D) Alterations. Except with respect to interior non-structural alterations, and except as shown on Tenant's Site Plan approved by Landlord (see Article 32), no alterations, installations, additions or improvements will be made to the Leased Premises by Tenant without Landlord's prior written approval. All installations, alterations, additions and improvements, whether by Landlord, Tenant or any other person (except only sign panels and movable trade fixtures installed at Tenant's cost) shall become, when made, a part of Landlord's real estate, and on termination of the Lease Term shall be surrendered with the Leased Premises in good condition. Tenant shall not have the right to remove sign boxes. Tenant shall defend, indemnify and save Landlord harmless from and against all claims for injury, loss or damage to person or property caused by or resulting from doing any work. For any work that involves penetration of the roof surface, Tenant shall employ a roofing contractor who would preserve the roof warranty.

(E) Permits. All repairs, installations, alterations, improvements and removals by Tenant will be done in a good and workmanlike manner, only after Tenant has procured all permits. Tenant shall comply with all laws, ordinances and regulations of public authorities and with all Landlord's and Tenant's insurance requirements and with insurance inspection or rating bureaus; and the work shall not adversely affect the structure of the building.

19. Surrender

(A) Condition On Termination. On the expiration herein stated for the end of this Lease Term or sooner termination, Tenant shall peaceably and quietly leave and yield to Landlord the Leased Premises (including Tenant's Building, which may not be removed or demolished except with Landlord's specific prior written consent) together with the improvements and appurtenances, all in good order, condition and repair. Tenant agrees that, if Landlord so requests, upon termination or expiration of this Lease, Tenant will execute and deliver a deed of Tenant's Building to Landlord. At the expiration or sooner termination of the tenancy hereby created, Tenant shall surrender all keys for the Leased Premises to Landlord and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Leased Premises. Prior to the expiration or sooner termination of this Lease, Tenant shall remove any and all trade fixtures, equipment and other unattached items which Tenant may have installed, stored or left in the Leased Premises or elsewhere in the Shopping Center, and Tenant shall not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including but not limited to wall-to-wall carpeting), walls or ceilings, all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of Landlord, nor shall Tenant remove any fixtures or machinery that were furnished or paid for by

Landlord (whether initially installed or replaced). The Leased Premises shall be left in a broom-clean condition. If Tenant shall fail to remove its trade fixtures or other property as provided in this Article 19, such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant and at the option of Landlord shall become the property of Landlord, or at Landlord's option may be removed by Landlord at Tenant's expense, or placed in storage at Tenant's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall belong to Landlord. In the event Tenant does not make any repairs as required by this Article 19(A), Tenant shall be liable for and agrees to pay Landlord's costs and expenses in making such repairs. Tenant's obligations and covenants under this Article 19(A) shall survive the expiration or termination of this Lease.

X.C. Landlord C.

Alterations

Tenant shall not make any alterations, additions or improvements to the store front of the premises or any alterations, additions or improvements affecting structural or support elements of or in the building of which the premises are a part, or affecting any utility system servicing the premises or other parts of the Center, or change in the entrance or entrance doors without the prior written consent of Landlord. Tenant will not make any alterations, additions, or improvements on or to the premises or any part thereof unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's sole expense, by an architect or other duly qualified person and shall have obtained Landlord's written approval of such plans and specifications. If such approval is granted, Tenant shall cause the work described in such plans and specifications to be performed, at its expense, in a good and workmanlike manner, promptly, efficiently and competently by duly qualified contractors without interference with or disruption to the operations of other tenants in the Center. All such work shall comply with all applicable codes, rules, regulations and ordinances. Any alterations, additions or improvements by Tenant which are permitted hereunder or hereafter approved by Landlord shall immediately become the property of Landlord and remain upon the premises at the end of the term unless Landlord notifies Tenant to restore the premises to its original condition, in which event Tenant shall comply with such requirement prior to the expiration of the term. Tenant shall not cut or drill into, or secure any fixtures, apparatus or equipment of any kind to, any part of the premises without Landlord's prior written consent; and if Tenant shall in any way cut through or pierce the roof or exterior walls of the premises, the Landlord's repair obligations respecting the roof or exterior walls (as the case may be) under Section 9.01 hereof shall thereupon terminate. Before undertaking any alterations permitted hereunder or consented to by Landlord hereunder, Tenant shall obtain and furnish to Landlord an endorsement to the public liability insurance policy required to be carried by Tenant under Section 15.02 hereof to cover liabilities incurred in connection with any work undertaken by Tenant.

Surrender of Premises

At the expiration of the tenancy hereby created, or upon any reentry by Landlord into the premises pursuant to Section 23.03 Tenant shall surrender the leased premises in the same condition as the leased premises were upon the commencement of the original term of this Lease, reasonable wear and tear excepted, and shall deliver all keys for the leased premises to Landlord at the place then fixed for the payment of rent, and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the leased premises. Tenant shall remove all of its trade fixtures and inventory and any alterations, additions or improvements which Landlord requires to be removed pursuant to Section 11.03, before surrendering the premises as aforesaid, and shall repair any damage to the leased premises caused by such removal. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease. During the last 120 days of the term, Landlord shall be allowed to place a sign in the window of the premises indicating the premises are available for rent.

