LEGAL

LEASE AGREEMENT

BY AND BETWEEN

PR FINANCING LIMITED PARTNERSHIP, as Landlord

and

EATERIES, INC., as Tenant

TRADE NAME: GARFIELD'S RESTAURANT & PUB

FUNDAMENTAL LEASE PROVISIONS

This Lease is executed and made as of SEPTEMBER 4, 2012, by and between **PR FINANCING LIMITED PARTNERSHIP**, a Pennsylvania limited partnership (herein called "**Landlord**") and **EATERIES, INC.**, a Delaware corporation (herein called "**Tenant**"), Landlord and Tenant having the following notice addresses:

Landlord:

PR Financing Limited Partnership
c/o PREIT Services, LLC
200 South Broad Street
The Bellevue, Third Floor
Philadelphia, PA 19102
Attn: Director, Legal

Copy to:

PR Financing Limited Partnership
Management Office
2900 East College Avenue
State College, PA 16801
Attn: General Manager

Tenant:

Eateries, Inc.
1101 West Waterloo Road
Edmond, OK 73025
Attn: Jerry Bertholdi

Copy to:

Mr. James Kallstrom
Hartzon, Conger, Carson & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102

Certain Fundamental Lease Provisions are presented in this Section and represent the agreement of the parties hereto, subject to definition and elaboration in the respective referenced Sections and elsewhere in this Lease:

(a) **Tenant's Trade Name:** Garfield's Restaurant & Pub (See Sec. 7.01)

(b) **Rent Term:** Ninety-six (96) months commencing on August 1, 2012 (the "**Rent Commencement Date**"). The Rent Term expires on July 31, 2020 (the "**Expiration Date**"). (See Sec. 3.01)

(c) **Tenant Store Number:** 0624 (See Exh. A)

(d) **GLA of Premises:** 4,832 square feet (See Sec. 1.04)

(e) **Design Drawings Submission Date:** August 1, 2020 provided that Tenant exercises the option period as described in **Section 23.25** of this Lease. (See Sec. 2.03)

(f) **Tenant's "Construction Commencement Date":** September 1, 2020 provided that Tenant exercises the option period as described in **Section 23.25** of this Lease. (See Sec. 2.03)
& "Construction Period": Sixty (60) days (See Sec. 2.03)

(g) **Minimum Rent:**

Time Period	Annual Amount	Monthly Amount	
Rent Commencement Date through July 31, 2016	$111,360.00	$9,280.00	
From August 1, 2016 through the end of the Term	$120,800.00	$10,066.67	(See Sec. 4.03)

(h) **Percentage Rent:**

Time Period	Annual Break Point	The "Percentage"	
Rent Commencement Date through July 31, 2016	$2,227,200.00	Five Percent (5%)	
From August 1, 2016 through the end of the Term	$2,416,000.00	Five Percent (5%)	(See Sec. 4.04)

(i) **Required Opening Date:** N/A as Tenant is currently occupying the Premises. (See Sec. 4.02)

(j) **Security Deposit:** N/A (See Sec. 2.02)

(k) **Marketing Service Charge:** $1.68 per square foot of the GLA of the Premises per Year payable in equal monthly installments. (See Sec. 9.01)

(l) **Certain Other Charges Payable by Tenant:**

Tax Charge (See Sec. 5.01)
Services Charges (See Sec. 6.01)
Refuse Handling Charge (See Sec. 6.03)
CAM Charge (See Sec. 8.03)

(m) **"Agent" and To Whom Rent Payable:**

Make check payable and mail to:

PR Financing Limited Partnership
P.O. Box 951745
Cleveland, OH 44193

If by overnight or special courier:

PR Financing Limited Partnership
PNC Bank
Attn.: Lockbox 951745
Mail Loc 01-6141
4100 West 150th Street
Cleveland, OH 44135

(n) **Use:** Operation of a family style sit down restaurant with a service bar, mixed menu with beer, wine, and liquor service, provided that the sale of alcoholic beverages shall not exceed 60% of Gross Sales and incidental to such use the sale of logo promotion items, have vending machines, one amusement device and one public telephone located on the Premises and for no other use or purpose whatsoever.

(See Sec. 7.01)

LEASE AGREEMENT

ARTICLE 1: INTRODUCTORY PROVISIONS

Section 1.01: REFERENCES AND CONFLICTS.

References appearing in the Fundamental Lease Provisions are to designate some of the other places in this Lease where additional provisions applicable to the particular Fundamental Lease Provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions shall be construed to incorporate all of the terms provided for under such provisions, and such provision shall be read in conjunction with all other provisions of this Lease applicable thereto. If there is any conflict between any of the Fundamental Lease Provisions and any other provisions of this Lease, the latter shall control. The listing on the Fundamental Lease Provisions of monetary charges payable by Tenant shall not be construed to be an exhaustive list of all charges or the amount thereof payable by Tenant under this Lease.

Section 1.02: GENERAL DEFINITIONS.

(a) The term "**Shopping Center**" means the land shown on **Exhibit A** attached hereto and by this reference incorporated herein, as the same may hereafter be reduced, expanded or otherwise altered from time to time.

(b) The term "**Mall Premises**" means the Shopping Center excluding however the Majors' Premises and the term "**Mall Premises**" includes the same as reduced, expanded or otherwise altered from time to time.

(c) The term "**Landlord's Building**" means the buildings, structures and other improvements shown in general on **Exhibit A** and includes the "**Enclosed Mall**" (hereinafter defined), but excludes the Majors' Premises (hereinafter defined). Landlord's Building is part of the Mall Premises. The term "**Landlord's Building**" includes the same as reduced, expanded or otherwise altered from time to time.

(d) The term "**Majors' Premises**" (or "**Majors Premises**") means the premises shown on **Exhibit A**, page 1 by such term, or by the word "**Major**" or name of the prospective or actual principal occupant thereof (the "**Majors**" or a "**Major**"), and the term "**Majors' Premises**" (or "**Majors Premises**") includes the same as reduced, expanded or otherwise altered from time to time. The term "**Major**" (or "**Majors**") includes any replacement for or other substitute of the primary occupant of a Majors Premises as well as, in the case of an expansion of the Shopping Center, the primary occupant of the premises equal to or exceeding, in terms of GLA, the GLA of any one (1) of the Majors' Premises shown on **Exhibit A** (even though those premises may not be originally shown thereon). References in this Lease to a Major or Majors shall include any such replacement, substitute or additional Major and its premises are included within the terms "**Majors' Premises**" and "**Major's Premises**".

(e) The term "**Common Areas**" means all areas, facilities and improvements operated or provided at or in connection with the Shopping Center from time to time for the non-exclusive common use of Landlord, the tenants of the Mall Premises and the Majors, and shall include but not be limited to the "**Enclosed Mall**" (hereinafter defined), parking areas, roadways, ramps, traffic controls, truck ways, loading and unloading docks, delivery areas, sidewalks, stairways, escalators and elevators (if any), service corridors, exit corridors, seating areas, buffer areas, screening facilities, merchandise pickup stations (excluding those of Majors, if any), public rest rooms and comfort stations, retaining walls, landscaped areas, open space areas, utility systems, sanitary and other waste handling systems, holding tanks, force mains, fire detection and/or suppression systems, life safety systems, security systems, community rooms, drainage systems, and lighting systems. The term "**Common Areas**" includes the same as reduced, expanded or otherwise altered from time to time.

(f) The term "**Enclosed Mall**" means the enclosed climate controlled pedestrian mall located in Landlord's Building, and the term "**Enclosed Mall**" includes the same as reduced, expanded or otherwise altered from time to time.

(g) The term "**Premises**" means the space demised by this Lease and situated in Landlord's Building which space is in the approximate location marked on **Exhibit A**, however, the Premises is limited vertically to the ceiling height above the structural floor set forth in Landlord's "**Store Design Criteria**" (defined in Section 2.03(b) hereof). In the event the Premises is a corner location, the Premises shall exclude any rights with respect to the exterior side wall of the Premises.

(h) The term "**Fast Food Cluster**" means the area or areas now or in the future specifically designated by Landlord for small restaurant or other food service operations situated in Landlord's Building or elsewhere in the Mall Premises, including the individual premises and any seating areas located therein and the maintenance and housekeeping areas primarily serving the Fast Food Cluster. The term "**Fast Food Cluster**" includes the same as reduced, expanded or otherwise altered from time to time.

(i) The term "**GLA**" means with respect to the Premises and all other leasable areas, Landlord's best estimate of the number of square feet of area on all floors in Landlord's Building for the exclusive use by the tenants or other occupants thereof and their customers, clients or other invitees including without limitation mezzanines and balconies if used for the sale of goods and/or services (but excluding all other areas and space defined herein as part of Common Areas). GLA of the Premises shall be measured from the exterior face of exterior walls and the exterior face of service corridor walls, the line along the front of the Premises where the Premises abuts the Enclosed Mall as shown on **Exhibit A** (which line is commonly known as the "**Lease Line**"), or the Lease Line of any pop-outs referred to in Section 1.04, as the case may be, and the center line of any wall Tenant shares with other tenants or occupants of the Landlord's Building or a Majors' Premises. With respect to all leasable areas other than the Premises, GLA shall be determined by virtue of the definition contained in the lease in question. No deduction from GLA shall be made for columns, stairs, elevators, or any interior construction or equipment. From time to time during the Term, Landlord may give Tenant notice of the GLA of Landlord's Building, at a given time for a given period of time, as such GLA may be revised because of reductions, expansions or other alterations of Landlord's Building or as such GLA may be adjusted pursuant to provisions in the leases of other tenants or occupants. The GLA of the Premises and of Landlord's Building shall be utilized to calculate the GLA Fraction (defined in **Section 1.02(j)** and to make any other calculations required to determine the charges to Tenant.

(j) The term "**GLA Fraction**" means a fraction, the numerator of which shall be the GLA of the Premises and the denominator of which shall be the occupied GLA of Landlord's Building, subject, however, to the provisions of **Section 4.08**. For so long as the occupied GLA of Landlord's Building is below eighty percent (80%) of the GLA of Landlord's Building (after first subtracting the GLA of any Junior Majors), Tenant's GLA Fraction shall be calculated as though eighty percent (80%) of the GLA of Landlord's Building (after first subtracting the GLA of any Junior Majors) were occupied.

(k) The term "**Junior Major(s) Premises**" means (not herein identified as or otherwise hereunder constituting a "**Major**"): any premises which contains in excess of 25,000 square feet of GLA in the Shopping Center.

(l) The term "**Lease**" as used in this document (the "**Lease**") shall mean the Fundamental Lease Provisions, the Lease Agreement, the Exhibits attached hereto and Addendum, if any.

Section 1.03: EXHIBITS.

The following plans and special provisions are attached hereto as Exhibits, are incorporated herein and hereby made a part of this Lease.

EXHIBIT A Plan of the Shopping Center as presently constituted which plan also shows the approximate location of the Premises.

EXHIBIT B Completion Certificate.

Section 1.04: TENANT'S STOREFRONT.

Tenant may, subject to receipt of all required governmental approvals and Landlord's prior written approval, "pop-out" all or a portion of the storefront. Should Tenant install a pop-out storefront, the GLA of the Premises shall be increased to include the square foot area of the pop-out(s). The Minimum Rent and the Break Point shall be accordingly increased, to include the area of such pop-out(s).

Section 1.05: CHANGES TO SHOPPING CENTER.

As between Landlord and Tenant, Landlord may at any time and from time to time eliminate land from, or add to or substitute for land of, the Shopping Center or any part thereof, or eliminate, add or substitute any improvements, or change, enlarge or consent to a change in the shape, size, location, number, height, or extent of the improvements to the Shopping Center or any part thereof, including, without limitation adding additional levels to any existing buildings therein.

Landlord agrees that in implementing its rights pursuant to this Section, except to the extent set forth below, it shall not change the Common Areas so as to substantially restrict access to or visibility of Tenant's storefront from other portions of the Enclosed Mall. Notwithstanding the foregoing, Tenant agrees that (a) any existing (i) kiosk or merchandising unit or (ii) other physical impediment to access or visibility such as, without limitation, a planter, tree, bench, or "pop out" store front or replacement of any of the foregoing and/or (b) any future kiosk or merchandising unit located more than thirty (30) feet from the center of the Lease Line; (c) any restriction of access or visibility resulting from work being performed in the Common Areas or any other premises "in line" with the Premises (including temporary construction barricades), and/or (d) holiday decorations or activities sponsored by the promotion fund and/or (e) means of vertical transportation leading to a second level of the Enclosed Mall, shall not be deemed a violation of the foregoing. If Landlord exercises its rights to add new buildings or change the Common Areas or perform any other acts authorized by this Section, and in so doing, Landlord substantially interferes with Tenant's ability to conduct business in the Premises to such a degree that Tenant, solely as a result of Landlord's acts, is unable to remain open for business for a period of time in excess of three (3) consecutive business days and Tenant closes for business, then Landlord agrees that as Tenant's sole and exclusive remedy for such interference the Rent thereafter falling due shall abate until Tenant is capable of recommencing business operations.

Section 1.06: CROSS EASEMENT AGREEMENT.

Tenant understands and agrees with Landlord that, notwithstanding anything to the contrary contained in this Lease, the Shopping Center including, without limitation, the Common Areas and the Premises are and shall be subject, subordinate and otherwise junior to any cross easement agreement (as they may be or may have been created, amended, supplemented or otherwise modified from time to time) between Landlord and each occupant of the Majors or Junior Majors who are parties thereto (such cross easement agreement being herein collectively called the "**REA**").

ARTICLE 2: PREMISES AND TENANT'S WORK

Section 2.01: LEASE OF PREMISES.

Landlord, in consideration of the "Rent" (defined in **Section 4.01**) to be paid and the covenants to be performed by Tenant, does hereby demise and lease unto Tenant, and Tenant hereby leases and takes from Landlord, for the Term, at the rental, and upon the covenants, conditions and other terms herein set forth, the commercial space referred to herein as the Premises situated or to be situated in Landlord's Building, as the case may be.

Section 2.02: SECURITY DEPOSIT.

Deleted.

Section 2.03: PREPARATION OF PLANS AND TENANT'S WORK.

(a) Tenant is occupying the Premises pursuant to the "**Prior Lease**" (as defined in **Section 23.19** of this Lease), has had the opportunity to examine the Premises and has accepted the same in the "**as is**" condition in which the Premises existed on the date Landlord, or Landlord's predecessor-in-interest, turned over the key to the Premises to Tenant or Tenant's designee. Tenant further acknowledges that Landlord has not made any representations as to the present or future condition of the Premises. Landlord shall not be required to send Tenant any formal notice tendering possession of the Premises.

(b) Tenant shall perform all work required to be performed by Tenant to remodel the Premises, all such work being referred to herein as "**Tenant's Work**". Tenant shall design the Premises in accordance with Landlord's current store and storefront design criteria booklet and otherwise comply with all insurance and other requirements therein (herein called "**Store Design Criteria**"), a copy of which Tenant acknowledges it has received. Tenant shall instruct its architect or designer to prepare Tenant's plans for the Premises in compliance with the Americans with Disabilities Act, the Clean Air Act and all other applicable laws, rules, codes, and regulations. In the event of any inconsistencies between the text of this Lease and the Store Design Criteria, the latter shall prevail. Tenant agrees to perform Tenant's Work in accordance with the provisions of this Lease and in such manner so as not to cause any interference with the use, occupancy or enjoyment of the remainder of the Shopping Center, or any part thereof. Tenant shall promptly cause to be repaired all items which may have been damaged as a result of the performance of Tenant's Work promptly upon the occurrence of such damage and shall at all times keep all portions of the Shopping Center (other than the Premises) free from and unobstructed by debris, equipment or materials related to Tenant's Work.

(c) On or before the Design Drawing Submission Date, Tenant shall submit to Landlord's tenant coordinator (herein called the "**Tenant Coordinator**") for the Landlord's reasonable approval design drawings (herein called the "**Design Drawings**") specifying each aspect of Tenant's Work and photographs of fixtures to be used and the interior layout of the Premises. The Design Drawings shall be prepared in accordance with the Store Design Criteria. After receipt of the Design Drawings, Landlord shall return to the Tenant the Design Drawings, either "approved", "approved as noted" or "disapproved"; if they are marked "disapproved", Landlord shall also note the reasons of such disapproval. On or before thirty (30) days after receipt of the "disapproved" Design Drawings, Tenant shall resubmit to the Tenant Coordinator revised Design Drawings meeting Landlord's objections. Landlord shall thereafter return the same to Tenant, marked as set forth above and Tenant shall within an additional thirty (30) day period resubmit revised drawings until the same have been "approved as noted" or "approved". On or before thirty (30) days after receipt of "approved as noted" or "approved" Design Drawings Tenant shall submit to the Tenant Coordinator for Landlord's approval, working drawings and specifications (herein called "**Final Plans**") for architectural, electrical, mechanical, sprinkler and plumbing work within the Premises, if applicable, and all other Tenant's Work proposed by Tenant and shown on the Design Drawings and required by the Store Design Criteria. The Final Plans shall be prepared in accordance with the Design Drawings as marked "approved as noted" or "approved" by Landlord. The Final Plans shall incorporate any revisions required by Landlord to the Design Drawings, including those forming the basis of Landlord's approving the same "as noted". After receipt of the Final Plans, Landlord shall return to Tenant the Final Plans, marked either "approved", "approved as noted" or "disapproved". If they are marked "disapproved", Landlord shall state the reasons for such disapproval and Tenant shall, on or before ten (10) days after receipt of such "disapproved" Final Plans, correct any deficiencies stated by Landlord and resubmit within ten (10) business days corrected Final Plans to Landlord until same are accepted as "approved as noted" or "approved". If Landlord accepts Tenant's Final Plans "approved as noted", Tenant need not resubmit the same to Landlord's Tenant Coordinator, but Tenant shall revise such Final Plans to incorporate Landlord's required changes and Tenant covenants that the Tenant Work in the Premises shall be constructed in such fashion as to comply with the notes disclosed on such "approved as noted" Final Plans. If Tenant does not correct such deficiency and resubmit any disapproved Final Plans within the required time period, such failure shall constitute an Event of Default. Tenant's Work shall be performed only in accordance with the Final Plans, as marked "approved as noted" or "approved" by Landlord. Tenant's failure to submit its Design Drawings on or before the Design Drawings Submission Date or Tenant's failure to commence Tenant's Work on or before the Construction Commencement Date shall be an Event of Default pursuant to **Section 16.01**.