XI. TENANT'S FORMS—HOLDING OVER

XI.A. Tenant A.

Holding Over.

In the absence of any written agreement to the contrary, if Tenant remains in occupancy of the demised premises after the expiration of the Lease term, then Tenant shall so remain as a tenant from month-to-month, and all provisions of this Lease applicable to such tenancy shall remain in full force and effect.

XI.B. Tenant B.

18.4 If Tenant or any person claiming under Tenant shall remain in possession of the Demised Premises or any part thereof after the expiration of the term of this lease without any agreement in writing between Landlord and Tenant with respect thereto, the person remaining in possession shall, prior to acceptance of rent by Landlord, be deemed a tenant at sufferance, and, after acceptance of rent by Landlord, the person remaining in possession shall be deemed a tenant from month to month subject to the provisions of this lease insofar as the same may be made applicable to a tenancy from month to month.

XI.C. Tenant C.

Section 19.6. Holdover.

If Tenant continues in occupancy of the demised premises after the end of the term, such occupancy shall not be deemed to extend or renew the term of this lease. Such occupancy shall be deemed a tenancy at will, from month to month (terminable by either party upon thirty (30) days' notice given by the terminating party to the non-terminating party), upon the terms herein contained, and at the Additional Rent and one hundred twenty (120%) percent of the Fixed Rent payable under Article IV for the last Lease Year prior to the end of the term. In the event such occupancy of the demised premises is for a partial month, the Rent shall be prorated for the period of such occupancy. Within thirty (30) days after Tenant surrenders the demised premises to Landlord in accordance with all of the terms and conditions required of Tenant pursuant to Sections 11.6 and 13.1 of this lease, Landlord shall refund to Tenant all unearned Rent paid in advance by Tenant.

XII. LANDLORD'S FORMS – HOLDING OVER

XII.A. Landlord A.

35. HOLD-OVER. If Tenant shall not immediately surrender the Premises the day after the end of the term hereby created, then Tenant shall, by virtue of this agreement, become, at Landlord's option, either (a) a tenant at sufferance, or (b) a tenant from month-to-month. In either of such events, rent shall be payable at a monthly or daily rate, as the case may be, of triple the Minimum Rent and Additional Rental payable by Tenant immediately prior to the expiration or termination of the term, with said tenancy to commence on the first day after the end of the term above demised; and said tenancy shall be subject to all of the conditions and covenants of this Lease insofar as such covenants and conditions are applicable thereto. Nothing contained in this Lease shall be construed as a consent by Landlord to the occupancy or possession of the Premises after the expiration of the term of this Lease. If Landlord fails to make an election under clause (a) or (b) within ten (10) days after the expiration or termination of the term, the hold-over tenancy shall be deemed to be a tenancy from month-to-month. If Tenant holds over as a month-to-month tenant, each party hereto shall give to the other at least thirty (30) days written notice to quit the Premises (any right to a longer notice period being hereby expressly waived), except in the event of non-payment of rent in advance or of the other Additional Rents provided for herein when due, or of the breach of any other covenant by the said Tenant, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days' notice to quit being expressly waived; provided, however, that in the event Tenant shall hold over after expiration of the term hereby created, and if Landlord shall desire to regain possession of said Premises promptly at the expiration of the term aforesaid, then at any time prior to the date Landlord makes (or is deemed to have made) its election under clause (b) of this Article 35, Landlord at its option, may re-enter and take possession of the Premises forthwith, without process, or by any legal action or process in force in the state in which the Premises is located; provided, however, that if Landlord has accepted rent for any period beyond the expiration of the term and Tenant is not then in default under any of the provisions of this Lease, Landlord shall promptly refund to Tenant an amount equal to any excess rental received by Landlord with respect to any period after Landlord exercises its right to re-enter the Premises under this Article 35.

XII.B. Landlord B.

Hold Over. If Tenant or anyone claiming under Tenant remains in possession of the Leased Premises after the expiration of the Lease Term, that person shall be a tenant at sufferance; and during such holding over, Base Rent shall be twice the rate which was in effect immediately prior to the Lease Term expiration, which Landlord may collect without admission that Tenant's estate is more than a tenancy at sufferance, and all the other provisions of this Lease shall apply insofar as the same are applicable to a tenancy at sufferance.

XII.C. Landlord C.

Section 27.16 Holding Over

Should Tenant remain in possession of all or any part of the Premises after the expiration of the term, such holding over shall, in the absence of a written agreement to the contrary, be deemed to have created and be construed to be a tenancy from month-to-month terminable on thirty (30) days written notice from either party to the other, at a monthly rental equal to the total of (i) twice the monthly installment of minimum rent payable during the last month of the Term; (ii) Tenant's proportionate share of Taxes; (iii) Tenant's Common Area Charge, as adjusted; and (iv) 1/12 of Tenant's allocable share of all annual insurance premiums payable by Landlord relative to the Center, and otherwise subject to all of the other terms, covenants, and conditions of this Lease insofar as the same may be applicable to a month-to-month tenancy.

XIII. TENANT'S FORMS—EXERCISE OF OPTION/RENEWALS

XIII.A. Tenant A.

4. Options to Extend Lease.

(a) Tenant has _____ (____) successive options to extend the term of this Lease for additional periods of _____ (____) years each (individually an "Option Period," and collectively "Option Periods"), each such Option Period to begin respectively upon the expiration of the term of this Lease as it may have been extended, and the same terms and conditions as set forth in this Lease will apply to each such Option Period, except for the Annual Rent (defined in Article 6), which shall be adjusted as set forth on Exhibit C. If Tenant elects to exercise an Option Period, then Tenant shall do so by giving notice to Landlord not less than six (6) months before the Expiration Date.

(b) It is the intention of the parties hereto to avoid the forfeiture of Tenant's rights to extend the term of this Lease through the inadvertent failure of Tenant to give notice of exercise of any Option Period. Accordingly, if Tenant fails to give Landlord timely notice exercising an Option Period, then Tenant's right to exercise its then applicable Option Period shall nevertheless continue until the date that is thirty (30) days following the date on which Tenant receives a notice (the "Reminder Notice") from Landlord advising Tenant of Tenant's failure to deliver such notice of exercise (the "Reminder Period"). If Tenant notifies Landlord within the Reminder Period that Tenant is exercising the Option Period in question, then Tenant shall be deemed to have timely exercised the Option Period, and all of the provisions relating thereto shall be deemed to be in effect from and after the day that the applicable extended portion of the term would have begun as if Tenant had timely exercised the Option Period to extend the term of this Lease. Landlord may deliver the Reminder Notice to Tenant any time after the first day on which Tenant, pursuant to the applicable provisions of this Article 4, could no longer have timely exercised an Option Period (if not for the provisions of this Article 4(b)).

XIII.B. Tenant B.

4.2 Tenant shall have the right, at its election, to extend the original term of this lease, or the original term as it may have been previously extended pursuant to the second sentence of this Section 4.2, for four (4) extension periods of five (5) years each, each commencing upon the expiration of the original term, or the original term as thus previously extended (each sometimes herein referred to as an "Extension Period"), provided that Tenant shall give Landlord notice of the exercise of such election (i) at least six (6) months prior to the expiration of the original term, or the original term as previously extended, as the case may be or (ii) within twenty (20) days after receipt of notice from Landlord to Tenant that Tenant has failed to exercise its option of extension within the period provided in (i) above, and the option(s) of extension shall not lapse until after the expiration of said twenty (20) day period following receipt of Landlord's notice. In addition, Tenant shall have the right, at its election, to extend the original term, or the original term as it may have been previously extended as aforesaid, for an extension period of a fraction of a year ending upon the January 31st next following the expiration of the original term, or the original term as previously extended, as the case may be (herein referred to as the "Extra Period"), provided that Tenant shall give Landlord notice of the exercise of such election (i) at least six (6) months prior to the expiration of the original term, or the original term as previously extended, as the case may be or (ii) within twenty (20) days after receipt of notice from Landlord to Tenant that Tenant has failed to exercise its option of extension within the period provided in (i) above, and the option(s) of extension shall not lapse until after the expiration of said twenty (20) day period following receipt of Landlord's notice. The expression "the original term" means the period described in Section 4.1 as the original term prior to the exercise by Tenant of any of such elections to extend the original term. After the exercise by Tenant of any of such elections, the expression "the term of this lease" shall mean the original term as it may have been then extended. Except as expressly otherwise provided in this lease, all the agreements and conditions in

this lease contained shall apply to each period or periods to which the original term shall be extended as aforesaid. If Tenant shall give notice of the exercise of any such election in the manner and within the time provided aforesaid, the term shall be extended upon the giving of such notice without the requirement of any further action on the part of Landlord.

XIII.C. Tenant C.

Section 3.1. Extensions.

Section 3.1 (a). Extensions.

The original term of this lease shall be automatically extended, without the requirement of any further act, lease or agreement by either party, for a total of six (6) successive periods of ten (10) years each (the "**Extension Periods**"), unless Tenant, at least ten (10) months prior to the expiration of the original term or of the then-current Extension Period (the "**Last Notice Date**"), shall give Landlord notice in writing to the contrary, in which event the term of this lease shall terminate on such expiration date.

Section 3.1 (b). Tenant's Grace Period.

If Tenant fails to give Landlord the termination notice provided for in Section 3.1 (a), Landlord may, but shall not be obligated to, give Tenant a written reminder notice of that fact, which reminder notice may be sent to Tenant at any time that is not more than thirty (30) days before the Last Notice Date. Notwithstanding the provisions of Section 3.1 (a), Tenant shall have the right to terminate this lease by giving written notice to Landlord not later than the thirtieth (30) day following (i) Tenant's actual receipt of Landlord's reminder notice under this Section, if any, or (ii) if no receipt by Tenant of Landlord's reminder notice under this Section, the expiration of six (6) months after the Last Notice Date, whichever of the two events (i.e., Tenant's receipt or the end of the six (6) month period) shall be the first to occur. Tenant's cancellation notice under this Section 3.1 (b) shall take effect at the end of the six (6) month period beginning with the first day of the first calendar month following the month in which Tenant gives such notice. If Tenant does not send a cancellation notice under the provisions of this Section 3.1(b), the lease shall continue in effect in accordance with its terms.