(d) Deleted.

(e) On or before the Construction Commencement Date, Tenant shall deposit with Landlord certificates of insurance as required in **Article 11** and the Store Design Criteria, as well as a true copy of Tenant's building permit and Tenant shall commence Tenant's Work and prosecute it diligently and continuously to completion. Within thirty (30) days after completion of Tenant's Work, Tenant shall deliver to Landlord an executed Completion Certificate in the form attached hereto as **Exhibit B**.

(f) Landlord shall have the right to post and keep posted in the Premises notices of non-responsibility, or such other notices as Landlord may deem to be proper for the protection of the Landlord or Landlord's estate, right, title and interest in the Shopping Center and any part thereof. Tenant shall before the commencement of any work which might result in any claim, lien or other charge give to the Landlord written notice of its intention to commence said work in sufficient time to enable Landlord to post, file and record such notices. The provisions of this **Section 2.03** shall apply with respect to Tenant's Work or any other work performed in or about the Premises at any time during the Term hereof.

Section 2.04: OPENING OF PREMISES.

Deleted.

Section 2.05: MECHANIC'S LIENS.

(a) Tenant will not permit to be created or to remain undischarged any lien, encumbrance or other charge arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialman or any mortgage, conditional sale, security agreement or chattel mortgage which might be or become a lien or encumbrance or other charge (collectively a "**Charge**") against or upon the Shopping Center or any part thereof, including without limitation the Mall Premises and Landlord's Building or the income therefrom. Tenant will not suffer any

other matter or thing whereby the estate, right, title and interest of Landlord in the Shopping Center or any part thereof including without limitation the Mall Premises and Landlord's Building might be impaired. If any claim or lien or notice of claim or lien on account of an alleged debt of Tenant or any notice of contract or Charge by a person engaged by Tenant or Tenant's contractor to work on the Premises shall be filed against or upon the Shopping Center or any part thereof including without limitation, the Landlord's Building or the Mall Premises, Tenant shall within twenty (20) days after demand from Landlord, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such claim or lien or notice of claim or lien or other Charge to be discharged within the period aforesaid, then, in addition to any other right or remedy it may have, Landlord may, but shall not be obligated to, discharge the same by payment, deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of the same by the claimant and to pay the amount of any judgment in favor of the claimant with interest, costs and allowances. Any amount so paid by Landlord and all interest, costs and expenses, including attorneys' fees, incurred by Landlord in connection therewith, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Nothing herein contained shall obligate Tenant to pay or discharge any Charge created by Landlord.

(b) Tenant shall pay promptly all persons furnishing labor or materials with respect to any work by Tenant or Tenant's contractor in or about the Premises. The foregoing shall not prohibit Tenant from withholding payment for disputed work or because of other breach of contract claimed by Tenant in good faith, provided said withholding of payment does not result in a lien on the Shopping Center. No work which Landlord permits Tenant to do shall be deemed to be for the immediate use and benefit of Landlord so that no mechanics' or other claim, lien or other Charge shall be allowed against the estate, right, title or interest of Landlord by reason of any consent given by Landlord to Tenant to do work in or about the Premises or provide materials therefor. Nothing contained herein shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanics' or other lien law.

ARTICLE 3: TERM

Section 3.01: TERM OF THIS LEASE.

The term of this Lease (sometimes herein called the "**Term**" or the "**Rent Term**") means the period commencing on the Rent Commencement Date and ending on the Expiration Date, as extended pursuant to **Section 21.02** hereof or by agreement executed by Landlord and Tenant or sooner terminated as provided herein, as the case may be.

Section 3.02: YEARS.

The term "**Year**" means each successive twelve (12) month period from August 1 through July 31 occurring during the Term, plus, if applicable any Partial Year. "**Partial Year**" means the period, if applicable, if the Term ends on other than a July 31, the period beginning on the last August 1 of the Term and ending on the last day of the Term.

ARTICLE 4: RENT

Section 4.01: TENANT'S AGREEMENT TO PAY RENT.

Tenant hereby agrees to pay for the right of use and occupancy of the Premises during the Rent Term, at the times and in the manner herein provided, the Minimum Rent, Percentage Rent and Additional Rent. As used in this Lease, the term "**Rent**" means, collectively, the Minimum Rent, Percentage Rent and Additional Rent.

Section 4.02: RENT COMMENCEMENT DATE.

As used in this Lease, the term "**Rent Commencement Date**" shall mean August 1, 2012.

Section 4.03: MINIMUM RENT.

(a) The base rent Tenant shall pay Landlord for each Year shall be the amount set forth in the Fundamental Lease Provisions as the Minimum Rent per Year and shall be payable in twelve (12) equal monthly installments, in advance, on the first day of each calendar month.

(b) The base rent Tenant shall pay Landlord for any Partial Year shall be that amount set forth in the Fundamental Lease Provisions as the Minimum Rent per Year times the Partial Year Fraction. As used in this Lease, "**Partial Year Fraction**" means a fraction, the numerator of which is the number of days in the applicable Partial Year, and the denominator of which is three hundred sixty-five (365). The base rent payable for a Partial Year shall be paid in equal monthly installments, in advance, on the first day of each calendar month, except that if the Rent Commencement Date is not the first day of a calendar month, then that portion of such base rent which is attributable to the days in that first partial calendar month shall be paid, in advance, on the Rent Commencement Date.

(c) The base rent payable by Tenant pursuant to Section 4.03(a) or (b), whichever is applicable, is called the "**Minimum Rent**" in this Lease. Minimum Rent shall be prorated for partial months, if any. If the Minimum Rent increases during the Rent Term, for the purpose of determining the date on which Minimum Rent increase(s) become effective, a partial month shall be disregarded.

(d) Deleted.

(e) At Landlord's discretion, Landlord may allocate a portion of Tenant's Minimum Rent toward any element(s) of Additional Rent at no increase in Minimum Rent to Tenant. Any such allocation by Landlord shall not serve to give Tenant any rights not otherwise granted in this Lease.

Section 4.04: PERCENTAGE RENT.

(a) In addition to Minimum Rent, Tenant shall pay Landlord percentage rent (herein called "**Percentage Rent**") as determined by this Article 4. The Percentage Rent for each Year shall be an amount equal to the "**Percentage**" (which is set forth in the Fundamental Lease Provisions) multiplied by the amount of Gross Sales made during such Year in excess of the applicable Break Point set forth in the Fundamental Lease Provisions. The Percentage Rent for each Partial Year shall be an amount equal to the Percentage multiplied by the amount of Gross Sales made during such Partial Year in excess of the Partial Year Break Point. The term "**Partial Year Break Point**" shall mean an amount equal to the Break Point multiplied by the Partial Year Fraction for the applicable Partial Year and the Break Point and Partial Year Break Point are collectively referred to as the "**Break Point**".

(b) In each Year or Partial Year, Tenant shall be obligated to pay Percentage Rent beginning with the first month in which the aggregate amount of Gross Sales made for such Year or Partial Year exceeds the Break Point. Tenant shall pay Percentage Rent (in addition to Minimum Rent and Additional Rent) for each and every succeeding month during the remainder of such Year or Partial Year on all additional Gross Sales. Each payment of Percentage Rent shall be paid by Tenant to Landlord without demand and otherwise as set forth in this **Article 4** together with Tenant's monthly statement of Gross Sales provided for in **Section 4.06**, subject to the annual adjustment provided for in such **Section 4.06**.

(c) In the event any Break Point is subject to adjustment during the Term of this Lease, and the date on which any such adjustment is to occur (hereafter referred to as the "**Rental Adjustment Date**") is other than the first day of a Year, the Break Point for the Year in which the Rental Adjustment Date shall fall shall be the sum of: (1) the initial Break Point multiplied by a fraction the numerator of which shall be the number of days in the period commencing on the first day of the Year in which the Rental Adjustment Date shall fall and ending on the day immediately prior to the Rental Adjustment Date and the denominator of which shall be three hundred sixty-five (365), plus (2) the latter Break Point multiplied by a fraction, the numerator of which shall be the number of days in the period commencing on the Rental Adjustment Date and ending on the last day of the Year in which the Rental Adjustment Date shall fall and the denominator of which shall be three hundred sixty-five (365).

Section 4.05: GROSS SALES.

(a) The term "**Gross Sales**" means the total gross receipts and receivables of all merchandise, wares and other goods sold or leased and the actual charges for all services performed, business conducted and accommodations rendered by Tenant and by any subtenant, licensee, concessionaire and other occupant in, at, from, or arising out of the use of the Premises, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without reserve or deduction for inability or failure to collect, including but not limited to sales, leases and services:

(i) where the orders therefor originate in, at, from or arising out of the use of the Premises, whether delivery or performance is made from the Premises or from some other place and regardless of the place of bookkeeping for, payment of, or collection of any account; or

(ii) made or performed by mail, telephone, Internet, website or similar means and orders received or filled or delivered in, at or from the Premises; or

(iii) made or performed by means of telephonic, mechanical or other vending means or devices in or for the Premises; or

(iv) which Tenant, and any subtenant, licensee, concessionaire and other occupant, in the normal and customary course of its business, would or does credit or attribute to its operations at the Premises or any part thereof.

Any deposit accepted and retained by Tenant shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Tenant receives payment therefor. No franchise, value added tax, capital stock tax, tax based upon assets or net worth or gross receipt tax, and no income or similar tax based on income or profits shall be deducted from Gross Sales.

(b) Only the following shall be excluded from Gross Sales:

(i) any exchange of merchandise between stores of Tenant when such exchange is made solely for the convenient operation of Tenant's business and is not for the purpose of consummating a sale made in, at or from the Premises;

(ii) returns to suppliers, shippers or manufacturers;

(iii) cash or credit refunds to customers on transaction otherwise included in Gross Sales;

(iv) sales of fixtures, machinery and equipment, which are not stock for sale or trade, after use thereof in the conduct of Tenant's business;

(v) amounts separately stated in the sales receipt and collected from customers which are paid by Tenant to any government for any sales or excise tax imposed by law at the point of sale;

(vi) vending machine sales;

(vii) sales to employees;

(viii) sale of promotional food and beverage.

(ix) logo items;

(x) amusement device sales; and

(xi) third party credit card charges, finance charges separately stated as such, and bad debts, up to an aggregate annual amount of two percent (2%) of annual Gross Sales.

Section 4.06: REPORTING OF GROSS SALES; YEAR END ADJUSTMENT.

(a) Tenant shall furnish to Landlord within twenty (20) days after the end of each calendar month during the Term a complete statement (the "**Monthly Report**"), certified by Tenant (or a responsible financial officer thereof if Tenant is a corporation), setting forth (i) the amount of Gross Sales during such month, (ii) the aggregate amount of Gross Sales during such Year (or Partial Year, as the case may be), including such month, (iii) the amount, if any, by which such

aggregate amount of Gross Sales exceeds the Break Point, and (iv) the amount of Percentage Rent previously paid by Tenant to Landlord for such Year (or Partial Year, as the case may be). The Monthly Report shall be in such form and style and contain such details and breakdown as Landlord may reasonably require.

(b) Tenant will also furnish to Landlord within sixty (60) days after the end of each Year a complete statement (the "**Yearly Report**") certified by the chief financial officer or treasurer of Tenant, showing in reasonable detail the amount of Gross Sales during such Year and the amount paid to Landlord pursuant to Section 4.04(b) for such Year. The Yearly Report shall be accompanied by the signed opinion of the person certifying the Yearly Report specifically stating that such person has read the definition of "**Gross Sales**" contained in this Lease, that such person has examined the Yearly Report of Gross Sales of such Year, that such person's examination included such tests of Tenant's books and records as such person considered necessary under the circumstances, and that the Yearly Report accurately represents the Gross Sales of such Year.

(c) An adjustment shall be made with the furnishing of each Yearly Report with respect to Percentage Rent as follows: if Tenant shall have paid to Landlord an amount greater than Tenant is required to pay as Minimum Rent and Percentage Rent under the terms of **Sections 4.03** and **4.04(a)**, Tenant shall receive a credit of such excess against payments of Minimum Rent next becoming due to Landlord; or, if Tenant shall have paid an amount less than was required to be so paid, then Tenant shall forthwith pay such difference. In no event, however, shall the sum of the Minimum Rent and Percentage Rent to be paid by Tenant and retained by Landlord under the terms of Sections 4.03 and 4.04(a) for any given Year be less than the Minimum Rent for such Year.

(d) The reports required by this **Section 4.06** shall be delivered to Landlord at the notices address of Landlord or to such other person and/or to such other place as may be designated from time to time by notice from Landlord to Tenant. If Tenant shall fail to deliver any Monthly Report and/or Yearly Report within ten (10) days after notice from Landlord that such Monthly Report and/or Yearly Report is past due then, in addition to all of Landlord's other rights and remedies hereunder, Tenant shall pay to Landlord, as Additional Rent, an amount equal to Twenty Five Dollars ($25.00) per day for each day such statement is overdue.

Section 4.07: TENANT'S RECORDS & AUDITS.

(a) Tenant covenants and agrees that the business records of Tenant and of any subtenant, licensee or concessionaire shall be maintained in accordance with generally accepted accounting principles. Furthermore, Tenant shall keep at all times during the Term, at the Premises or at the home or regional office of Tenant, full complete and accurate books of account and records in accordance with generally accepted accounting practice with respect to all operations of the business conducted in or from the Premises, including the recording of Gross Sales and the receipt of all merchandise and other goods into and the delivery of all merchandise and other goods from the Premises during the Term, and shall retain such books and records, copies of all tax reports and tax returns submitted to taxing authorities, as well as copies of contracts, vouchers, checks, inventory records and other documents and papers in any way relating to the operation of such business for at least two (2) years from the end of the period to which they are applicable, or if any audit is required or a controversy should arise between the parties hereto regarding the Rent payable hereunder, until such audit or controversy is terminated even though such retention period may be after the expiration of the Term or earlier termination of this Lease. No more than once per year, such books and records shall be open at all reasonable times during the aforesaid retention period to the inspection of Landlord or its duly authorized representatives, who shall have full and free access to such books and records and the right to require of Tenant, its agents and employees, such reasonable information or explanation as reasonably required to clarify said books.

(b) The acceptance by the Landlord of payments of Percentage Rent shall be without prejudice to the Landlord's examination and audit rights hereunder. Landlord may at any reasonable time, upon thirty (30) days' prior written notice to Tenant, cause a complete audit to be made of Tenant's entire books, records and other materials which Tenant is required to retain concerning the Premises under the terms of this Lese (including the books and records of any subtenant, licensee, concessionaire and other occupant) for all or any part of the two (2) year period immediately preceding the day of the giving of such notice by Landlord to Tenant. If such audit shall reveal a deficiency in any payment of Percentage Rent, Tenant shall forthwith pay to Landlord the amount of the deficiency.

(c) If such audit shall disclose that (i) any of the Yearly Reports understate Gross Sales during the reporting period of the report to the extent of four percent (4%) or more; or (ii) Tenant has not recorded Gross Sales, or kept books of account and records, as and for the period required by this Section 4.07; or (iii) if Tenant shall be delinquent in delivering to Landlord the Yearly Report or Monthly Reports for three (3) consecutive months, or more than three times in any Year or Partial Year, then Landlord shall have the right to bill to Tenant the amount of any deficiency in Percentage Rent and the reasonable cost of said audit which shall be paid by Tenant within ten (10) business days after demand then such understatement, failure or delinquency shall be an Event of Default and such deficiency will bear interest at the "**Default Rate**" (defined in Section 16.03 hereof) from and after the date it should have been paid until paid.

(d) In the event Tenant violates the provisions of Sections 4.06 or 4.07 or both and as a result of such violation, Landlord, or its duly authorized representatives, is unable to conduct a proper examination and/or audit, the parties agree that Landlord shall have been deprived of an important right under this Lease and, as a result thereof, will suffer damages in an amount which is not readily ascertainable and thus, in such event, Landlord, in addition to and not in lieu of any other remedies which Landlord has under this Lease, at law or in equity, shall have the right, at its option, to collect, as liquidated damages and not as a penalty, an amount equal to twenty percent (20%) of the greater of (i) Percentage Rent reported for the period or periods in question, or (ii) the annual Minimum Rent payable for the period or periods in question. Tenant agrees to pay such liquidated damages.

Section 4.08: ADDITIONAL RENT.

In addition to Minimum Rent and Percentage Rent, Tenant shall pay, as additional rent (herein sometimes collectively called "**Additional Rent**") all other amounts, sums of money or charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to this Lease, whether or not the same is designated as "**Additional Rent**". The terms "Taxes", "Tax Charge", "CAM Sum" and "CAM Charge" are defined in Articles 5 and 8, respectively. In computing

the Tax Charge, the CAM Charge and any other charge to Tenant computed on the same or substantially similar basis as the Tax Charge or the CAM Charge (collectively "**Other Like Charges**"), the net payments by the occupant of the Majors and Junior Majors to Landlord toward the Taxes, the CAM Sum or the sums on which Other Like Charges are based (collectively the "**OLC Sums**") shall be applied respectively to reduce the Taxes, the CAM Sum and the particular OLC Sum before apportionment and determination of the Tax Charge, CAM Charge or Other Like Charge to be paid by Tenant and for the purposes of computing the Tax Charge, the CAM Charge and such Other Like Charge, the denominator of the GLA Fraction shall not include the GLA of the Majors' Premises and the Junior Majors' Premises.