XIV. LANDLORD'S FORMS – EXERCISE OF OPTIONS/RENEWAL

XIII.A. Landlord A.

NO STANDARD CLAUSE INCLUDED IN FORM—NEEDS TO BE NEGOTIATED AND ADDED

XIII.B. Landlord B.

THIS ARTICLE IS DEAL SPECIFIC – CONFORM TO PARTICULARS OF DEAL.

34. **OPTIONS TO EXTEND LEASE.** (A) Provided Tenant is not in default of the Lease and has faithfully performed the terms or conditions of the Lease and Tenant is in actual physical possession of all of the Leased Premises (and operating and open for business as contemplated by this Lease, in all of the Leased Premises), Tenant shall have the right to extend the term of this Lease set forth in Article 1 (the "**Original Term**") for three consecutive additional periods of five years each (the "**First Additional Term**", "**Second Additional Term**" and the "**Third Additional Term**"). In order to exercise an option, Tenant must deliver to Landlord written notice at least one (1) year prior to the expiration of the then current Term, of its election to exercise its option, **TIME BEING OF THE ESSENCE** with respect to such notice. Such notice of election to extend the term of the Lease shall be irrevocable. Except as specifically set forth herein, the Additional Terms shall be upon all of the terms and conditions of the Lease except that any articles which were intended to be one time, initial provisions or concessions (such as free Rent, Landlord Work, or a Tenant improvement allowance) shall be deemed to have been satisfied and shall not apply to the Additional Terms. Also, there shall be no option to extend the Third Additional Term. The exercise of the option for the First Additional Term is a condition precedent to the exercise of the option for the Second Additional Term and the exercise of option for the Second Additional Term is a condition precedent to the exercise of option for the Third Additional Term. The renewal options set forth in this Article are exclusively for the benefit of **ENTER TENANT'S LEGAL NAME AS IT APPEARS ON THE LEASE** and shall not be available to any successor, assignee, subtenant or transferee of **TENANT'S NAME**. In the event of any assignment, subletting, or other transfer of **TENANT'S NAME**'s interest in this Lease or the Leased Premises, this Article shall be deemed deleted from the Lease.

(B) First Additional Term - Option Base Rent. In the event Tenant exercises its option to extend the Term of the Lease for the First Additional Term as provided above, the Base Rent during each Lease Year of the First Additional Term shall be as set forth in Article 1(H)(i).

(C) Second Additional Term - Option Base Rent. In the event Tenant exercises its option to extend the Term of the Lease for the Second Additional Term as provided above, the Base Rent during each Lease Year of the Second Additional Term shall be as set forth in Article 1(H)(ii).

(D) Third Additional Term - Option Base Rent. In the event Tenant exercises its option to extend the Term of the Lease for the Third Additional Term as provided above, the Base Rent during each Lease Year of the Third Additional Term shall be as set forth in Article 1(H)(iii).

XIII.C. Landlord C.

NO STANDARD CLAUSE INCLUDED IN FORM—NEEDS TO BE NEGOTIATED AND ADDED

XIV. TENANT’S FORMS---DAMAGES

XIV.A. Tenant A.

Reletting. Without terminating this Lease, Landlord may re-enter and repossess the Leased Premises, or any part thereof, and lease the Leased Premises, or any part thereof, to any other Person upon such terms as are reasonable, for a term within or beyond the Term. Any such reletting shall be for the account of Tenant, and Tenant shall remain liable for the excess (if any) of: (a) all Rent which would be payable under this Lease by Tenant in the absence of such repossession; over (b) the proceeds, if any, of any reletting effected for the account of Tenant after deducting from such proceeds any Reletting Expenses; provided, however, if the term of any reletting is greater than the amount of time remaining on the then current Term, then any Reletting Expenses shall be reasonably allocated throughout the entire reletting term for purposes of determining the amount of the deduction from reletting proceeds. If the Leased Premises are, at the time of Tenant Default, sublet or leased by Tenant to others, Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to Rent and other amounts due hereunder without in any way affecting Tenant's obligation to Landlord hereunder. No repossession of the Leased Premises or any part thereof pursuant to this Section 20.2.2. shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such repossession, and Landlord may, at its option, sue (which may include successive actions) for and collect all Rent and other charges due hereunder at any time as when such charges accrue.

20.2.3. Self Help. Exercise self-help pursuant to Section 24.13.

20.3. Mitigation of Damages. Upon the occurrence of a Tenant Default, Landlord agrees to endeavor in good faith to use reasonable efforts to mitigate any damages for which Tenant may be liable. [Reasonable efforts shall not require Landlord to lease the Leased Premises prior to other vacant space in the Shopping Center of a similar size, to lease the Leased Premises for a use prohibited by Section 24.30 of this Lease, to lease the Leased Premises to a Tenant with a bad business reputation, insufficient net worth or insufficient experience in retail operations or for a use in conflict with the primary use of another Shopping Center tenant or in violation of another Shopping Center tenant's exclusive use clause.]

20.4. Expenses. At any time following a default, in the event that Landlord commences suit for the repossession of the Leased Premises, for the recovery of Rent, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all reasonable expenses incurred in connection therewith, including reasonable attorneys' fees and costs. If Tenant defaults under this Lease, all sums of money owed to Landlord under this Lease shall bear interest at the Default Rate until the sums are paid to Landlord.

XIV.B. Tenant B.

DEFAULT

13.1 If Tenant shall default in the payment of rent or any other sum of money payable by Tenant to Landlord and if Tenant shall fail to cure such default within fourteen (14) days after receipt of notice of such default from Landlord,

then Landlord may, without waiving any claim for breach of agreement, send notice to Tenant of the termination of the term of this lease, and on the fifth (5th) day next following the date of the sending of such notice, the term of this lease shall terminate, Tenant hereby waiving all rights of redemption.

13.2 In case of any such termination, Tenant shall indemnify Landlord against all loss of rent and other payments provided herein to be paid by Tenant to Landlord between the time of such termination and the expiration of the term of this lease by conclusion of the agreed term of years specified in Article IV hereof. It is understood and agreed that at the time of such termination or at any time thereafter Landlord may rent the Demised Premises, for a term which may expire after such expiration of the term of this lease specified in Article 4.1 hereof, without releasing Tenant from any liability whatsoever, that Tenant shall be liable for any expenses incurred by Landlord in connection with any such reletting, including, without limitation, reasonable attorneys' fees and reasonable brokers' fees, and that any monies collected from any reletting shall be applied first to the foregoing expenses and then to payment of rent and all other payments due from Tenant to Landlord.

13.3 After any assignment of Tenant's interest in this lease Landlord shall not exercise any rights or remedies under this Article XIII on account of any default in payment of any rent or other sum of money unless Landlord shall give notice to the tenant named herein, as well as the tenant in possession, of such default and the opportunity to cure each such default within the period of time after such notice as is provided in Section 13.1 above. After such notice, if the term of this lease shall be terminated pursuant to the provisions of this Article XIII or pursuant to bankruptcy, the tenant named herein shall not be liable for the payment of any rent or for the performance or observance of any agreements or conditions to be performed or observed after the date of such termination unless about the time of such termination Landlord shall have offered to the tenant named herein a lease of the balance of the term of this lease upon the provisions of this lease contained.

13.4 Landlord shall not have any lien, for the performance of any obligations of Tenant, upon any fixtures, machinery, equipment, goods, wares, merchandise or other personal property, and Landlord hereby expressly waives the provisions of any law giving to Landlord such a lien.

13.5 If any person to whom Tenant shall not then be paying rent under this lease shall demand payment of rent from Tenant, or any other amount payable by Tenant under this lease, alleging his or its right to receive such rent or other amount as a result of a transfer of Landlord's interest in this lease or otherwise, Tenant shall not be obligated to honor such demand unless Tenant shall receive written instructions to do so from the person to whom Tenant shall then be paying rent or shall otherwise receive evidence satisfactory to Tenant of the right of the person making the demand. The withholding of rent, or any other amount payable by Tenant under this lease, by Tenant pending the determination of the right of the party making the demand shall not be deemed to be a default on the part of Tenant.

13.6 If either party shall be in default of any obligation to make any payments to the other party under this lease for more than ten (10) days after receipt of notice thereof from the other party, then thereafter interest shall accrue upon such payment, and be payable, at an annual rate equal to the so-called base or prime rate then announced, from time to time, by Citibank plus two percent (2%) per year (the "Default Rate").

XIV.C. Tenant C.

LANDLORD'S REMEDIES.

Section 16.1. Termination for Tenant's Event Of Monetary Default.

Each of the following shall be an "Event Of Monetary Default": (a) Tenant shall fail to pay Fixed Rent and/or any other recurring monthly payment due under this lease for a period of fifteen (15) days after Tenant's receipt of written notice from Landlord specifying the amount of such payment that is due and unpaid, or (b) Tenant shall fail to pay any other amount payable to Landlord under any provision contained in this lease for a period of thirty (30) days after Tenant's receipt of written notice from Landlord specifying the amount of such payment due and unpaid. It is expressly understood and agreed that no default, non-compliance or failure of performance by Tenant under this lease, other than Tenant's Event Of Monetary Default, shall constitute an event of failure, non-compliance or default by Tenant that would give Landlord the right to terminate this lease. Upon the occurrence of an Event Of Monetary Default that would give the Landlord the right to terminate this lease, defined as aforesaid, then in any such case, notwithstanding any waiver or other indulgence of any prior default, Landlord may terminate this lease by written notice to Tenant sent at any time thereafter, but before Tenant has cured or removed the cause for such

termination. Such termination shall take effect on the thirtieth (30th) day after Tenant receives it, and shall be without prejudice to any remedy Landlord might otherwise have for any prior breach of covenant.

Section 16.2. (A) Tenant's Damage Payments Upon Termination For An Event Of Monetary Default.