Section 4.09: WHERE RENT PAYABLE AND TO WHOM; NO DEDUCTIONS.

Rent payable by Tenant under this Lease (whether Minimum Rent, Percentage Rent, or Additional Rent) shall be paid when due without prior demand therefor (unless such prior demand is expressly provided for in this Lease), shall be payable without any deductions or setoffs or counterclaims whatsoever (except for credits expressly permitted by this Lease) and shall be paid by Tenant to Landlord at the payment address of Landlord set forth in the Fundamental Lease Provisions or to such payee and/or at such other place as may be designated from time to time by notice from Landlord to Tenant. At the end of the Term, provided Tenant is not in default, Landlord shall refund to Tenant any amount of excess Rent paid to Landlord and any other amounts due from Landlord to Tenant. Any Rent, or installment thereof, which is not paid by Tenant to Landlord within ten (10) calendar days after it is due shall bear interest at the Default Rate. In the event any installment of Minimum Rent or other sum under this Lease shall not be paid when due, a "**Late Charge**" of five cents ($.05) per each dollar so overdue may be charged by Landlord, as Additional Rent, for the purpose of defraying Landlord's administrative expenses incident to the handling of such overdue payments. If Tenant pays any installment of Rent by check and such check is returned for insufficient funds or other reasons not the fault of Landlord, then Tenant shall pay Landlord, on demand, a processing fee of One Hundred Dollars ($100.00) per returned check plus all applicable Late Charges and if three (3) checks are returned for insufficient funds within any twelve (12) consecutive month period or other reasons not the fault of Landlord, all subsequent payments to Landlord by Tenant shall be in the form of either a certified or cashier's check.

ARTICLE 5: TAXES AND ASSESSMENTS

Section 5.01: TENANT'S TAX CHARGE.

Tenant shall pay to Landlord in each calendar year, as Additional Rent, Tenant's share of all real estate and other ad valorem taxes and other assessments, impositions, excises and other governmental or quasi-governmental charges of every kind and nature (including, but not limited to, general and special assessments, sewer and fire district assessments, foreseen as well as unforeseen and ordinary as well as extraordinary) with respect to the Shopping Center and all improvements thereon or any part thereof. Such taxes and assessments are collectively called the "**Taxes**" in this Lease. Tenant's share of the Taxes in each calendar year (the "**Tax Charge**") shall be an amount equal to the product obtained by multiplying the Taxes applicable to such calendar year by the GLA Fraction (with daily proration for any Partial Year). "**Taxes**" shall also include Landlord's reasonable costs and expenses (including statutory interest, if any) in obtaining or attempting to obtain any refund, reduction or deferral of Taxes.

Section 5.02: PAYMENT BY TENANT.

(a) Payment of the Tax Charge required under this Article 5 shall be paid by Tenant in equal monthly installments in advance in such amounts as are estimated and billed by Landlord based upon the total Taxes payable in each calendar year. Landlord may revise its estimate and may adjust such monthly payment at the end of any calendar month. The first such installment shall be due and payable by Tenant on the Rent Commencement Date (prorated for the remaining number of days in the calendar year) and subsequent installments shall thereafter be due and payable at the beginning of each ensuing calendar month during the Term. In addition to the payments provided for in the immediately preceding sentence, if, prior to the Rent Commencement Date, Landlord shall have prepaid all or a portion of the Taxes applicable to the Term, the Tax Charge shall include and Tenant shall reimburse to Landlord the Tenant's share of such Taxes (calculated in accordance with the provisions of Section 5.01), on or before the Rent Commencement Date. Landlord shall send to Tenant an invoice setting forth Tenant's share of such Taxes, together with copies of receipted bills evidencing Landlord's payment of such Taxes.

(b) After Landlord has received the Tax bills for each calendar year, Landlord will notify Tenant of (i) the amount of Taxes on which the Tax Charge is based, (ii) the amount of any refund, reduction or deferral expenses, (iii) the total GLA of the Premises and Landlord's Building on which the Tax Charge is based and (iv) the amount of the Tax Charge. If the aforesaid monthly payments on account of the Tax Charge for a given calendar year are greater than Tenant's share of the Taxes payable for a given calendar year, Tenant shall receive a credit from Landlord for the excess against installments of the Tax Charge next becoming due to Landlord, and if said payments are less than Tenant's share, Tenant shall forthwith pay Landlord the difference.

Section 5.03: TENANT'S ADDITIONAL TAX OBLIGATIONS.

(a) Tenant shall pay before delinquency any and all taxes, assessments, impositions, excises, fees and other charges levied, assessed or imposed by governmental or quasi-governmental authority upon Tenant or its business operation, or based upon the use or occupancy of the Premises, or upon Tenant's leasehold interest, trade fixtures, furnishings, equipment, leasehold improvements (including, but not limited to, those required to be made pursuant to Tenant's Work) alterations, changes and additions made by Tenant, merchandise and personal property of any kind owned, installed or used by Tenant in, from or upon the Premises. If the property of Landlord is included in any of the foregoing items, the aforesaid taxes, assessments, impositions, excises, fees and other charges shall nonetheless be paid by Tenant as herein provided. Tenant shall pay, when due and payable, any sales tax, or other tax, assessment, imposition, excise or other charge now or hereafter levied, assessed or imposed upon or against this Lease or any Rent or other sums paid or to be paid hereunder, or Tenant's, Landlord's or Agent's interest in this Lease or any Rent or other sums paid or to be paid hereunder. Should the appropriate taxing authority require that any tax, assessment, imposition, excise or other charge referred to in this Section 5.03(a) be collected by Landlord or Agent for or on behalf of such taxing

authority, then such tax, assessment, imposition, excise or other charge shall be paid by Tenant to Landlord or to Agent monthly as Additional Rent in accordance with the terms of any notice from Landlord or Agent to Tenant to such effect. The taxes, assessments, impositions, excises, fees and other charges described in this Section 5.03(a) shall be the obligation of Tenant and not Landlord or Agent. If any tax, assessment, imposition, excise, fee or other charge covered by this Section 5.03(a) is imposed on Landlord or Agent, Tenant shall pay the same to Landlord within thirty (30) days after receipt of each bill therefor.

(b) Nothing herein contained shall be construed to include in Taxes any inheritance, estate, succession, transfer, gift, franchise, corporation, net income or profit tax or capital levy that is or may be imposed upon Landlord; provided, however, that, if at any time during the Term the methods of taxation prevailing at the commencement of the Term shall be altered so that in lieu of or as a supplement to the whole or any part of the taxes now levied, assessed or imposed on real estate as such there shall be levied, assessed or imposed (i) a tax on the rents received from such real estate, or (ii) a license fee measured by the rents receivable by Landlord from the Shopping Center or any portion thereof, or (iii) a tax or license fee imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Shopping Center or any portion thereof, then the same shall be included in the computation of Taxes hereunder, computed as if the amount of such tax or fee so payable were that due if the Shopping Center were the only property of Landlord subject thereto. If any gross receipts tax in lieu of real estate tax, shall be payable by Landlord, Tenant shall pay the portion thereof attributable to Landlord's receipts from this Lease.

ARTICLE 6: SERVICES

Section 6.01: UTILITIES.

(a) During the Term, Tenant shall be solely responsible for and promptly pay all charges for heat, water, electricity, sewer rents or charges, sprinkler charges, A.D.T. or other alarm system, water treatment facility charges, and any other utility used or consumed in the Premises or in providing heating and air conditioning to the Premises together with all connection and service charges and all taxes or other charges levied on such utilities. Should Landlord elect or be required to supply or make available any utility used or consumed at the Premises, Tenant agrees to purchase and pay for same, as Additional Rent, every month in the Term; provided that Tenant shall not be obligated to pay to Landlord an aggregate annual sum therefor in excess of the aggregate annual amount therefor which Tenant would otherwise be obligated to pay for similar utility usage and service as a retail customer of the public utility or municipal authority then supplying such utility to the Shopping Center. In addition, Tenant shall also pay any taxes, surcharges, impositions, penalties or other additional charges applicable to the utility service being supplied, provided that such taxes, surcharges, impositions or other charges are required by law to be collected from Tenant or are paid by Landlord to its supplier of the utility service in question. If permitted by law, Landlord shall have the right at any time and from time to time during the Term to either contract for service from a different company or companies providing utility service to the Shopping Center, provided the fees charged by such utility provider will not exceed those charged by the local public utility to a retail customer.

(b) In the event the Premises does not presently contain an electric or other utility meter, at Landlord's request, Tenant shall, within forty-five (45) days after receipt of such request and at its sole cost and expense, install a meter of a type approved in advance by Landlord. Thereafter, at Landlord's request, Landlord and Tenant shall enter into an amendment to this Lease specifying the procedures for reading such meter and the rendering of bills to Tenant for the utility being so metered. In the event Landlord or the local authority, municipality, utility or other body supplies water and/or sewer services and collects for such service and/or consumption, Tenant covenants and agrees to pay the water and sewer charge (both minimum and otherwise) and any other tax, rent, levy, connection fee or meter or other charge which now or hereafter is assessed, imposed or may become a lien upon the Premises, or the Shopping Center, pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, or the water or sewerage connection or system. Such charges shall be based on metered readings or other formula specified by Landlord.

(c) Landlord shall not be liable or responsible for any loss, damage or expense Tenant may sustain or incur by reason of any change, failure, curtailment, interruption, disruption, 'brown out" or defect in the supply or character of any utility supplied to the Shopping Center or Premises or if the quantity or character of the utility supplied by Landlord or any service provider is no longer available or suitable for Tenant's requirements and none of the foregoing shall constitute an actual or constructive eviction or entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease. Tenant shall operate the Premises in such a manner as shall not waste energy or water or burden or damage the utility lines therein. Landlord or third party charges for water or sewer will not exceed that charged by the local public utility to a retail customer.

(d) Landlord may, after thirty (30) days notice to Tenant, cease to furnish any one or more of the utility services to the Premises, without any responsibility to Tenant, except to connect at Tenant's sole cost and expense, Tenant's distribution facilities therefor with another source for the utility service so discontinued.

(e) If any utilities furnished by Landlord become unavailable for a period in excess of three (3) days solely by reason of Landlord's negligence or the negligence of third party utility provider, and Tenant is forced to close its business to the public due to such interruption, then after the third (3rd) day of such closing, Tenant's Minimum Rent shall abate until such time as service is restored.

Section 6.02: APPLICATION FOR UTILITIES.

Tenant shall make all appropriate applications to the local utility companies at such times as shall be necessary to insure utilities being available at the demised premises no later than the commencement of the term and pay all required deposits, connection fees and/or charges for meters within the applicable time period set by the local utility company.

Section 6.03: TRASH AND GARBAGE REMOVAL.

(a) Tenant shall be solely responsible for trash and garbage removal from the Premises, including the placing of all trash and garbage in containers provided by Landlord for such purpose. In the event Landlord elects to furnish such service to the tenants in Landlord's Building, Tenant agrees to use only the service provided by Landlord and to pay for such service (including, without limitation, both the cost of leasing containers and the cost of removal) monthly, as Additional Rent, in accordance with a schedule of charges to be established by Landlord (the "**Refuse Handling Charge**"). In no event shall Tenant be obligated to pay Landlord more for the Refuse Handling Charge than the prevailing competitive rates of reputable independent trash removal contractors for service similar to that provided by Landlord. Tenant shall not dispose of any hazardous materials or environmentally sensitive or restricted item of waste in any trash facilities provided by Landlord, and in lieu thereof, Tenant shall arrange, at its sole cost and expense, to have all such items removed from the Premises and Shopping Center in accordance with all Governmental Requirements (hereinafter defined).

(b) During the entire Term of this Lease, Tenant shall provide a trash room within the Premises, and trash removal on a daily basis from such trash room. There shall be no storage of trash outside the Premises. At least twice daily, Tenant shall be required to remove all trash from all portions of the Common Areas of the Shopping Center which are located within a fifty (50') foot radius of the Premises.

ARTICLE 7: USE OF PREMISES

Section 7.01: SOLE USE AND TRADE NAME.

Tenant covenants and agrees that throughout the Rent Term, Tenant shall continuously use and operate all of the Premises for the use set forth in the Fundamental Lease Provisions and under Tenant's Trade Name set forth therein. Tenant shall not use or permit the Premises to be used for any other purpose or under any other trade name without the prior written consent of Landlord; provided, however, that Landlord's consent to change Tenant's trade name shall not be unreasonably withheld. Tenant agrees that if Tenant or anyone else claiming through or under Tenant uses the Premises for a use or trade name not set forth in the Fundamental Lease Provisions without Landlord's prior written consent, such conduct shall constitute an Event of Default. Tenant shall, at its expense, procure any and all governmental licenses and permits, including, without limitation, sign permits, required for the conduct of business in or from the Premises and shall, at all times, comply with the requirements of each such license and permit. Landlord does not represent or warrant that it will obtain for Tenant (or that Tenant will be able to obtain) any license or permit. Further, Tenant may change Tenant's trade name without Landlord's prior written consent provided it changes the trade name of all its stores in the Commonwealth of Pennsylvania and State of Ohio.

Section 7.02: HOURS.

(a) Tenant covenants and agrees that throughout the Rent Term, Tenant shall continuously operate, conduct its business within and otherwise use the Premises in accordance with the terms and conditions of this Lease, including, without limitation, the provisions of **Section 7.01** hereof and all of the other provisions of this **Article 7** (unless the Premises are rendered unfit for occupancy by reason of fire or other casualty, in which event **Article 12** shall control). Tenant will keep the Premises open for business to the public at least seven (7) days per week from 11:00 a.m. until 9:00 p.m. (unless prohibited by jurisdictional authorities) as required by Landlord. In the event Tenant violates the foregoing, in addition to any other rights or remedies available to Landlord, Landlord shall have the right to collect (as liquidated damages and not as a penalty) One Hundred Dollars ($100.00) for each day a violation occurs. Tenant agrees that Landlord may change the foregoing business hours from time to time to reflect local custom or seasonal shopping patterns provided that such changes are uniformly applied to the majority of retail tenants in Landlord's Building. Tenant shall not be required to keep the Premises open during hours when the Enclosed Mall is closed to the public. The requirements of this **Section 7.02** are subject, with respect to any business controlled by governmental regulations in its hours of operation, to the hours or operation so prescribed by such governmental regulations and are further subject to applicable federal, state, and local environmental and other laws, rules, or regulations, guidelines, judgments or orders. In addition to being able to close when the Shopping Center is closed, Tenant will be able to close two (2) days per Year without penalty.

(b) Notwithstanding the foregoing, in addition to keeping the Premises open for business during the Shopping Center's operating hours set forth above, Tenant may also open for business in the Premises prior to the opening of the Shopping Center and/or remain open and operating in the Premises after the Shopping Center has closed seven (7) days during each week of the Year, subject to all local governmental codes. During all hours Tenant is open for business during which the Enclosed Mall is closed, Tenant shall secure all entrances and exit doors, if any, to the Enclosed Mall so that Tenant's patrons and employees are denied access to the Enclosed Mall and shall allow its patrons and employees to use only an outside entrance to the Premises. Furthermore, in the event Landlord deems, in its reasonable business judgment that additional Common Area services (such as additional security, lighting, maintenance, etc.) are necessary during any hours that Tenant is open for business in the Premises before and/or after the hours during which the Shopping Center is open, the parties hereby acknowledge and agree that Landlord may provide any such services it so deems reasonably necessary, and Tenant shall be fully liable for the reasonable payment of all costs and expenses relative to any such additional Common Area services, which shall be billed to, and payable by, Tenant as Additional Rent hereunder.

Section 7.03: OPERATIONAL REQUIREMENTS.