If this lease is terminated under this Article, Tenant shall pay to Landlord, on the first day of each calendar month remaining in the original term (or the then-current Extension Period), one-twelfth (1/12) of the Fixed Rent payable under Section 4.1 of this lease for each remaining Lease Year of the term, according to the Fixed Rent specified in Section 4.1 of this lease, plus, in the manner and at the times set forth in this lease for the date due of each calendar year, the Additional Rent and all other amounts payable by Tenant to Landlord pursuant to this lease, but Landlord shall use "reasonable diligence to relet the demised premises", and the net proceeds, if any, of such Landlord reletting the demised premises (after deducting reasonable expenses), as well as all rents payable and received under existing subleases that are not terminated, shall be credited against the amounts payable by Tenant under this Section. For purposes of this lease, "reasonable diligence to relet the demised premises" shall be satisfied if Landlord shall (a) list the demised premises as available for leasing with a commercial real estate broker who is actively involved in the leasing of such real estate in the County of Baltimore, (b) post on the demised premises a "For Rent" sign reasonably visible from York Road (subject, however, to any sign criteria or regulations imposed by Baltimore County, Maryland), and (c) consider in good faith any offers to lease the whole or any part of the demised premises.

(B) Tenant's Damage Payments Upon An Event Of Monetary Default Absent A Termination.

If an Event Of Monetary Default occurs and this lease is not terminated, Landlord shall have the right and remedy to sue Tenant monthly for the collection of all Fixed Rent payable under Section 4.1 and all Additional Rent with respect to which Tenant may then be in default and which accrued up to the date of any such suit and not thereafter, which suits shall be permitted from time to time.

(C) Tenant's Damage Payments Upon An Event Of Non-Monetary Default.

If Tenant defaults in the performance of any other obligation imposed on it by this lease, and shall not cure such default within thirty (30) days after written notice thereof [or, if the default requires more than thirty (30) days to be cured, if Tenant does not begin to cure the default within that period and then diligently prosecute the cure to completion], such default being deemed an "Event Of Non-Monetary Default" then Landlord, at any time thereafter, may cure Tenant's default for the account of Tenant. If necessary to protect the interest of Landlord in the Shopping Center or the demised premises or in the event of an emergency that would result in injury to persons or damage to property, Landlord may cure a default by Tenant prior to the expiration of the waiting period but after oral (if only oral notice is reasonable under the emergency circumstances) or written notice to Tenant.

(D) Interest On Damage Payments.

Tenant shall pay to Landlord the greater of interest ordered by the Court or interest at the Interest Rate (but not both) on all such amounts of unpaid Fixed Rent and/or unpaid Additional Rent under this lease then due and owing from the date when such installment shall have become due to the date of full payment thereof.

Section 16.3. Limitations of Damages.

Tenant's obligations to Landlord for any Event Of Monetary Default or Event Of Non-Monetary Default under this lease shall be limited to payment of the sums provided for herein, payment of the reasonable cost of procuring substitute performance (as, for example, but without limitation, in the case of Tenant's failure to perform one of its repair obligations), and such prohibiting injunctive relief as a court of competent jurisdiction may determine, but Tenant shall never have any liability or responsibility whatever for any consequential or indirect damages, whether proximately or remotely related to a default by Tenant. Landlord hereby waives all rights of distraint and distress and all other rights, title and interest in and restrictions and encumbrances on all Tenant's fixtures, signs and all other property of Tenant.

XV. LANDLORD'S FORMS – DAMAGES

XVI.A. Landlord A.

29. LANDLORD'S REMEDIES UPON DEFAULT. Tenant shall be in default under this Lease if Tenant (i) fails to pay any installment of Minimum Rent, Additional Rent or other charges or money obligation to be paid by Tenant hereunder

within five (5) days after the same shall become due (all of which monetary obligations of Tenant shall bear interest at the highest rate allowable by law, not to exceed 18% per annum from the date due until paid); or (ii) defaults in the performance of any of the covenants, terms or provisions of this Lease (other than the payment, when due, of any of Tenant's monetary obligations hereunder) or any of the Rules and Regulations now or hereafter established by Landlord to govern the operation of the Shopping Center and fails to cure such default within twenty (20) days after written notice thereof from Landlord; or (iii) abandons the Premises or fails to keep the Premises continuously and uninterruptedly open for business; or (iv) files a voluntary petition in bankruptcy, or any similar petition seeking relief under any present or future federal, or other bankruptcy or insolvency statute or law; or if a proceeding under any present or future federal, state or other bankruptcy or insolvency statute or law shall be filed against Tenant or any asset of Tenant, and such proceeding shall not have been dismissed or vacated within thirty (30) days of the date of such filing; or (v) makes an assignment for the benefit of its creditors. Upon the occurrence of any of the above events, Landlord, at its option, may pursue any one or more of the following remedies without any notice or demand whatsoever:

(a) Landlord, at its option, may at once, or at any time thereafter, terminate this Lease by written notice to Tenant, whereupon this Lease shall end. Upon such termination by Landlord, Tenant will at once surrender possession of the Premises to Landlord and remove all of Tenant's effects therefrom, and Landlord may forthwith re-enter the Premises and repossess itself thereof, and remove all persons and effects therefrom, using such force as may be necessary, without being guilty of trespass, forcible entry, detainer or other tort.