Tenant agrees that it:

(a) will not in connection with the Premises conduct or permit to be conducted any auction, fire, bankruptcy or going out of business sales, or similar type sale, or utilize any unethical method of business; provided, however, that this provision shall not restrict the absolute freedom (as between Landlord and Tenant) of Tenant to determine its own selling prices nor shall it preclude the conduct of periodic, seasonal, promotional or clearance sales;

(b) will not use or permit the use of any apparatus for sound and/or light reproduction or transmission including loudspeakers, phonographs, radios or televisions, or of any musical instrument in such manner that the sounds

so reproduced, transmitted or produced shall be audible beyond the interior of the Premises; will not distribute, or cause to be distributed, at the Shopping Center or in any part thereof any handbills or other advertising or notices; and will not conduct or permit any activities that might constitute a nuisance, or which are prurient or otherwise not generally considered appropriate in accordance with standards of operation for the Shopping Center established by Landlord; will not install any antennae or other communication equipment on the roof of Landlord's Building or anywhere on the exterior of the Premises;

(c) will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Premises; will not cause or permit strong, unusual, offensive or objectionable sound, sights, odors, fumes, dust or vapors to emanate or be dispelled from the Premises;

(d) will not load or permit the loading or unloading of merchandise, supplies or other property, nor ship, nor receive, outside the area and entrance designated therefor by Landlord from time to time; will not permit the parking or standing outside of said area of trucks, trailers, or other vehicles or equipment engaged in such loading or unloading in a manner which may interfere with the use of any Common Areas or any pedestrian or vehicular use and good regional shopping center practice; will use its best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Premises prior to 9:30 a.m. each day;

(e) subject to **Section 10.01**, will not paint or decorate any part of the exterior or interior of the Premises, or change the architectural treatment, fixturing, decor or other appearance of the interior or exterior of the Premises, without first obtaining Landlord's written approval of such painting, decoration or change; and will remove promptly upon order of Landlord any paint, decoration or change which has been applied to or installed upon the exterior or interior of the Premises without Landlord's written approval;

(f) will keep the inside and outside of all glass in the doors and windows of the Premises clean and will replace any cracked or broken glass with glass of the same kind, size and quality; will maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests and will use an exterminator reasonably designated by Landlord and at times reasonably designated by Landlord; will not burn or permit undue accumulation of garbage, trash, rubbish and other refuse; will (subject to **Section 6.03**) remove the same from the Premises to compactors or other receptacles designated by Landlord at reasonable locations, and will keep such refuse in proper containers in the interior of the Premises until so removed from the Premises;

(g) will comply with all applicable federal, state and local environmental and other laws, rules, regulations, guidelines, judgments and orders and all recommendations of any public or private agency having authority over insurance rates which now or in the future enact requirements with respect to the use or occupancy of the Premises by Tenant, including, without limitations the requirements imposed by the Americans with Disabilities Act which imposes requirements relating to the design and use of the Premises and the requirements imposed by the Clean Air Act which imposes, among others, requirements relating to the venting, use of, and disposal of chlorofluorocarbons and other refrigerants (collectively the "**Governmental Requirements**"); will not use or permit the use of any portion of the Premises for any unlawful purpose; and will conduct its business in the Premises in all respects in a dignified manner and in accordance with high standards of store operation;

(h) will provide, or cause to be provided all security within its Premises as it deems appropriate;

(i) will also comply with and observe all reasonable rules and regulations established by Landlord from time to time in accordance with **Section 8.05**;

(j) will not permit the use of any portion of the Premises for solicitations, demonstrations or any activities inconsistent with reasonable standards of a first class shopping mall;

(k) will not use, or permit to be used, the malls or sidewalks adjacent to the Premises, or any other space outside of the Premises for the display or sale or offering for sale of any merchandise or for any other business, occupation or undertaking provided that, Tenant may have one sandwich board by the door from the Enclosed Mall into the Premises and a podium outside the entrance, if Tenant deems necessary in its reasonable business judgment;

(l) will provide or cause to be provided within the Premises, without cost or expense to Landlord, adequate lighting and security for its licensees, invitees and employees during such periods as the Premises are open for business;

(m) will maintain at all times a full staff of employees and a complete stock of merchandise and other goods consistent with the use of the Premises;

(n) Deleted;

(o) Tenant shall maintain the Premises in first-class condition throughout the Term of this Lease and shall refurbish all worn surfaces, at Tenant's sole cost and expense, as same is reasonably necessary during the Term;

(p) will conduct its labor relations and its relations with employees in such a manner as to avoid all strikes, picketing, boycotts or hand billing at or about the Premises and the Mall Premises. Tenant further agrees that if, during the period of any work by or for Tenant in or about the Premises in connection with such work there is a strike, picketing, boycotting, hand billing or other activity objectionable to Landlord, Tenant shall remove or cause to be removed from the Premises and the Mall Premises all persons, to the extent not prohibited by law, until such strike, picketing, boycotting, hand billing or other activity ceases and the cause thereof is settled to Landlord's satisfaction;

(q) will not, without obtaining Landlord's prior written approval, which approval may be withheld in Landlord's discretion, install any storage or propane tank, whether above or underground, at the Premises or in the Shopping Center and if Landlord shall consent to such installation, Tenant will comply with all applicable laws, regulations and underwriter requirements concerning the installation, operation, and closure of such tank. Upon termination of this Lease, Landlord shall have the option of requiring that Tenant, at Tenant's sole cost and expense, perform tests relating to the condition of such tank and/or remove any tank installed by Tenant and associated contaminated material. Tenant shall be deemed the

owner and operator of any tank installed by Tenant. Tenant shall relocate such tank at Landlord's request and at Tenant's expense, to another location acceptable to Landlord;

(r) will, if applicable, install and properly maintain a grease trap and either a "black iron duct", or other self-contained venting and exhaust system acceptable to Landlord. Such items shall be installed in a manner, of materials and at a location approved in advance by Landlord and shall, at Landlord's option, connect to trunk facilities, if any, supplied by Landlord for same.

(s) will not use the plumbing facilities for any purpose other than that for which they were constructed and will not dispose of any damaging or injurious substance therein;

(t) deleted; and

(u) will not store, display, rent or sell any audio or video cassettes.

Section 7.04: TENANT'S USE OF ROOF, EXTERIOR WALLS, ETC.

Tenant shall not, without having obtained the prior written consent of the Landlord, perform any work of any nature whatsoever to the roof, exterior walls or to any of the structural portions of Landlord's Building or the Premises or in areas reserved to Landlord or excluded from Tenant in the Store Design Criteria. Any damage to the Premises or any person or property occurring as a result of a breach of this provision shall be the sole responsibility, cost and expense of the Tenant. Notwithstanding Tenant's rights set forth elsewhere in this Lease, Landlord may erect additional stories or other structures over all or any part of the Premises, Landlord's Building and any other part of the Mall Premises. In connection with such erection, or otherwise, Landlord may relocate Tenant's equipment and may erect temporary scaffolds and other aids to such construction at Landlord's sole cost and expense.

Section 7.05: OPERATION OF HVAC SYSTEM.

Tenant agrees, during the hours the Premises is open for business, to control and/or operate as applicable the HVAC system serving the Premises regardless of whether such equipment was installed by Landlord or Tenant so that conditions inside the Premises are maintained within a range of 72 to 75 degrees Fahrenheit or within such range as may be prescribed by applicable governmental authorities so that heat, ventilation and cooled air are not drained from the Premises or the Enclosed Mall.

Section 7.06: EMPLOYEE PARKING AREAS.

Landlord may, from time to time, reasonably designate particular portions of the Shopping Center parking areas (the "**Employee Parking Areas**") that are to be used by Tenant and its employees, or other individuals working at or from the Premises. If Landlord does so, Tenant and its employees shall park their vehicles only in the Employee Parking Areas. Tenant shall notify each employee in writing of the provisions of this Section 7.06 prior to each employee commencing employment or work at or from the Premises. If Tenant or any of its employees do not park their vehicles in the Employee Parking Areas, Landlord may give Tenant notice of such violation. If Tenant does not cease such violation, or cause such violation by the employee to cease, as the case may be, within two (2) days after Landlord's notice of violation is given, and Landlord shall, have the right to have the violating vehicles towed at Tenant's expense.

Section 7.07: NON-COMPETITION COVENANT.

Tenant covenants and agrees with Landlord that through the Term, neither Tenant or any "**Affiliate of Tenant**" (hereinafter defined) shall directly or indirectly own, operate or manage or have a financial interest in any business which is primarily similar to that of Tenant or which sells or displays, directly or indirectly, merchandise or other goods, or services, similar to those primarily sold or offered or displayed by Tenant at or from the Premises (the "**Competing Store**") within three (3) miles from the property line of the Shopping Center nearest to the Competing Store (the foregoing covenant being hereinafter called "**Tenant's Non-Competition Covenant**"). "**Affiliate of Tenant**" means a proprietorship, corporation, partnership, unincorporated association or other person or entity "controlling", "controlled" by or under common "control" with Tenant. The words "**controlling**", "**controlled**" and "**control**" shall have the meanings given them under the Securities Exchange Act of 1934, as amended. If the Tenant's Non-Competition Covenant is violated, then, in addition to all other rights and remedies, Landlord shall have the right to add the "gross receipts of the Competing Store" (hereinafter defined) to the Gross Sales made by Tenant hereunder for the purpose of computing Percentage Rent. The phrase "**gross receipts of the Competing Store**" shall be determined by applying the definition of Gross Sales at Section 4.05 to transactions of the Competing Store. Tenant shall include the address and identity of its business at the Premises in all advertisements made by Tenant in which the address and identity of any similar local business of Tenant is mentioned and shall not divert from the Premises any transactions or other business which would occur at or from the Premises.

Section 7.08: SIGNS AND ADVERTISING.

Tenant shall not place or permit to be placed on the exterior of the Premises or windows or in the store front or roof, any sign, banner, decoration, lettering or advertising matter (collectively a "**sign**") without the Landlord's prior written approval. Tenant shall submit to Landlord reasonably detailed drawings of its proposed signs for review and approval by Landlord prior to utilizing same; however, Tenant may without such approval use in the store front professionally made reasonably sized signs indicating prices, styles and like information. All signs shall be insured and maintained at all times by Tenant in good condition, operating order and repair. Flashing signs are prohibited without Landlord's prior written approval. Tenant shall install one internally illuminated, individually lettered sign or other type of sign as specified by Landlord above the storefront of the Premises and professionally lettered name signs on its service doors in accordance with the Final Plans or other plans and specifications previously approved by Landlord. Notwithstanding the foregoing, Tenant is permitted to have installed:

(i) one (1) menu board outside the front interior door of the Premises; and
(ii) Tenant may paint its logo and hours of operation on the exterior door.
(iii) a podium outside the entrance a stated elsewhere in this Lease.

Landlord shall have the right, after twenty-four (24) hours prior written notice to Tenant and without liability for damage to the Premises reasonably caused thereby, to remove any items displayed or affixed in or to the Premises which Landlord determines (in its reasonable judgment) to be in violation of the provisions of this **Section 7.08**.

Tenant will keep the storefront sign and display windows in the Premises lighted during all periods that the Shopping Center is open to the public and for one-half hour after required business hours and for such other periods as may be reasonably required by rules and regulations established in accordance with **Section 8.05**.

ARTICLE 8: COMMON AREAS

Section 8.01: USE OF COMMON AREAS.

(a) Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged during the Term to use the Common Areas for their respective intended purposes in common with other persons. Tenant's right to use any meeting room or auditorium, if any, in the Common Areas shall be subject to such schedules and payment of such fees or charges therefor as Landlord may from time to time adopt governing the use thereof.

(b) Landlord shall at all times have the right to utilize the Common Areas including, without limitation, the Enclosed Mall for promotions, exhibits, carnival type shows, rides, outdoor shows, displays, automobile and other shows or events, the leasing or licensing of kiosks, push carts and food facilities, landscaping, seating areas, seasonal displays, decorative items, and any other use which, in Landlord's judgment, tends to attract customers to, or benefit the customers of the Shopping Center.

Landlord agrees that in implementing its rights pursuant to this Section, except to the extent set forth below, it shall not change the Common Areas so as to substantially restrict access to or visibility of Tenant's storefront from other portions of the Enclosed Mall. Notwithstanding the foregoing, Tenant agrees that (a) any existing (i) kiosk or merchandising unit or (ii) other physical impediment to access or visibility such as, without limitation, a planter, tree, bench, or "**pop out**" store front or replacement of any of the foregoing and/or (b) any future kiosk or merchandising unit located more than thirty (30) feet from the center of the lease line; (c) any restriction of access or visibility resulting from work being performed in the Common Areas or any other premises "in line" with the Premises (including temporary construction barricades), and/or (d) holiday decorations or activities sponsored by the promotion fund and/or (e) means of vertical transportation leading to a second level of the Enclosed Mall, shall not be deemed a violation of the foregoing. If Landlord exercises its rights to add new buildings or change the Common Areas or perform any other acts authorized by this Section, and in so doing, Landlord substantially interferes with Tenant's ability to conduct business in the Premises to such a degree that Tenant, solely as a result of Landlord's acts, is unable to remain open for business for a period of time in excess of three (3) consecutive business days and Tenant closes for business, then Landlord agrees that as Tenant's sole and exclusive remedy for such interference the Rent thereafter falling due shall abate until Tenant is capable of recommending business operations.

Section 8.02: COMMON AREA MAINTENANCE SUM.

(a) The term "**Common Area Maintenance Sum**" (or the "**CAM Sum**") shall be charged and prorated in the manner hereinafter set forth and shall mean all sums incurred in a manner deemed by Landlord to be reasonable and appropriate and for the best interests of the Shopping Center in connection with the operation, repair and maintenance of the Common Areas and the Shopping Center (and any additions thereto), including, without limitation, the costs and expenses of:

(i) operation, inspection and/or maintenance of the storm, sanitary, electrical, gas, steam, water, telephone systems, lighting system (including poles, bulbs, and fixtures), and other utility systems, including pipes, ducts and similar items; directional signs and other traffic signals, markers, controls, signs (including all identification signs) both on and off site:

(ii) snow, ice, trash and garbage removal, pest control, and cleaning, painting, sweeping, striping and repaving all parking surfaces, services areas and other portions of the Common Areas;

(iii) operation and/or maintenance of all heating, ventilating and air cooling and other utility systems, emergency water and sprinkler, security, life safety systems, pumping systems, electrical systems and all escalator and elevator systems and any other items, facilities, equipment, and systems furnished by Landlord as part of the Common Areas;

(iv) premiums and other charges for insurance to the extent provided by Landlord, including without limitation, liability insurance for personal and bodily injury, death and property damage; insurance covering Landlord's Building and the Common Areas against fire and extended coverage perils; theft or casualties; workers' compensation; plate glass insurance for glass exclusively serving the Common Areas; boiler insurance (if carried); losses borne by Landlord as a result of deductibles carried by Landlord under an insurance policy or self insurance by Landlord; Landlord's risk management expenses and rent insurance provided by Landlord pursuant to Section 11.02;

(v) operation and/or maintenance of gazebos, fountains, art features, sculptures, fencing and similar items located within the Common Areas and interior and exterior planting, replanting and replacing of all flowers, shrubbery, plants, trees and other landscaping within the Common Areas;

(vi) operation and/or maintenance of Landlord's Building's structure, including, without limitation, floors, doors, walls, ceiling, roofs, skylights, and windows;

(vii) maintenance and depreciation of all machinery and equipment used in the operation or maintenance of the Common Areas (including but not limited to all escalators, elevators and other vertical transportation (if any), security vehicles and equipment) and all personal property taxes and other charges incurred in connection with such machinery and equipment;

(viii) all license and permit fees, any and all parking surcharges that may result from any environmental or other laws, rules, regulations, guidelines or orders;

(ix) the expense of installation and operation of loudspeaker systems, music program services, cable television systems, or similar audio or video transmission systems;

(x) personnel, including without limitation, cleaning and maintenance personnel, Landlord's on-site management staff (which includes the General Manager, Assistant Manager, secretaries and bookkeepers) together with the uniforms, payroll, payroll taxes and employee benefits of all such personnel;

(xi) the expense of security personnel and equipment, including, without limitation, uniforms as well as transportation and surveillance equipment;

(xii) all costs, charges, and expenses incurred by Landlord in connection with any change of any company providing electricity service, including, without limitation, maintenance, repair, installation, and service costs associated therewith;

(xiii) all expenses incurred by Landlord at the same rate per unit Landlord charges to tenants, in connection with refuse disposal, water and sewer, gas, steam, exterior site lighting, electricity, air conditioning, heating, and other utilities, including, without limitation, any and all usage, service, hook-up, connection, availability and/or standby fees or charges pertaining to same;

(xiv) Landlord's supervisory charge in an amount equal to fifteen percent (15%) of the total aggregate cost of operating and maintaining the Common Areas, including but not limited to those things listed in Section 8.02(a); and

(xv) expanding, adding to or reconfiguring the Common Areas (or any portion thereof).

(b) Notwithstanding the foregoing, the CAM Sum shall not include:

(i) the expense of any repair or replacement required of Landlord pursuant to the reconstruction obligations of Section 12.01;

(ii) depreciation (other than depreciation as above specified);

(iii) any utilities which are directly metered or submetered to tenants in Landlord's Building; and

(iv) any capital expense which substantially enhances the physical assets of the Shopping Center beyond those originally constructed, provided that any expenditures which Landlord reasonably expects to effect a cost savings with respect to the CAM Sum or are required by any Governmental Requirements, shall not be excluded from the CAM Sum.

(c) Notwithstanding anything contained in this Lease to the contrary, in calculating the "**CAM Charge**" (defined in Section 8.03), the CAM Charge may be based upon Landlord's estimates, which estimates and payments thereon shall be subject to adjustments in future billings to Tenant based on Landlord's actual cost, it being understood and agreed that in determining actual costs, Landlord in its reasonable discretion, will make allocations of certain items between the Enclosed Mall and other portions of the Shopping Center of which the Enclosed Mall is a part, which need not be based on relative size or use.

(d) Landlord may cause any or all maintenance services for the Common Areas to be provided by an independent contractor or contractors or others and the costs therefor shall be included in the CAM Sum. Except as provided hereinabove, none of the costs for the original construction and installation of the Common Areas shall be included in the CAM Sum.

(e) If Landlord from time to time acquires, or makes available, additional land or improvements for parking or other Common Area purposes, the CAM Sum shall also include all costs and expenses incurred by Landlord in connection with the operation or maintenance of said additional land and improvements.

(f) Landlord agrees that if it incurs in any single year expenditures which individually cost in excess of $200,000.00 relating to the replacement of roofs, the replacement of mall HVAC units or the replacement of any other mechanical or physical component of the Shopping Center then, for the purpose of Section 8.02, such cost shall be amortized over a period of five (5) years (or if less, the expected useful life of such item), plus CAM Interest (hereafter defined) on the portion of such cost which has not been included in the CAM Sum for each such year. For the purposes of this provision, "CAM Interest" is defined as interest at the rate per annum equal to the lesser of: (a) two (2) percentage points above the average annual announced prime rate of a bank selected by Landlord for the year in question; and (b) the maximum legal rate.

(g) The words "maintenance", "maintain" or "maintaining" as used in this Article 8 includes, without limitation, all repairs, replacements and other work and service of any type whatsoever.

Section 8.03: CAM CHARGE.

(a) Tenant shall pay to Landlord, as Additional Rent, Tenant's share of the CAM Sum in the manner set forth in Section 8.03(b) and (c) below. Tenant's share of the CAM Sum for each calendar year shall be an amount equal to the CAM Sum for that period multiplied by the GLA Fraction (the "**CAM Charge**"). For any Partial Year, the CAM Sum will be multiplied by the Partial Year Fraction with the result multiplied by the GLA Fraction. Landlord agrees that Tenant's maximum payment of its CAM Charge for the second twelve (12) month Year shall not exceed the first such Year's payment plus five percent (5%) of such payment; and further, that any subsequent Year's payment shall not exceed the immediately preceding Year's payment plus five percent (5%) of such payment. Notwithstanding the foregoing, in making the foregoing calculation, Common Area Costs relating to insurance, snow removal and security shall be excluded from the aforesaid limitation, and Tenant shall continue to pay its pro rata share of such items without regard to the foregoing. Notwithstanding anything to the contrary herein, the foregoing 5% limitation shall not be applicable in the event, there is an increase in the CAM Sum due to an increase in the rates of the provider for utilities. In such an instance, the increase shall be excluded from the 5% limitation.

(b) Tenant shall pay Landlord on the Rent Commencement Date and on the first day of each calendar month in the Term thereafter amounts estimated by Landlord to be Tenant's monthly share of the CAM Sum. Landlord may adjust said amount at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated costs.

(c) Following the end of each calendar year, Landlord shall furnish Tenant a statement covering the calendar year just expired, certified as correct by an independent public accountant or an authorized representative of Landlord, showing the CAM Sum and the amount of the CAM Charge and the payments made by Tenant with respect thereto as set forth in the preceding **Section 8.03(b).** If Tenant's aggregate monthly payments on account of the CAM Charge are greater than Tenant's share of the CAM Sum, Tenant shall receive a credit for the excess against monthly installments on account of the CAM Charge next becoming due to Landlord; if said payments are less than said share, Tenant shall pay to Landlord the difference forthwith.

(d) Landlord may have heretofore elected to spread, and may hereafter elect to spread, the amount of any of the expenses of the CAM Sum over such period of years as Landlord shall determine by amortizing them over such periods instead of including such expenses entirely in the year in which expended or incurred, in which event, the annual amortization amount shall be deemed to be an expense incurred during each year of the amortization period, notwithstanding that such expenses may have been expended or incurred prior to the execution of this Lease.

(e) Provided no Event of Default has occurred and is continuing at the time of Tenant's request and provided the CAM Sum, Tenant may audit the CAM Sum for a single Year designated by Tenant provided:

1. Tenant designates the Year Tenant desires to audit which Year shall be within three (3) years of the date of Tenant's request and must, in any event, be during the Term of this Lease;

2. Such audit is conducted by an independent certified public accountant retained by Tenant based solely upon a fixed or hourly fee, not contingency fee; or "bonus" or other incentive arrangement;

3. Such audit is conducted, at Landlord's office, during regular business hours on a date reasonably designated by Landlord;

4. Tenant may review only those records of Landlord that are specifically related to the CAM Sum and Tenant may not review any other leases or anchor agreements or Landlord's tax returns or financial statements;

6. Tenant shall hold the results of such audit in confidence and shall require its employees to do likewise;

7. Tenant and/or its auditor execute and deliver to Landlord, prior to such audit being performed, a confidentiality agreement approved by Landlord; and

Notwithstanding the foregoing, Tenant shall have no right to audit the CAM Sum if Landlord's outside auditor or any other Tenant has performed a certified audit for the Year in question and Landlord has made available to Tenant a copy of any audit. Tenant agrees to deliver to Landlord within fifteen (15) days of its receipt by Tenant a copy of the results of such audit it performs and Tenant shall not disclose the results of such audit to anyone except Landlord.

Section 8.04: CHANGES BY LANDLORD.

(a) As between Landlord and Tenant, Landlord shall at all times have the right and privilege of determining the nature and extent of the Common Areas and of making such changes, rearrangement, additions or reductions therein and thereto from time to time which in its opinion are deemed to be desirable or which are made as a result of any federal, state or local environmental or other law, rule, regulation, guideline, judgment or order, including but not limited to, the location, relocation, enlargement, reduction or addition of driveways, entrances, exits, automobile parking spaces, employee and customer parking areas (if any), the direction and flow of traffic, installation of landscaped areas, and any and all other facilities of the Common Areas. Landlord (or others entitled to) may from time to time make alterations, renovations, reductions, or additions anywhere within Landlord's Building or to the Common Areas or other part of the Shopping Center or any lands or improvements added thereto, construct additional buildings or improvements on the Common Areas or elsewhere and make alterations thereto, build additional stories on any buildings, construct multi-level or elevated or underground parking facilities, and construct roof, walls, and any other improvements over, or in connection with any part of, or all of, the Common Areas in order to enclose same.

(b) Landlord agrees that in implementing its rights pursuant to this Section, except to the extent set forth below, it shall not change the Common Areas so as to substantially restrict access to or visibility of Tenant's storefront from other portions of the Enclosed Mall. Notwithstanding the foregoing, Tenant agrees that (a) any existing (i) kiosk or merchandising unit or (ii) other physical impediment to access or visibility such as, without limitation, a planter, tree, bench, or "pop out" store front or replacement of any of the foregoing and/or (b) any future kiosk or merchandising unit located more than thirty (30) feet from the center of the lease line; (c) any restriction of access or visibility resulting from work being performed in the Common Areas or any other premises "in line" with the Premises (including temporary construction barricades), and/or (d) holiday decorations or activities sponsored by the promotion fund and/or (e) means of vertical transportation leading to a second level of the Enclosed Mall, shall not be deemed a violation of the foregoing. If Landlord exercises its rights to add new buildings or change the Common Areas or perform any other acts authorized by this Section, and in so doing, Landlord substantially interferes with Tenant's ability to conduct business in the Premises to such a degree that Tenant, solely as a result of Landlord's acts, is unable to remain open for business for a period of time in excess of three (3) consecutive business days and Tenant closes for business, then Landlord agrees that as Tenant's sole and exclusive remedy for such interference the Rent thereafter falling due shall abate until Tenant is capable of recommending business operations.

Section 8.05: RULES AND REGULATIONS.

Tenant agrees that Landlord may establish and from time to time change, alter and amend, and enforce against Tenant, such reasonable rules and regulations as Landlord may deem necessary or advisable for the proper and efficient use, operation and maintenance of the Common Areas, provided that all such rules and regulations affecting Tenant and its invitees and employees shall apply equally and without discrimination to substantially all of the retail tenants in Landlord's Building or substantially all retail tenants engaging in certain acts or of a certain use. The rules and regulations

herein provided for may include, but shall not be limited to, the hours during which the Common Areas shall be open for use. Notwithstanding the foregoing, however, Landlord acknowledges that Tenant may stay open after the interior part of Landlord's Building is closed. Landlord will not unreasonably restrict the amount of parking available to Tenant's customers or employees or restrict the proximity to the proximate to the Premises of the parking for said parties. The mall manager for Landlord's Building shall also work with Tenant to keep the appropriate entrances to Landlord's Building open during such times.

Section 8.06: LANDLORD'S MAINTENANCE AND CONTROL.

Subject to Sections 1.05, 8.01 and 8.04, Landlord agrees to maintain and operate, or cause to be maintained and operated, the Common Areas in good and reasonable condition and manner. Landlord shall, as between Landlord and Tenant, at all times during the Term have the sole and exclusive control, management and direction of the Common Areas, and shall provide or cause to be provided, security in the Common Areas at a level determined by Landlord (and Tenant shall provide, or cause to be provided, adequate security within Tenant's Premises as Tenant deems appropriate). Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of any of the Common Areas, excepting, however, Tenant and other tenants of Landlord and bona fide invitees of either who make use of said areas for their intended purposes and in accordance with the rules and regulations established by Landlord from time to time with respect thereto. The rights of Tenant in and to the Common Areas shall at all times be subject to the rights of others to use the same in common with Tenant, and it shall be the duty of Tenant to keep all of the Common Areas free and clear of any obstructions or interferences created or permitted by Tenant or resulting from Tenant's operation provided, however, that Tenant may place its sandwich board and podium outside its entrances as permitted in this Lease. Landlord may at any time and from time to time close all or any portion of the Common Areas to make repairs or changes, or to such extent as may, in the opinion of Landlord, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, to close temporarily any or all portions of the Common Areas and to do and perform such other acts in and to Common Areas as, in the exercise of good business judgment, Landlord shall determine to be advisable with a view to the improvement of the convenience and use thereof by occupants and tenants, their employees and invitees.

Landlord agrees that in implementing its rights pursuant to this Section, except to the extent set forth below, it shall not change the Common Areas so as to substantially restrict access to or visibility of Tenant's storefront from other portions of the Enclosed Mall. Notwithstanding the foregoing, Tenant agrees that (a) any existing (i) kiosk or merchandising unit or (ii) other physical impediment to access or visibility such as, without limitation, a planter, tree, bench, or "pop out" store front or replacement of any of the foregoing and/or (b) any future kiosk or merchandising unit located more than thirty (30) feet from the center of the lease line; (c) any restriction of access or visibility resulting from work being performed in the Common Areas or any other premises "in line" with the Premises (including temporary construction barricades), and/or (d) holiday decorations or activities sponsored by the promotion fund and/or (e) means of vertical transportation leading to a second level of the Enclosed Mall, shall not be deemed a violation of the foregoing. If Landlord exercises its rights to add new buildings or change the Common Areas or perform any other acts authorized by this Section, and in so doing, Landlord substantially interferes with Tenant's ability to conduct business in the Premises to such a degree that Tenant, solely as a result of Landlord's acts, is unable to remain open for business for a period of time in excess of three (3) consecutive business days and Tenant closes for business, then Landlord agrees that as Tenant's sole and exclusive remedy for such interference the Rent thereafter falling due shall abate until Tenant is capable of recommending business operations

ARTICLE 9: PROMOTION OF SHOPPING CENTER AND MINIMUM ADVERTISING

Section 9.01: MARKETING SERVICE.

(a) Landlord has established or will establish an advertising and promotional service (herein called the "**Marketing Service**") to furnish and maintain advertising and sales promotions which, in Landlord's judgment, will benefit the Shopping Center. Landlord has established or will establish a fund (the "**Marketing Service Fund**") to be used by Landlord to pay all costs and expenses associated with the formulation and carrying out of an ongoing program for the advertising and other promotion of the Shopping Center. The program may include, without limitation, special events, shows, displays, signs, marquees, decor, seasonal events, advertising for the Shopping Center, promotional literature and other activities to market the Shopping Center based on sums collected from tenants. Tenant shall pay, as its share of the cost and expense of the Marketing Service for the Term of this Lease, the amount set forth in the Fundamental Lease Provisions (herein called the "**Marketing Service Charge**"). The Marketing Service Charge for any Partial Year shall be determined by multiplying Tenant's Marketing Service Charge by the Partial Year Fraction.

(b) Landlord may appoint an advisory committee, composed at least of a representative of Landlord, a representative of each Major, and a representative from each of six (6) tenants in Landlord's Building to review the advertising and other promotional activities provided. Such committee shall function solely in an advisory capacity subject to Landlord's discretion.

(c) In addition, Landlord may use the Marketing Service Fund to defray the costs of administration of the Marketing Service, including, without limitation, the salary and benefits of a marketing director and related administrative personnel, rent and insurance.

(d) Notwithstanding the provisions of this Article 9, Landlord may, at any time, in its sole discretion, decide that Landlord will, on and after a certain date thereafter, no longer provide the Marketing Service. Landlord may cease performing the Marketing Service on the date so specified by the Landlord, provided that nothing herein shall require Landlord to breach or fail to perform any agreement or obligation it has made with or to any third person in connection with the Marketing Service. If Landlord determines that it is or may be at risk of any such breach or failure, Landlord need not cease performing the Marketing Service until Landlord determines that such risk has passed.

(e) Deleted.

(f) Landlord reserves the right, in its sole discretion, to recommence providing the Marketing Service at any time after Landlord ceased providing the same.

Section 9.02: TENANT'S MINIMUM ADVERTISING OBLIGATION.

Deleted.

Section 9.03: ADJUSTMENTS AND CHARGES.

The Marketing Service Charge shall be paid in equal monthly installments, in advance, on the first day of each month.

Section 9.04: DISSOLUTION OF MERCHANT'S ASSOCIATION.

In the event there presently exists a merchant's association in use in the Shopping Center, Tenant agrees that Landlord shall have the unilateral right to take any steps required to terminate the same and to replace such merchant's association with a marketing service, promotion fund, advertising fund, or any other similar entity designated by Landlord in which event, upon notice to Tenant, Tenant shall automatically be deemed a member thereof and shall contribute to the same the amount which Tenant immediately prior to such termination was required to contribute to the merchant's association. Further, Tenant does hereby irrevocably assign to Landlord all of Tenant's voting rights contained in any bylaw or other similar document forming or governing the administration of any such merchant's association.

ARTICLE 10: CONSTRUCTION WORK

Section 10.01: APPROVALS AND STANDARDS.

Tenant shall not perform any construction or make any alterations or changes in or to the Premises at any time during the Term (herein sometimes collectively called "**Construction Work**") without Landlord's prior written consent. In no event shall Tenant make or cause to be made any penetration through any roof, floor or exterior or corridor wall without the prior written consent of Landlord. Tenant shall be directly responsible for any and all damages, including, without limitation, damages to Landlord's Building, the Premises and the premises of other tenants in Landlord's Building resulting from any of Tenant's Construction Work, whether or not Landlord's consent therefor was obtained. Any and all Construction Work which is consented to by Landlord shall be performed in accordance with (a) plans and specifications prepared by a licensed architect, or engineer and approved in writing by the Landlord before the commencement of the Construction Work, (b) all necessary governmental approvals and permits, which approvals and permits Tenant shall obtain at its sole expense, and (c) all applicable laws, rules, regulations and building codes relating thereto. All Construction Work shall conform to Landlord's Store Design Criteria and shall be performed in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of the Construction Work. Any Construction Work performed by Tenant without Landlord's consent shall be returned to its original condition at Tenant's expense upon request by Landlord. Tenant shall perform any Construction Work in such a manner as not to obstruct the access to the premises of any other occupant to the Enclosed Mall nor obstruct other Common Areas.

Notwithstanding anything set forth in **Section 10.01** to the contrary, Tenant may without Landlord's consent, make alterations to the interior of the Premises which do not alter, modify or in any other manner whatsoever affect the structural portions of the Premises (including, but not limited to, the storefront) and/or the structural integrity of the building of which the Premises shall form a part and/or the plumbing, electrical, heating, ventilating or air conditioning or mechanical systems and installations in the Premises, provided that any such alteration (or series of such related alterations) complies with Landlord's then current Store Design Criteria and does not involve a cost or aggregate cost (as the case may be) in excess of Twenty-Five Thousand and no/100 Dollars ($25,000.00) per Year.

Section 10.02: INSURANCE AND RECONSTRUCTION.

In the event Tenant shall perform any permitted or required Construction Work, none of the Construction Work need be insured by Landlord under such insurance as Landlord may carry upon the Landlord's Building nor shall Landlord be required under any provisions of this Lease relating to reconstruction of the Premises to reconstruct or reinstall any such Construction Work.

ARTICLE 11: INDEMNITY AND INSURANCE

Section 11.01: TENANT'S INSURANCE.

(a) Tenant further covenants and agrees that from and after the date of delivery of the Premises from Landlord to Tenant, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) **Commercial General Liability Insurance.** Commercial general liability insurance covering the Premises and Tenant's use thereof against claims for "personal and advertising injury" and "bodily injury" or death, "property damage" and "product/completed operations" liability (as the aforesaid terms are defined in such policy) occurring upon, in or about the Premises and Tenant's activities in the Common Area, such insurance to afford protection to the limit of not less than $3,000,000 regardless of the number of persons claiming injuries or damages arising out of any one occurrence. The insurance coverage required under this Section 11.01(a)(i) shall, in addition, extend to any liability of Tenant arising out of the indemnities provided for in Section 11.03. Therefore, such policy shall not contain any exclusion for contractual liability coverage for any of the foregoing coverages. The general aggregate limits under the liability

insurance policy or policies must apply separately to the Premises and to Tenant's use thereof. The certificate of insurance evidencing the commercial general liability form of policies shall specify on the face thereof that the limits of such policies apply separately to the Premises.

(ii) **Boilers.** Boiler and machinery insurance in adequate amounts on all fired objects and other fired pressure vessels and systems serving the Premises (if any); and if the said objects and the damage that may be caused by them or result from them are not covered by Tenant's extended coverage insurance, then such insurance shall be in an amount not less than $250,000 and be issued on a replacement cost basis.

(iii) **Tenant Leasehold Improvements and Property.** Insurance covering all of the items included in Tenant's leasehold improvements, heating, ventilating and air conditioning equipment and all other improvements and betterments installed by (or demised by this Lease to) Tenant, and all trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and alterations, additions or changes made by Tenant pursuant to Article 10, in an amount not less than one hundred percent (100%) of their full replacement cost from time to time during the Term, providing special form coverage, including but not limited to, protection against the perils included with the standard state form of fire and broad form extended coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief. Any policy proceeds from such insurance shall be held in trust by Tenant's insurance company for the repair, reconstruction and restoration or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 12.

(iv) **Workers' Compensation And Employer's Liability.** Workers' Compensation and Employers Liability insurance affording statutory coverage and containing statutory limits with the Employers Liability portion thereof to have minimum limits of $1,000,000.00.

(v) **Business Interruption Insurance.** Business Interruption Insurance equal to not less than fifty percent (50%) of the estimated gross earnings (as defined in the standard state form of business interruption insurance policy) of Tenant at the Premises which insurance shall be issued on an "all risks" basis (or its equivalent).

(b) All policies of insurance provided for in Section 11.01(a) shall be issued by insurance companies with a financial rating of not less than A VII as rated in the most current available "**Best's Insurance Reports**", and qualified to do business in the state in which Landlord's Building is located. Tenant's obligation to provide the insurance coverage specified in Section 11.01(a)(i) above shall not be affected by any deductible with respect to such policy or self insurance retention maintained by Tenant. Each and every such policy, except for Workers' Compensation and Employers Liability insurance:

(i) shall be issued in the name of Tenant and shall name as an additional insured each of Landlord, Agent and any other parties in interest from time to time designated in writing by notice from Landlord to Tenant;

(ii) shall be for the mutual and joint benefit and protection of Landlord and Tenant and any such other parties in interest;

(iii) shall (or a certificate thereof shall) be delivered to each of Landlord and any such other parties in interest within thirty (30) days prior to the expiration of each such policy, and, as often as any such policy shall expire or terminate. Renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent;

(iv) shall contain a provision that the insurer will give to Landlord and such other parties in interest at least thirty (30) days notice in writing in advance of any material change, cancellation, termination or lapse, or the effective date of any reduction in the amounts of insurance;

(v) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Landlord may carry; and

(vi) shall contain a provision that Landlord and any such other parties in interest, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant.