(b) Landlord may, without terminating this Lease, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor, and, if Landlord so elects, make such alterations and repairs as, in Landlord's judgement, may be necessary to relet the Premises, and relet the Premises or any part thereof for such rent and for such period of time and subject to such terms and conditions as Landlord may deem advisable and receive the rent therefor. Upon each such reletting, the rent received by Landlord in respect of such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord, including interest thereon; second, to the payment of any loss and expenses of such reletting, including brokerage fees, attorneys' fees and the cost of such alterations and repair; third, to the payment of rent due and unpaid hereunder, together with interest thereon as herein provided; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Tenant agrees to pay to Landlord, on demand, any deficiency that may arise by reason of such reletting. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such prior default.

(c) In the event Landlord shall re-enter the Premises and/or terminate this Lease in accordance with the provisions of this Article 29, Landlord may, in addition to any other remedy it may have, recover from Tenant all damages and expenses Landlord may suffer or incur by reason of Tenant's default hereunder, including without limitation, the cost of recovering the Premises and reasonable attorney fees. Tenant agrees that actual damages to Landlord resulting from Landlord's exercise of the remedies set forth in paragraphs (a) or (b) above, or from a failure of Tenant to operate in the Premises in accordance with the provisions of this Lease (including, without limitation, damages resulting from the adverse impact on the sales and percentage rental payable to Landlord by other tenants of the Shopping Center), will be difficult to ascertain, and therefore, after a default of Tenant hereunder, Tenant shall also pay to Landlord "Liquidated Damages" for the failure of Tenant to observe and perform the covenants of this Lease, which at the election of Landlord, shall be either: (A) (x) the sum of (i) the minimum monthly rent, plus (ii) the average monthly Percentage Rent paid hereunder for the two (2) Lease Years immediately preceding the date of termination or re-entry by Landlord (or for the entire preceding portion of the lease term if less than two (2) Lease Years) plus (iii) the Additional Rent payable hereunder for the month immediately preceding such failure to operate, re-entry or termination, less (z) the net amount, if any, of the rents collected on account of the lease or leases of the Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease, all of which sums shall become due and payable by Tenant to Landlord upon the first day of each calendar month during the otherwise unexpired portion of the term hereof; or (B) the whole of said Liquidated Damages calculated under clause (A) multiplied by the number of months then remaining in the lease term, discounted to present value at a rate of six percent (6%) per annum as of the date of termination or re-entry by Landlord; provided, however, that in the event Landlord shall relet the Premises and the rent received by Landlord in respect of such reletting together with the discounted Liquidated Damages paid by Tenant, less the costs and expenses incurred by Landlord in such reletting, shall exceed the rent reserved hereunder for that period which would otherwise have constituted the remainder of the term hereof, then Landlord shall, upon the expiration of the period which would have constituted the term of this Lease, refund to Tenant the lesser of the amount of such excess or the discounted Liquidated Damages theretofore paid by Tenant.

(d) If the rent agreed to be paid, including all other sums of money which under the provisions hereto are declared to be rent, shall be in arrears in whole or in part for five (5) or more days, Landlord may at its option (if such arrearage remains unpaid after ten (10) days written notice to Tenant) declare the tenancy hereunder converted into a tenancy from month to month, and upon giving written notice to Tenant of the exercise of such option, Landlord shall forthwith be entitled to all provisions of law relating to the summary eviction of monthly tenants in default in rent.

(e) Anything in this Lease to the contrary notwithstanding, in order to cover the extra expense involved in handling delinquent payments, Tenant shall pay a "late charge" in an amount equal to the greater of (i) 5% of any delinquent payment, or (ii) \$250.00, when any installment of Minimum Rent (or any other amount as may be considered Additional Rental under this Lease) is paid more than five (5) days after the due date thereof. It is hereby understood that this charge is for extra expenses incurred by the Landlord in processing the delinquency.

(f) Tenant hereby appoints as its agent to receive service of all dispossessory or other proceedings and notices thereunder and under this Lease the person apparently in charge of the Premises at the time, and if no person then appears to be in charge of the Premises, then such service or notice may be made by attaching the same to the main entrance of the Premises, provided that, in such later event, a copy of any such proceedings or notice shall also be mailed to Tenant in the manner set forth in Article 36 hereof.

(g) Tenant shall be considered in "Habitual Default" of this Lease upon (i) Tenant's failure, on two (2) or more occasions during any Lease Year, to pay, when due, any installment of Minimum Rent, Additional Rent, or any other sum required by the terms of this Lease, or (ii) Tenant's repeated violation of, or failure to comply with, any term covenant or condition of this Lease after written notice of such violation or failure to comply has been given by Landlord to Tenant. Upon the occurrence of an event of Habitual Default on the part of Tenant, Tenant shall immediately be deemed to have released any and all options or rights granted, or to be granted, to Tenant under the terms of this Lease (including, without limitation, rights of renewal, rights to terminate, or rights of first refusal), and Landlord may, in addition to its other remedies under this Lease, by notice to Tenant, (i) increase the security deposit required hereunder to an amount equal to six (6) months Minimum Rent (or, at Landlord's option, a lesser period) such amount to be due and payable within ten (10) days after the date of such notice, and/or (ii) upon the occurrence of each such event of habitual default, increase the annual Minimum Rent payable from time to time under Article 3 by an amount equal to One Dollar (\$1.00) multiplied by the number of square feet of leasable area in the Premises.