(c) Any insurance provided for in Section 11.01(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds, provided, however, that:

(i) Landlord and any other parties in interest from time to time designated by Landlord to Tenant shall be named as an additional insured thereunder as its interest may appear;

(ii) the coverage afforded Landlord and any such other parties in interest will not be reduced or diminished by reason of the use of such blanket policy of insurance;

(iii) any such policy or policies [except any covering the risks referred to in Section 11.01(a)(i)] shall specify therein (or Tenant shall furnish Landlord with a written statement from the insurers under such policy specifying) the amount of the total insurance allocated to the Tenant's improvements and property more specifically detailed in Section 11.01(a)(iii); and

(iv) the requirements set forth in this Article 11 are otherwise satisfied.

(d) Tenant agrees to permit Landlord at all reasonable times to inspect the policies of insurance of Tenant with respect to the Premises for which policies or copies thereof are not delivered to Landlord.

Section 11.02: LANDLORD'S INSURANCE.

(a) Landlord shall at all times during the Term carry and maintain the following types of insurance in the amounts specified and in the form hereinafter provided for:

(i) **Commercial General Liability Insurance.** Commercial general liability insurance against claims for property damage and bodily injury or death, such insurance to afford protection to the limit of not less than $5,000,000 in respect to property damage, injury or death to any number of persons arising out of any one occurrence.

(ii) **Landlord's Real and Personal Property.** Insurance covering the Landlord's Building [exclusive of any tenant improvements and betterments and property required to be insured by Tenant pursuant to Section 11.01(a)(iii)] in an amount not less than one hundred percent (100%) of full replacement cost (exclusive of the cost of excavations, foundations and footings), from time to time during the Term, providing protection against perils included within the standard state form of special form coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief, and such other risks as Landlord may from time to time determine and with any such deductibles as Landlord may from time to time determine.

(iii) **Rent Insurance.** Rent insurance with respect to the premises of the tenants in the Shopping Center if available at a cost which Landlord in its sole judgment deems reasonable, against loss of rents in an aggregate amount equal to not more than twenty-four (24) times the sum of (i) the monthly requirement of Minimum Rent of such tenants, plus (ii) the average monthly amount estimated from time to time by Landlord to be payable by such tenants as Percentage Rent and as Additional Rent pursuant to their leases.

(b) Any insurance provided for in Section 11.02(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds provided that the requirements of Section 11.02(a) are otherwise satisfied.

(c) Tenant shall have no rights in any policy or policies maintained by Landlord and shall not be entitled to be named an insured thereunder, by reason of payment, as part of the CAM Sum of its share of Landlord's premiums for the insurance provided for in this Section 11.02 or otherwise.

Section 11.03: INDEMNIFICATION BY TENANT.

Tenant agrees that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the Term, for any cause whatsoever (except due to the negligence or willful misconduct of Landlord or Agent) by reason of the construction, use, occupancy or enjoyment of the Premises by Tenant or any person therein or holding under Tenant or happening upon or about the Premises and Tenant for the purposes of this Section 11.03 shall be deemed to be in exclusive control of the Premises during the Term. Tenant does hereby agree to and shall protect, defend, indemnify and save harmless Landlord and Agent from all claims, actions, demands, costs and expenses and liability whatsoever, including reasonable attorney's fees, on account of any such real or claimed event, damage or liability, and from all liens, claims and demands arising from (a) any occurrence in, or about the Premises, and/or (b) Tenant's activities in the Common Areas, and/or (c) arising out of the construction, use, occupancy or enjoyment of the Premises, and/or (d) occasioned in whole or in part by any act or omission of Tenant, its agents, contractors, servants, employees or invitees (in the Premises), regardless of where occurring. Tenant shall not, however, be liable for damage or injury occasioned by the willful act of the Landlord which is the cause of damage or injury unless Tenant is required by this Lease to assume or insure against such damage or injury. Tenant's obligations under the aforesaid indemnity shall not be limited to the amount of commercial general liability insurance coverage which Tenant is required to carry.

Landlord will protect, defend, indemnify and save harmless Tenant from all claims, actions, demands, costs and expenses and all liability whatsoever, including reasonable attorneys' fees, on account of any real or claimed event, damage or liability, and from all liens, claims and demands arising from any occurrence in, or about the Common Areas or arising out of the construction, use, occupancy or enjoyment of the Common Areas, but, in each case, only if the claim, action or demand arises in whole or in part by any act or omission of Landlord, its agents, contractors, servants or employees therein. Landlord shall not, however, be liable for damage or injury occasioned by the act or omission of the Tenant which is the cause of damage or injury.

Section 11.04: MUTUAL WAIVERS.

Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises, its contents or to the other portions of Landlord's Building, arising from any risk covered by special form coverage insurance, and to the extent of recovery under valid and collectible policies of such insurance, provided that such waiver does not invalidate such policies or prohibit recovery thereunder. The parties hereto each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that such insurers may have against Landlord or Tenant, as the case may be.

Section 11.05: COMPLIANCE WITH INSURANCE AND GOVERNMENTAL REQUIREMENTS.

Subject to Landlord's obligations in Section 13.01 to maintain the structure of the Premises, Tenant agrees at its own expense to comply with all Governmental Requirements as well as the recommendations and requirements, with respect to the Premises, or its use or occupancy, of the insurance underwriters or insurance rating bureau or any similar public or private body and any governmental authority having jurisdiction with respect to the use or occupancy of Landlord's Building, including, but not limited to, installation of fire extinguishers or automatic detection, suppression systems and/or life-safety systems, any changes, modifications or alterations in the detection and/or suppression systems or additional detectors and/or sprinkler heads or the location of partitions, trade fixtures, or other contents of the Premises. Landlord shall not materially change the dimensions of the Premises or materially affect access to the Premises from the Landlord's Building unless required to make any such changes by reason of any federal, state or local environmental or other law, rule, regulation, guideline, judgment or order.

Section 11.06: EFFECT ON LANDLORD'S INSURANCE.

Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, or which will prevent Landlord from procuring such policies in companies acceptable to Landlord at regular rates or which will in any way cause an increase in the insurance rates for any portion of the Shopping Center. If Tenant violates any prohibition provided for in the first sentence of this Section 11.06, Landlord may, without notice to Tenant, correct the same at Tenant's expense. Tenant shall pay to Landlord as Additional Rent forthwith upon demand the amount of any increase in the premiums for insurance resulting from any violation of the first sentence of this Section 11.06, even if Landlord shall have consented to the doing of or the keeping of anything on the Premises which constituted such a violation (but payment of such Additional Rent shall not entitle Tenant to violate the provisions of the first sentence of this **Section 11.06**). Notwithstanding the foregoing, Landlord acknowledges that Tenant's Use is for restaurant purposes, including the sale of alcoholic beverages. This Use alone will not cause a default or any increase in rent or insurance costs owed by Tenant under this Lease.

Section 11.07: LIMIT OF LANDLORD'S RESPONSIBILITY.

Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying space adjoining the Premises or any other part of the Shopping Center or Landlord's Building, or for any loss or damage resulting to the Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or other utility lines or for any damage or loss of property within the Premises from any cause whatsoever. Such limitation of responsibility and liability shall not, however, apply to Landlord's willful acts or negligent omissions, except to the extent the same are waived or released by Tenant pursuant to Sections 11.03 or 11.04.

ARTICLE 12: DAMAGE OR DESTRUCTION

Section 12.01: LANDLORD'S DUTY TO RECONSTRUCT.

In the event the Landlord's Building is damaged or destroyed by any of the risks referred to in Section 11.02(a)(ii) against which Landlord is obligated to procure insurance, Landlord shall (subject to being able to obtain all necessary permits and approvals therefor, including without limitation permits and approvals required from any agency or body administering environmental laws, rules or regulations), within one hundred twenty (120) days after such damage or destruction (unless Landlord terminates this Lease pursuant to Section 12.03), commence to: (a) repair or reconstruct Landlord's Building and (b) repair or reconstruct the structural floor slab, demising wall studs (without drywall) and roof (or floor slab above) as the case may be of the Premises. Landlord shall prosecute all such work diligently to completion. In no event shall Landlord be liable for interruption to Tenant's business or for damage to or repair or reconstruction of any of those things which Tenant is required to insure pursuant to Section 11.01(a)(iii), nor shall Landlord be required to expend more for any repair or reconstruction pursuant to this Section than the net amount of insurance proceeds actually received by Landlord and allocable to the Premises on a square foot basis.

Within ninety (90) days after the destruction referred to above, Landlord shall advise Tenant whether or not the net insurance proceeds available to Landlord (after deducting from such proceeds the amount, if any, which Landlord's mortgagee shall require to be applied to its mortgage) and fairly allocable to the Premises plus any additional funds which Landlord may elect to expend (without any obligation to so do) shall be sufficient to complete Landlord's restoration responsibilities contained herein. If the net proceeds shall be insufficient, Tenant shall have the right to cancel this Lease upon thirty (30) days written notice to Landlord, said notice to be delivered within thirty (30) days after Tenant shall receive Landlord's notification referred to herein. If Tenant so terminates this Lease, neither party shall have any obligation to the other as a result of such termination. In the event Tenant fails to exercise such option within the time aforesaid, the option shall terminate and this Lease shall continue in full force and effect.

Section 12.02: TENANT'S DUTY TO RECONSTRUCT.

If any item which Tenant is required to insure pursuant to Section 11.01(a)(iii) is damaged or destroyed by fire or other casualty, Tenant shall (subject to being able to obtain all necessary permits and approvals therefor, including without limitation permits and approvals required from any agency or body administering environmental laws, rules and regulations), within thirty (30) days after Landlord has substantially repaired or reconstructed Landlord's Building and the portion of the Premises Landlord is obligated to repair or reconstruct pursuant to Section 12.01 (unless Landlord terminates this Lease pursuant to Section 12.03), commence to repair or reconstruct such damaged or destroyed items to at least substantially the same condition in which they were prior to such damage or destruction and prosecute the same diligently to completion.

Section 12.03: LANDLORD'S RIGHT TO TERMINATE.

(a) Landlord shall have the option to terminate this Lease upon giving written notice to Tenant of the exercise thereof within one hundred twenty (120) days after the Landlord's Building is damaged or destroyed if:

(i) the Premises are rendered wholly unfit for carrying on the Tenant's business after damage to or destruction thereof from any cause; or

(ii) Landlord's Building is damaged or destroyed as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other risk not covered by insurance which Landlord is obligated to procure pursuant to Section 11.02(a)(ii); or

(iii) any damage to or destruction of Landlord's Building occurs within the last three (3) Years of the Term or in any Partial Year at the end of the Term; or

(iv) fifty percent (50%) or more of the GLA in the Landlord's Building immediately prior to the damage or destruction is rendered unfit for carrying on business therein; or

(v) Landlord's Building is so substantially damaged that it is reasonably necessary, in Landlord's judgment, to demolish the same for the purpose of reconstruction.

(b) Unless so terminated, this Lease shall continue in full force and effect, and Landlord and Tenant shall perform their respective obligations under Section 12.01 and 12.02. Upon any termination of this Lease under any of the provisions of this Section 12.03, the Rent shall be adjusted as of the date of such termination and the parties shall be released from all liability hereunder upon the surrender of possession of the Premises to the Landlord, except for items which have been theretofore accrued and are then unpaid.

Section 12.04: ABATEMENT OF RENT.

If this Lease is not terminated by Landlord pursuant to Section 12.03 after damage or destruction of the Landlord's Building, and if the Premises are rendered wholly or partially unfit for carrying on Tenant's business by such damage or destruction, whether to the Premises or Landlord's Building, then the Minimum Rent and the Additional Rent payable by Tenant under this Lease shall be abated, and the applicable Break Point and Partial Year Break Point (as the case may be) shall be reduced in direct proportion to the percentage of the GLA in the Premises which is rendered unfit for that period from the date the Premises are so rendered unfit until the earlier of ninety (90) days after Landlord re-delivers possession of the Premises to Tenant or the date Tenant reopens for business. The Premises will be deemed wholly

unfit for carrying on Tenant's business without limitation, if any part of the kitchen or more than twenty percent (20%) of the seating area is damaged or destroyed.

ARTICLE 13: MAINTENANCE OF PREMISES

Section 13.01: LANDLORD'S DUTY TO MAINTAIN STRUCTURE.

Landlord will keep the roof, exterior face of service corridor walls, structural columns and structural floor or floors which enclose the Premises (excluding floor coverings, such as carpeting, terrazzo and other special flooring, walls installed at the request of Tenant, doors, windows and glass) in good repair. Notwithstanding the foregoing provisions of this **Section 13.01**, Landlord shall not in any way be liable to Tenant unless Tenant shall have given Landlord written notice of the necessity for such repairs and Landlord fails to commence making such repairs within a reasonable period thereafter, and provided that any damage necessitating such repairs shall not have been caused by the omission, negligence or willful act of Tenant, its concessionaires, invitees, officers, employees, licensees or contractors or by the failure of Tenant to perform any of its obligations under this Lease (in either of which events Tenant shall be responsible therefor) or have been caused to any of the items Tenant is required to insure pursuant to Article 11. Landlord shall be under no liability for repair, maintenance, alteration, improvement, reconstruction, renewal or any other action with respect to the Premises or any part thereof, or any plumbing, electrical, heating, ventilating, air conditioning, or other mechanical installation therein, except as may be expressly set forth in this Lease.

Section 13.02: TENANT'S DUTY TO MAINTAIN PREMISES.

Excepting due to Landlord's or Agent's negligence or willful misconduct, Tenant will at all times, from and after delivery of possession of the Premises to Tenant, at its own cost and expense, maintain and make all needed repairs, and do all other work to or for the Premises and every part thereof to render the same in good and tenantable condition. Tenant's obligation under this **Section 13.02** shall include, but not be limited to, repairing, replacing and otherwise maintaining items as are required by any governmental agency having jurisdiction thereof (whether the same is ordinary or extraordinary, foreseen or unforeseen), walls (other than the exterior face of service corridor walls), ceilings, plate glass, utility meters, pipes and conduits outside the Premises which are installed by or demised to Tenant or which exclusively serve the Premises, all fixtures, heating, ventilating and air conditioning equipment installed by or demised to or used solely by Tenant, if any (whether such heating ventilating and air conditioning equipment is located inside the Premises, between the ceiling and the roof or on the roof of Landlord's Building), sprinkler equipment and other equipment within the Premises except sprinkler and fire alarm mains, the storefront or storefronts, all of Tenant's signs, security grilles or similar enclosures, locks and closing devices, and all window sash, casement or frames, doors and door frames; provided that Tenant shall make no adjustment, alteration or repair of any part of any sprinkler, life safety or other detection or suppression system in or serving the Premises without Landlord's prior approval. Tenant shall permit no waste, damage or injury to the Premises and Tenant shall initiate and carry out a program of regular repair and other maintenance of the Premises, including the painting or refinishing of all areas of the interior and the storefront as approved by Landlord, so as to impede, to the extent possible, deterioration by ordinary wear and tear and to keep the same in attractive condition. Tenant will not overload the electrical wiring or other systems serving the Premises or within the Premises, and will install at its expense, but only after obtaining Landlord's written approval, any additional electrical wiring or other items which may be required in connection with Tenant's apparatus.

Section 13.03: RIGHT TO ACCESS TO THE PREMISES.

Landlord and its authorized representative may upon reasonable notice enter the Premises at any and all times during usual business hours for the purpose of inspecting the same (and at all other times in the case of emergency) after reasonable notice under the circumstances. Tenant further agrees that Landlord may from time to time go upon the Premises and make any additions, alterations, repairs or replacements and do other work to the Premises or to any utilities, systems or equipment located in, above or under the Premises which Landlord may deem necessary or desirable to comply with all governmental requirements and/or recommendations of an insurance rating bureau or of any similar public or private body or that Landlord may deem necessary or desirable to prevent waste or deterioration in connection with the Premises if the Tenant does not make or cause such additions, alterations, repairs or other work to be made or performed promptly after receipt of written demand from Landlord and reasonable opportunity to cure. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which under any provision of this Lease that Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. In the event Landlord performs or causes any such work to be performed, Tenant shall pay the cost thereof to Landlord as Additional Rent upon demand therefor. In addition, Landlord may install, use, repair or replace any and all materials, tools and equipment, and pipes, ducts, conduits, columns, foundations, footings, wires and other mechanical equipment serving other portions, tenants and occupants of Landlord's Building in, through, under or above the Premises that Landlord deems desirable therefor, without the same constituting an actual or constructive eviction of Tenant. Also, Landlord may, by appointment and upon reasonable notice, enter the Premises at all times during usual business hours for the purpose of showing the Premises to prospective purchasers, mortgagees and tenants but in on event shall Landlord install any "For Lease" signage on the Premises prior to the end of the Term. No exercise by Landlord of any rights provided in **Section 13.01 or 13.03** shall entitle Tenant to any damage for any inconvenience, disturbance, loss of business or other damage to Tenant occasioned thereby nor to any abatement of Rent.

In the event Landlord enters the Premises to make any additions, alterations or repairs to the Premises or to any utility systems or equipment located in, above or under the Premises (other than Landlord's performance of Tenant's obligations where Tenant fails so to do) and the Premises are rendered unfit for the conduct of Tenant's business during such work for a period in excess of three (3) full business days and Tenant is required to close for business, then Tenant's Rent shall abate from and after said three (3) business day period until such time as the Premises are again fit for the conduct of Tenant's business.

Section 13.04: CONFLICTS.

To the extent, if any, that there may be any conflict between this Article 13 and Article 12, or between this Article 13 and Article 22, Article 12, if applicable, or Article 22, if applicable, shall prevail.

ARTICLE 14: FIXTURES AND PERSONAL PROPERTY

Section 14.01: TENANT'S PROPERTY; REMOVAL.

Any trade fixtures, signs, counters, shelving, inventory, showcases, mirrors, decorative lighting, signage, kitchen equipment, including ovens, stoves, refrigerators, walk-in coolers, exhaust systems, sinks, locks, washers and fire retardant systems, and other personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant. Tenant shall have the right, provided Tenant is not in default under this Lease, at any time and from time to time during the Term, to remove any and all of its personal property which it may have stored or installed in the Premises. If Tenant is in default under this Lease, Landlord shall have the right to take exclusive possession of such property and to use such property without rent or charge, and Landlord, whether or not it takes possession of such property, shall have the benefit of any lien thereon permitted under the laws of the state in which Landlord's Building is located and, if such possession is taken or such lien is asserted by Landlord in any manner, including but not limited to operation of law, Tenant shall not remove or permit the removal of said trade fixtures, signs or other personal property until such possession is relinquished or the lien is removed, as the case may be. Nothing in this Article shall be deemed or construed to permit or allow Tenant to remove any of such personal property prior to the end of the Term without the immediate replacement thereof with similar personal property of comparable or better quality, or otherwise render the Premises unsuitable for the continued conduct of Tenant's permitted use thereof. Tenant at its expense shall immediately repair and otherwise make good any damage occasioned to the Premises or Shopping Center by reason of installation or removal of any such personal property unless such damage is caused by Landlord pursuant to **Section 13.03**. If after the expiration of five (5) days after notice by Landlord, (i) Tenant fails to remove such items from the Premises or (ii) if this Lease is terminated by Landlord and Tenant fails to remove such items from the Premises, then in any such event all such personal property shall thereupon become the property of Landlord, without further act by either party hereto, unless Landlord elects to require all or a portion of such items to be removed by Tenant in which case Tenant shall promptly remove the items designated by Landlord and restore the Premises to its prior condition at Tenant's expense.

Provided Tenant is not in default, Landlord agrees to subordinate its lien on items of personal property of Tenant to the lien of a purchase money chattel mortgagee or any institution providing financing, provided Landlord is provided with a detailed list of the personal property subject to said mortgage or refinancing, and further provided that such mortgagee or institution agrees to remove such personal property prior to the expiration or earlier termination of this Lease and to repair any damage to the Premises which may be caused by their removal of any such personal property.

Section 14.02: IMPROVEMENTS TO PREMISES.

All improvements made to the Premises by Tenant, including, but not limited to, the items furnished pursuant to Tenant's Work, alterations, changes and additions by Tenant, light fixtures, floor coverings and partitions, heating, ventilating and air-conditioning equipment, mechanical and plumbing equipment, but excluding trade fixtures and signs and other personal property specified in Section 14.01, shall become the property of Landlord upon expiration or earlier termination of this Lease.

ARTICLE I5: ASSIGNMENT AND SUBLETTING

Section 15.01: PROHIBITED.

(a) Tenant shall not permit anyone other than Tenant to occupy the Premises or any part thereof and shall not transfer, assign, sublet, enter into license or concession or other occupancy or use agreements or mortgage or hypothecate this Lease or the Tenant's interest in and to the Lease or the Premises or any part thereof (herein collectively referred to as "**Transfer**") without first obtaining in each and every instance the prior written consent of Landlord which Landlord may withhold in its sole discretion. Any attempted Transfer without such prior written consent shall be an Event of Default, shall not be binding upon Landlord, shall confer no rights upon any third person and shall not relieve Tenant of its obligations under this Lease. Any transfer by merger, consolidation, liquidation or otherwise by operation of law, including, but not limited to, an assignment for the benefit of creditors, as well as any transfer, assignment, or hypothecation of any stock or general partnership interest in Tenant so as to result in a change of the control thereof, shall be included in the term "**Transfer**" for the purposes of this Lease and shall be a violation of this Section 15.01 and an Event of Default, except as otherwise specifically set forth in this Article 15. Consent by Landlord to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. In the event of a permitted Transfer, Tenant agrees nevertheless to and shall remain fully liable for the full performance of each and every obligation under this Lease to be performed by Tenant and the assignee shall be deemed to have assumed, and agreed to be bound by all of the terms of this Lease. In the event of any proposed Transfer, Tenant shall deliver to Landlord written notice (the "**Request Notice**") requesting Landlord's consent to the proposed Transfer at least thirty (30) days prior to the date on which, with Landlord's prior written consent, the Transfer would be effective. The Request Notice shall contain, without limitation, at least: (i) the full identification of the proposed transferee; (ii) the most recent financial statements and other evidence of the transferee's financial responsibility and business performance; (iii) the transferee's proposed specific use and business proposed to be conducted at the Premises; (iv) the scope of any proposed alterations to the storefront of and within the Premises; and (v) the monetary and non-monetary terms and conditions of the proposed Transfer. If Landlord elects to give Landlord's written consent to the proposed Transfer, then Tenant shall pay to Landlord forthwith upon Tenant's receipt, as Additional Rent, all sums and other economic consideration (whether by lump sum payment or otherwise) received by Tenant in any month as a result of the Transfer whether denominated rentals or otherwise which exceed, in the aggregate, the total sums which Tenant is obligated to pay and does pay Landlord under this Lease in the same month (prorated to reflect obligations allocable to that portion of the Premises which is the subject of the Transfer), all without affecting or reducing any other obligation of Tenant hereunder provided, that in the case of an assignment of this Lease such Additional Rent payment by Tenant to Landlord shall equal the entire consideration for such assignment. If Landlord gives Landlord's written consent to the proposed Transfer and the Transfer is not made (including without limitation, delivery of possession by Tenant to and occupancy by the proposed transferee approved by Landlord) within thirty (30) days after the date Landlord gives its written consent to the proposed Transfer, then Landlord's written consent and the Transfer shall be automatically null, void and of no force or effect whatsoever. Tenant shall pay to Landlord the

sum of Five Hundred ($500.00) Dollars to defray Landlord's administrative costs, overhead and counsel fees in connection with the consideration, review and document preparation of any proposed assignment or subletting, such sum to be paid at the time Tenant delivers the assignment and assumption agreement executed by the assignee and assignor.

(b) Notwithstanding anything contained in this Section to the contrary, Tenant shall have the unrestricted right to assign this Lease or to sublet the Premises to its parent corporation or to any subsidiary or affiliated corporation provided that Tenant shall deliver to Landlord, within ten (10) days after the date of such assignment or subletting, an executed copy of the assignment or sublease wherein such parent corporation, subsidiary or affiliated corporation assumes for the benefit of Landlord all of the obligations of Tenant under this Lease and agrees to be bound by the terms, conditions and covenants of this Lease and further provided that any such assignment or subletting shall not relieve Tenant from liability for the payment of Rent or other sums herein provided or from the obligation to keep and be bound by the terms, conditions and covenants of this Lease. In the event such parent, subsidiary or affiliated corporation of the entity making the assignment or sublease shall at any time after the date of such assignment or sublease no longer be a parent, subsidiary or affiliated corporation of the entity making the assignment or sublease, then such event shall constitute a Transfer for the purposes hereof and shall be subject to the provisions of this **Section 15.01**.

(c) Notwithstanding anything contained in this Article to the contrary, Tenant shall have the right to assign this Lease or to sublet the Premises to any corporation into which Tenant may merge or to any corporation arising out of a consolidation of Tenant with another corporation or to a corporation or other entity acquiring all or substantially all the assets of Tenant or all of the issued and outstanding voting stock of Tenant provided (a) that such acquiring entity has at least twenty (20) stores more than the combined number of stores operated by Tenant and all its affiliates, under leases in which such acquiring entity is the tenant as of the date of such assignment or sublease and all such stores sell merchandise comparable to that which Tenant sells; (b) all such stores are transferred to the corporation into which Tenant is merged or the corporation arising out of a consolidation of Tenant with another corporation or such acquiring corporation or other entity, as the case may be, in connection with such assignment or sublease; (c) Tenant delivering to Landlord, within ten (10) days after the date of such assignment or subletting, evidence that the entity into which Tenant merges or consolidates, as the case may be, has a net worth and financial condition equal to or greater than the net worth and financial condition of Tenant as of the date of this Lease or as of the date of such assignment or sublease, whichever is greater and; (d) Tenant delivering to Landlord; within ten (10) days after the date of such assignment or subletting, an executed copy of the assignment or sublease in a form reasonably acceptable to Landlord wherein the corporation into which Tenant may merge or the corporation arising out of a consolidation of Tenant with another corporation or such acquiring corporation or other entity, as the case may be, assumes for the benefit of Landlord all of the terms, conditions and covenants set forth in this Lease to be observed and performed by Tenant and agrees to be bound by the terms, conditions and covenants of this Lease. Any such assignment or subletting shall not relieve Tenant from liability for the payment of Rent or other sums herein provided or from the obligation to keep and be bound by the terms, conditions and covenants of this Lease.

(d) Tenant may, without Landlord's prior consent, sublease the Premises to any of the following: (i) Tenant's parent corporation, (ii) a wholly-owned subsidiary of Tenant or of Tenant's parent corporation or (iii) a corporation or entity of which a controlling interest is owned by Tenant; provided, however, that in any such event, Tenant shall, prior to the date on which any such sublease commences deliver to Landlord executed copies of any applicable sublease and all related collateral agreements (collectively "**Agreements**"), which agreements shall provide that:

1. The execution of the Agreements shall not alter or diminish Tenant's direct obligation for performance of its obligations hereunder, and Tenant shall not be released therefrom in any respect; and

2. All of the rights of such sublessee shall be subject to all obligations imposed upon Tenant by this Lease, and such sublessee shall affirmatively covenant in the agreements to perform all such obligations for the direct benefit of Landlord as a third party beneficiary thereof; and

3. The Agreements shall be consistent with the terms hereof and shall not grant to the sublessee any rights not afforded to Tenant by this Lease, and in the event of a conflict between the terms, covenants and conditions contained in this Lease and those contained in the agreements, the terms of this Lease shall prevail; and

4. If, in Landlord's opinion, the sublessee operating the Premises is doing so in a manner not consistent with the quality of other stores in the Shopping Center, within twenty (20) days after Landlord's request, Tenant shall have the ability to and will cancel the Agreements and either immediately recommence business in the Premises as a company operation or will obtain another sublessee in accordance with this **Section 15.01(e)**; and

5. In no event will Landlord be obligated to: (a) give any notice to or join such sublessee in any proceeding Landlord institutes against Tenant, or (b) recognize the continued existence of such sublessee as the Landlord's tenant in the event Tenant defaults under this Lease, and the agreements will by their own terms automatically terminate upon the expiration or sooner termination of this Lease.

ARTICLE 16: DEFAULTS BY TENANT

Section 16.01: EVENTS OF DEFAULT.

This Lease is made upon the condition that Tenant shall punctually and faithfully perform and fulfill all of the covenants, conditions and agreements by it to be performed as in this Lease set forth. In addition to events elsewhere stated in this Lease as Events of Default, the following shall be deemed to be an Event of Default (each of which is sometimes referred to as an "**Event of Default**" in this Lease):

(a) the failure by the Tenant to pay Minimum Rent and/or Percentage Rent and/or Additional Rent or any installment or year-end adjustment thereof if such failure continues for ten (10) days after written notice thereof by Landlord to Tenant; or

(b) the failure of Tenant to submit its Design Drawings on or before the Design Drawings Submission Date in accordance with Section 2.03(c) or commence Tenant's Work on or before the Construction Commencement Date in accordance with the terms and conditions of Section 2.03(c); or

(c) the failure of Tenant to open its business to the public in the Premises on or prior to the date on which Tenant is required to open its business to the public pursuant to the terms and conditions of Section 2.04, or the failure to open the Premises, or to keep the Premises open, on the days and hours required by this Lease, or if Tenant vacates or abandons the Premises; or

(d) the failure of Tenant to observe or perform any of the covenants, terms or conditions set forth in Article 15 (relating to assignment and subletting); or

(e) the sale or removal of a substantial portion of Tenant's property located in the Premises in a manner which is outside the ordinary course of Tenant's business; or

(f) the failure to maintain inventory levels and employee staff in accordance with the provisions of Article 7 hereof; or

(g) repetition or continuation of any failure to timely pay any Minimum Rent and/or Percentage Rent and/or Additional Rent or other sums reserved hereunder or to timely report Gross Sales as provided in Section 4.06 hereof where such failure shall continue or be repeated for three (3) consecutive months, or for a total of four (4) months in any period of twelve consecutive months; or

(h) repetition of any failure to observe or perform any of the monetary covenants, terms or conditions of this Lease more than three (3) times, in the aggregate, in any period of twelve (12) consecutive months; or

(i) any other failure of Tenant to observe or perform any of the other covenants, terms or conditions set forth in this Lease where said failure continues for a period of twenty (20) days after written notice thereof from Landlord to Tenant (unless such failure cannot reasonably be cured within twenty (20) days and Tenant shall have commenced to cure said failure within twenty (20) days and continues diligently to pursue the curing of the same until completed); or

(j) the commencement of levy, execution, or attachment proceedings against Tenant or Guarantor (hereafter defined) or a substantial portion of Tenant's or Guarantors assets; the commencement of levy, execution, attachment or other process of law upon, on or against the estate created in Tenant hereby; the application for or the appointment of a liquidator, receiver, custodian, sequestrator, conservator, trustee, or other similar judicial officer for Tenant or Guarantor or for all or any substantial part of the property of Tenant or Guarantor (and such appointment continues for a period of thirty (30) days); the insolvency of Tenant or Guarantor of Tenant in bankruptcy or equity sense; any assignment by Tenant or Guarantor for the benefit of creditors; or

(k) the commencement of a case by or against Tenant or Guarantor, under any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal; or the determination by the Tenant or Guarantor to request relief under any insolvency proceeding, including any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal, and in no event shall the Premises or Tenant's interest in this Lease become an asset in any such proceedings; or

(l) notwithstanding the Tenant's obligation to pay Minimum Rent and/or Percentage Rent and/or Additional Rent as of the first day of each month during the Term, in the event that an insolvency, bankruptcy or similar proceeding is filed by or against the Tenant or any Guarantor, the Tenant shall be obligated to pay all such Minimum Rent and/or Percentage Rent and/or Additional Rent on a ratable basis from the date of the commencement of any such proceeding through the end of the month in which such proceeding is commenced.

Section 16.02: LANDLORD'S REMEDIES.

(a) Landlord may treat any Event of Default as a material breach of this Lease. Landlord's failure to insist upon strict performance of any covenant, term or condition of this Lease or to exercise any right or remedy it has herein shall not be deemed a waiver or relinquishment for the future of such performance, right or remedy. In addition to any and all other rights or remedies of Landlord in this Lease or at law or in equity provided, Landlord shall have the following rights and remedies if there shall occur any Event of Default none of which shall be construed as an election to forego any of the other remedies then or in the future:

(i) Deleted;

(ii) to terminate this Lease, and to re-enter the Premises and take possession thereof and to remove all persons and contents therefrom, and Tenant shall have no further claim or right hereunder; and/or

(iii) to bring suit for the collection of Rent as the same becomes due from time to time and for damages without entering into possession of the Premises or terminating this Lease; and/or

(iv) to terminate Tenant's right of possession of the Premises by summary proceedings or otherwise, without terminating this Lease. In the event of any re-entry and termination of possession, Landlord shall have the right but not the obligation to remove any personal property from the Premises and either treat such property as abandoned, or at Landlord's option, place the same in storage at a public warehouse at the sole cost, expense and risk of the Tenant; and/or

(v) to enter the Premises and without further demand or notice proceed to distress and sale of the goods, chattels, personal property and other contents there found and to levy the Rent, and Tenant shall pay all costs and officers' commissions, including watchmen's wages and sums chargeable by Landlord, and further including charges which Landlord may impose by statute as commissions to the constable or other person making the levy, and in such cases all costs, officers' commissions and other charges shall immediately attach and become part of the claim of Landlord for Rent, and any tender of Rent without said costs, commissions and charges made, after the issuance of a warrant of distress, shall not be sufficient to satisfy the claim of Landlord.

(b) **Confession of Judgment - Rent.** Deleted

(c) **Confession of Judgment - Possession.** Tenant covenants and agrees that if there is an Event of Default or this Lease is terminated or the Term or any extensions or renewals thereof is terminated or the Term or any extensions or renewals thereof is terminated or expires, then, and in addition to the rights and remedies set forth in Section 16.02(b), Landlord may, after service of process, without limitation, cause judgments in ejectment for possession of the Premises to be entered against Tenant and, for those purposes, Tenant hereby grants the following warrant of attorney: (i) Tenant hereby irrevocably authorizes and empowers any prothonotary, clerk of court, attorney of any court of record and/or Landlord (as well as someone acting for Landlord) in any and all actions commenced for recovery of possession of the Premises to appear for Tenant and confess or otherwise enter judgment in ejectment for possession of the Premises against Tenant and all persons claiming directly or indirectly by, through or under Tenant, and thereupon writ of possession may forthwith issue and be served, without any prior notice, writ or proceeding whatsoever except as may otherwise be required by applicable law; (ii) if, for any reason after the foregoing action or actions shall have been commenced, it shall be determined that possession of the Premises should remain in or be restored to Tenant, Landlord shall have the right to commence one or more further actions as hereinbefore set forth to recover possession of the Premises including, without limitation, appearing for Tenant and confessing or otherwise entering judgment for possession of the Premises as hereinbefore set forth; and (iii) the provisions of Section 16.02(d) are incorporated herein by this reference thereto.