(h) Pursuit of any of the foregoing remedies shall not preclude Landlord from pursuing any other remedies therein or at law or in equity provided, nor shall pursuit of any remedy by Landlord constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of Tenant's violation of any of the covenants and provisions of this Lease. Tenant hereby waives any right to assert or maintain any counterclaims against Landlord in any action brought by Landlord to obtain possession of the Premises. No act of Landlord (including, without limitation, acts of maintenance, efforts to relet the Premises, or any other actions taken by Landlord or its agents to protect Landlord's interests under this Lease) other than a written notice of termination, shall terminate this Lease. The acceptance of keys to the Premises by Landlord, its agents, employees, contractors or other persons on Landlord's behalf shall not be deemed or constitute to effect a termination of this Lease unless such early termination is evidenced by a written instrument signed by Landlord. The receipt or acceptance of payments of Minimum Rent or Additional Rent by Landlord, its agents, employees, contractors or other persons on Landlord's behalf after Landlord has elected to terminate this Lease or reenter as provided in this Article 29 shall not be deemed or constitute to effect a cure by Tenant of any default, but shall be deemed to be payment on account with respect to Tenant's underlying obligations, and Landlord may accept such check without prejudice to any other rights or remedies which it may have against the Tenant.

XVI.B. Landlord B.

Defaults and Remedies.

(A) Any one of the following shall be a default by Tenant: (1) if Tenant fails to pay Rent, Security Deposit or other money, or to provide a certificate of insurance or to provide an estoppel certificate as required by Article 27 when due, or (2) if Tenant fails to perform or observe any agreement or condition on its part to be performed or observed, other than the defaults mentioned in the preceding clause (1) or in clauses (3) through (8) below, or if Tenant defaults under any other lease or agreement between Tenant and Landlord or an affiliate of Landlord, or (3) if Tenant's leasehold interest is levied on, attached or taken by any process of law, or (4) if Tenant makes an assignment of its property for the benefit of creditors, or (5) if any bankruptcy, insolvency or reorganization proceeding or arrangement with creditors (whether through court or by proposed composition with creditors) is commenced by or against Tenant, or (6) if a receiver or trustee is appointed for any of Tenant's property, or (7) if this Lease is transferred to or devolves on, or the Leased Premises is occupied by, anyone other than Tenant

except if specifically permitted by this Lease, or (8) if Tenant closes the Leased Premises or ceases doing business at the Leased Premises.

(B) If (i) a default described in subsection 15(A)(1) or in subsections 15(A)(3) through (7) inclusive occurs, or (ii) a default described in subsections 15(A)(2) or 15(A)(8) occurs and continues for more than fifteen (15) days after written notice from Landlord, then in any of such cases Landlord or its agent shall have the right to enter the Leased Premises and dispossess Tenant and all other occupants and their property by legal proceedings, use of reasonable force (under the conditions allowed in Article 15(F) hereof) or otherwise. Tenant hereby waives any claim it might have for trespass or conversion or other damages if Landlord exercises such remedies. Landlord may exercise the remedies just mentioned without terminating this Lease. As an independent cumulative right to obtaining possession without terminating this Lease, Landlord shall have the right to terminate this Lease by giving Tenant written notice specifying the day of termination (which shall be not less than five (5) days from the date of the notice), on which date this Lease and all of Tenant's rights will cease as a conditional limitation, as if that date specified in Landlord's notice was the original date for expiration of this Lease; but in all cases Tenant shall remain liable as hereinafter provided.

(C) Notwithstanding any re-entry, dispossession or termination of the Lease by Landlord, Tenant will remain liable for damages to Landlord in an amount equal to the aggregate of all Rents and other charges required to be paid up to the time of such re-entry, dispossession or termination, and for Landlord's damages arising out of the failure of Tenant to observe and perform Tenant's covenants and, in addition, for each month of the period which would otherwise have constituted the balance of the Lease Term, Tenant shall pay any deficiency between the monthly installment of Base Rent plus the Tax Rent, Common Area Rent and all other Rent that would have been payable, less the net amount of the rents actually collected by Landlord from a new tenant, if any. Tenant will not be entitled to any surplus. Furthermore, Tenant will be liable to Landlord for all the expenses Landlord incurs for: legal fees related to obtaining possession and making a new lease with another tenant; legal fees and court costs incurred in or related to bankruptcy proceedings, including legal fees and court costs incurred or related to issues and events that are peculiar to bankruptcy; brokerage commissions in obtaining another tenant; and expenses incurred in putting the Leased Premises in good order and preparing for re-rental (together herein referred to as "**Reletting Costs**"). In addition, Landlord may relet the Leased Premises, or any part thereof, for a term which may be less or more than the period which would have constituted the balance of the Lease Term and may grant reasonable concessions or free rent to a new tenant. Landlord's refusal or failure to relet the Leased Premises to a new tenant shall not release or affect Tenant's liability; and Landlord shall not be liable for failure or refusal to relet, or for failure to collect rent under such reletting. For the purpose of computing Landlord's damages due to loss of Percentage Rents subsequent to termination, the Gross Sales of the Leased Premises for each Lease Year commencing with the Lease Year of such termination shall be deemed to be equal to the amount of Gross Sales which were realized during the highest of the three (3) Lease Years prior to the termination.