(d) In any action or proceeding described in Section 16.02(c), or in connection therewith, if a copy of this Lease is therein verified by Landlord or someone acting for Landlord to be a true and correct copy of this Lease (and such copy shall be conclusively presumed to be true and correct by virtue of such verification), then it shall not be necessary to file the original of this Lease, any statute, rule of court of law, custom or practice to the contrary notwithstanding. The right to enter judgment or judgments by confession or otherwise by virtue of the warrants of attorney contained in this Lease and to enforce all of the other provisions of this Lease may be exercised by any assignee of Landlord's right, title and interest in this Lease in such

(e) In the event Landlord retakes possession of the Premises after an Event of Default has occurred, Landlord agrees to use reasonable efforts to relet the Premises. It is understood and agreed, however, the Landlord shall not be required to relet the Premises to a replacement tenant with less merchandising expertise or financial stability as Tenant at the time of execution of this Lease or for any use other than the permitted use herein.

(f) Tenant expressly waives:

(i) The benefit of all laws, now or hereinafter in force, exempting any goods in the Premises or elsewhere from distraint, levy or sale in any legal proceedings taken by Landlord to enforce any rights under this Lease.

(ii) The benefit of all laws now made or which may hereafter be made regarding any limitation as to the goods upon which, or the time within which, distress is to be made after the removal of goods, and Tenant further relieves Landlord of the obligation of proving or identifying such goods; it being the purpose and intent of this provision that all goods of Tenant whether upon the Premises or not, shall be liable to distress for rent subject to the rights of Tenant's secured lenders under **Section 14.01**.

(iii) The right to issue a writ of replevin for the recovery of any goods seized under a distress for Rent or levy upon an execution for Rent, damages or otherwise.

(iv) The right to delay execution on any real estate that may be levied upon to collect any amount which may become due under the terms and conditions of this Lease and any right to have the same appraised. The Prothonotary or Clerk of Court is hereby authorized and empowered by Tenant at Landlord's instance to enter a writ of execution or other process upon Tenant's voluntary waiver and further agrees that said real estate may be sold on a writ of execution or other process.

(v) All rights under Act of April 5, 1957, No 20 and all supplements and amendments thereto, hereby authorizing the sale of any goods distrained for rent at any time after seven (7) days from said distraint without any appraisement and condemnation thereof.

(vi) The right to three (3) months and/or fifteen (15) or thirty (30) days' notice required under certain circumstances, or any other notice required or otherwise provided by statute as a condition to the commencement of summary proceedings or an action for possession or to the termination of this Lease or any retaking of possession, Tenant hereby agreeing that the respective notice periods provided for in this Lease shall be sufficient in any such case.

Section 16.03: DAMAGES.

(a) Deleted.

(b) If Landlord elects to terminate this Lease instead of terminating only Tenant's right to possession, Landlord shall have the right to immediately recover against Tenant as damages for loss of the bargain, and not as a penalty, the excess (if any), as determined by Landlord, of (i) the present value of the projected Rent payable by Tenant under this Lease (as determined by Landlord on the basis of the amounts of Additional Rent which would have been payable pursuant to this Lease for the full calendar year prior to the calendar year in which the default occurred, increasing annually on the first of each year after such calendar year at the rate of six percent (6%) per annum compounded) that would have accrued for the balance of the Term plus any other amount necessary to compensate Landlord for all detriments proximately caused by Tenant's failure to perform its obligations under this Lease, including reasonable attorney's fees and interest on all sums due Landlord at the Default Rate (hereafter defined), less (ii) the then present fair market rental value of the Premises for the balance of the Term as reasonably determined by Landlord, taking into account among other things, the condition of the Premises, market conditions and the period of time the Premises may remain vacant before Landlord is able to relet the same to a suitable replacement tenant, and the Costs of Reletting (as defined above) that Landlord may incur in order to enter into a replacement lease ("**Benefit of the Bargain Damages**"). Notwithstanding anything to the contrary contained in this Lease, if, subsequent to the termination of this Lease and the recovery of damages from Tenant pursuant to this subsection (b), Landlord relets the Premises for an effective Rent higher or lower than the Rent assumed for purposes of calculating the Benefit of the Bargain Damages, the Benefit of the Bargain Damages shall not be recalculated and Landlord shall be entitled to retain all of the proceeds of such reletting.

(c) The "**Default Rate**" means the rate of interest which is three percent (3%) over the announced prime rate of PNC Bank, Philadelphia, Pennsylvania or any successor thereto or other bank selected by Landlord.

(d) Landlord shall be obligated to make a good faith effort to relet the Premises at a Minimum Rent, Additional Rent, and other charges consistent with the prevailing economic conditions to a tenant which is acceptable to Landlord based upon the following criteria: (i) the proposed tenant shall have a net worth equal to or greater than the net worth of Tenant on the date hereof, (ii) the proposed tenant will be obligated to use the Premises for either the same use as Tenant or other use which in Landlord's reasonable judgment is in accordance with a proper mix of uses for the Shopping Center and (iii) the proposed tenant shall agree to enter into a lease agreement with Landlord which contains terms, covenants and conditions at least as favorable to Landlord as those set forth in this Lease. However, Landlord shall not be required to lease the Premises in preference to any other then vacant space in the Shopping Center.

Section 16.04: LANDLORD'S SELF-HELP.

In addition to Landlord's rights to self-help set forth elsewhere in this Lease, if Tenant at any time fails to perform any of its obligations under this Lease in a manner reasonably satisfactory to Landlord, Landlord shall have the right, but not the obligation, upon giving Tenant at least five (5) days prior written notice of its election to do so (in the event of any emergency no prior notice shall be required) to perform such obligations on behalf of and for the account of Tenant and to take all such action to perform such obligations. In such event, Landlord's costs and expenses incurred therein shall be paid for by Tenant as Additional Rent, forthwith, upon demand therefor, with interest thereon from the date Landlord performs such work at the Default Rate. The performance by Landlord of any such obligation shall not constitute a release or waiver of Tenant therefrom.

Section 16.05: LEGAL EXPENSES.

(a) In the event that Landlord should retain counsel and/or institute any suit against Tenant for violation of or to enforce any of the covenants or conditions of this Lease, or should Tenant institute any action against Landlord for violation of any covenants or conditions of this Lease, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party in any such suit shall be entitled to all its costs, expenses and reasonable fees to its attorney(s) in connection therewith.

(b) In the event that a bankruptcy proceeding is filed by or against Tenant under any chapter of the Bankruptcy Code, or Tenant makes an assignment for the benefit of creditors or commences or otherwise becomes the subject of any insolvency, receivership or similar proceeding, Landlord shall be entitled to recover its reasonable attorneys' fees and costs incurred in or in connection with any such proceeding from Tenant or any trustee, custodian, receiver, assignee or other representative acting on its behalf, all of which fees and expenses shall constitute, in addition to any other sums due and owing under this Lease (i) an obligation of Tenant hereunder, and (ii) a component of any cure claim assertable by Landlord under 11 U.S.C. § 365(b) of otherwise.

ARTICLE 17: LIABILITY OF LANDLORD

Section 17.01: LANDLORD'S DEFAULT.

Except as otherwise provided in this Lease, Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after written notice thereof from Tenant to Landlord (unless such failure cannot reasonably be cured within thirty (30) days and Landlord shall have commenced to cure said failure within said thirty (30) days and continues diligently to pursue the curing of the same). If Landlord shall be in default under this Lease and, if, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Shopping Center as the same may then be encumbered and Landlord shall not be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than Landlord's right, title and interest in the Shopping Center as hereinbefore expressly provided. No default by Landlord under this Lease shall give Tenant the right to terminate this Lease.

Section 17.02: TRANSFER OF LANDLORD'S INTEREST.

In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the Shopping Center (except in the case of a sale-leaseback financing transaction in which Landlord is the lessee), Landlord shall transfer and assign to such purchaser or transferee any portion of the Security Deposit which may then be held by Landlord pursuant to Section 2.02 of this Lease, and Landlord thereupon and without further act by either party hereto shall be released from all liability and obligations hereunder derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or transfer. Tenant shall have no right to terminate this Lease nor to abate Rent nor to deduct from nor set-off nor counterclaim against Rent because of any sale or transfer (including without limitation any sale-leaseback) by Landlord or its grantees, successors or assigns. Neither Landlord's mortgagee (or its designee) nor the purchaser at a foreclosure sale shall be liable to Tenant for the return of Tenant's Security Deposit unless and until Landlord actually delivers the Security Deposit to such mortgagee or purchaser or their designee.

ARTICLE 18: SUBORDINATION AND ATTORNMENT

Section 18.01: SUBORDINATION OF LEASE.

Tenant agrees that, except as hereinafter provided, this Lease is, and shall always be, subject and subordinate to any lease wherein Landlord is the lessee and to the lien of any or all mortgages or deeds of trust, regardless of whether such lease, mortgages or deeds of trust now exist or may hereafter be created with regard to all or any part of the Shopping Center, and to any and all advances to be made thereunder, and to the interest thereon, and all modifications, consolidations, renewals, replacements and extensions thereof. Such subordination shall be effective without the

execution of any further instrument. Tenant also agrees that any lessor, mortgagee or trustee may elect to have this Lease prior to any lease or lien of its mortgage or deed of trust, and in the event of such election and upon notification by such lessor, mortgagee or trustee to Tenant to that effect, this Lease shall be deemed prior in lien to the said lease, mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said lease, mortgage or deed of trust.

Provided Tenant is not then in default hereunder, at Tenant's written request, Landlord agrees to use reasonable efforts to secure from Landlord's first permanent mortgagee a non-disturbance and attornment agreement or subordination of mortgage agreement, whichever document is specified by such mortgagee. Tenant agrees to execute such document in the form approved by such mortgagee. Tenant shall reimburse Landlord, on demand, as Additional Rent, any administrative and legal fees incurred by Landlord in securing such agreement for Tenant.

Section 18.02: TENANT'S ATTORNMENT.

In the event of any foreclosure of, or the exercise of a power of sale under, any mortgage or deed of trust referred to in Section 18.01 covering the Premises or in the event of the termination of any lease referred to in Section 18.01 wherein Landlord is the lessee, Tenant, upon the purchaser or lessor's request, shall attorn to and recognize the purchaser or Landlord's lessor as Landlord under this Lease.

Tenant's attornment shall be subject to the purchaser or assignee recognizing the validity and continuance of this Lease and agreeing not to disturb Tenant's possession of its Premises under the terms of this Lease so long as Tenant shall not be in default (subject to Tenant's right to cure any default in accordance with the provisions of this Lease).

Section 18.03: INSTRUMENTS TO CARRY OUT INTENT.

Tenant agrees that, upon the request of Landlord, or any such lessor, mortgagee or trustee, Tenant shall execute and deliver whatever instruments may be required for such purposes and to carry out the intent of this Article 18, and in the event Tenant fails to do so within fifteen (15) days after demand in writing, Tenant shall be deemed to have committed an Event of Default.

Any document executed by Tenant evidencing such subordination shall provide that Landlord's mortgagee or such purchaser shall not be liable for any action or omission of any prior landlord (including Landlord) under the Lease, subject to any off sets, claims or defenses which Tenant might have against prior landlord (including Landlord), bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord), bound by any amendment or modification of the Lease or any other agreement concerning the Lease made without mortgagee's written consent or responsible in any way for any security deposit which was delivered to Landlord but was not subsequently delivered to such mortgagee or purchaser.

ARTICLE 19: ESTOPPEL CERTIFICATES

Section 19.01: TENANT'S AGREEMENT TO DELIVER.

From time to time within twenty (20) days after request in writing therefor from either party, the non-requesting party agrees to execute and deliver to the other party, or to such other addressee or addressees as designated (and such party and any such addressee may rely thereon), a statement in writing in form and substance satisfactory to such requesting party (herein called "**Estoppel Certificate**"), certifying as to such matters as may be reasonably requested. Each party expressly agrees that the other party may assign its interest in the Estoppel Certificate to its lender(s) at any time who may act in material reliance thereon.

Section 19.02: FAILURE OF TENANT TO PROVIDE.

In the event that Tenant fails to provide a Tenant's Estoppel Certificate within twenty (20) days after Landlord's written request therefor, Tenant shall be deemed to have committed an Event of Default ten (10) days after Landlord provides Tenant with written notice of its non-compliance.

ARTICLE 20: QUIET ENJOYMENT

Section 20.01: FAITHFUL PERFORMANCE.

Upon payment by the Tenant of the Rent herein provided for, and upon the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease, and mortgages, leases and other matters to which this Lease is subject or subordinate.

ARTICLE 21: SURRENDER AND HOLDING OVER

Section 21.01: DELIVERY AFTER TERM.

Tenant shall deliver up and surrender to Landlord possession of the Premises upon the expiration or earlier termination of the Term, broom clean, free of debris, in good order, condition and state of repair and in compliance with Section 14.01 (excepting Landlord's obligation under this Lease, damage by casualty and ordinary wear and tear), and shall deliver the keys to the management office of Landlord or to such other place as may be designated from time to time by notice from Landlord to Tenant. If not sooner terminated as herein provided, this Lease shall terminate at the end of the Term as provided for in Article 3 without the necessity of notice from either Landlord or Tenant to terminate the same.

Section 21.02: EFFECT OF HOLDING OVER; RENT.

If Tenant or any party claiming under Tenant remains in possession of the Premises or any part thereof, after any expiration or termination of this Lease, no tenancy or interest in the Premises shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate ouster and removal, and (a) Tenant shall pay upon demand to Landlord for any period when Tenant shall hold the Premises after the Term has terminated or expired, as liquidated rent for such period, a sum equal to all Percentage Rent and Additional Rent provided for in this Lease plus an amount computed at the rate of one hundred and fifty percent (150%) the Minimum Rent (the "**Liquidated Minimum Rent**") for such period, and (b) Tenant shall indemnify and hold harmless Landlord from all loss, cost, expense and liability whatsoever resulting from such holding over, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant based on such holding over. Notwithstanding any provision in this **Section 21.02**, to the contrary herein, the Liquidated Minimum Rent referred to herein, shall not be charged so long as Landlord and Tenant are negotiating the renewal or extension of this Lease or the terms of a new lease covering the Premises in good faith. If during such hold over period, Landlord believes that Tenant is not negotiating such lease renewal, extension or new lease in good faith, Landlord may so indicate by giving thirty (30) days' notice in writing, to the end of which period Tenant shall be obligated to pay Liquidated Minimum Rent if Tenant is still in possession.

ARTICLE 22: CONDEMNATION

Section 22.01: ALL OF PREMISES TAKEN.

If the whole of the Premises shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by any competent authority in appropriation proceedings or by any right of eminent domain or by agreement or conveyance in lieu thereof (each being hereinafter referred to as "**Condemnation**"), this Lease shall terminate as of the day possession shall be taken by such authority, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent as shall have been paid in advance for a period subsequent to the date of the taking of possession.

Section 22.02: LESS THAN ALL OF PREMISES TAKEN.

If less than all but more than twenty-five percent (25%) of the GLA in the Premises is taken by Condemnation, or if (regardless of the percentage of the GLA in the Premises which is taken) or any of the kitchen or more than twenty percent (20%) of the seating area is taken or the remainder of the Premises cannot be used for the carrying on of Tenant's business, then in either event Landlord or Tenant shall each have the right to terminate this Lease upon notice in writing to the other party within ninety (90) days after possession is taken by such Condemnation. If this Lease is so terminated, it shall terminate as of the day possession shall be taken by such authority, and Tenant shall pay Rent and perform all of its obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent as may have been paid in advance for a period subsequent to the date of the taking of possession. If this Lease is not so terminated, it shall terminate only with respect to the parts of the Premises so taken as of the day of possession shall be taken by such authority, and Tenant shall pay Rent up to that day with a proportionate refund by Landlord of any Rent as may have been paid for a period subsequent to the date of such taking and, thereafter, the Rent and the applicable Break Point shall be reduced in direct proportion to the amount of GLA of the Premises taken and Landlord agrees, at Landlord's cost and expense, as soon as reasonably possible to restore the Premises on the land remaining to a complete unit of similar quality and character as existed prior to such appropriation or taking (to the extent feasible); provided that Landlord shall not be required to expend more on such restoration than an amount equal to the condemnation award received by Landlord (less all expenses, costs, legal fees and court costs incurred by Landlord in connection with such award).

If Landlord's award is not sufficient to restore the Premises and Landlord elects not to add such additional sums required to so restore, Tenant, at its option, may: (i) pay the excess between the amount received by Landlord and the amount required to restore the Premises but only if Landlord decides to restore the balance of the Shopping Center or a substantial portion of the other premises affected by said Condemnation; or (ii) cancel this Lease on sixty (60) days prior written notice to Landlord.

Section 22.03: SHOPPING CENTER TAKEN.

If any part of the Shopping Center is taken by Condemnation so as to render, in Landlord's judgment, the remainder unsuitable for use as an enclosed mall shopping center, Landlord shall have the right to terminate this Lease upon notice in writing to Tenant within one hundred twenty (120) days after possession is taken by such Condemnation. If Landlord so terminates this Lease, it shall terminate as of the day possession is taken by the condemning authority, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent as may have been paid in advance for a period subsequent to such possession.

Landlord may only exercise its option to terminate this Lease if Landlord also terminates the leases of the majority of similarly situated tenants in the Shopping Center.

Section 22.04: OWNERSHIP OF AWARD.

As between Landlord and Tenant, all damages for any Condemnation of all or any part of Shopping Center, including, without limitation, all damages as compensation for diminution in value of the leasehold, reversion and fee, and Tenant's leasehold improvements, shall belong to the Landlord without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest to any such award. Although all damages in the event of any Condemnation are to belong to the Landlord, whether such damages are awarded as compensation for diminution in value of the leasehold, reversion or fee of the Premises, or Tenant's leasehold improvements, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right for or on account of any cost or expense which Tenant might incur in removing Tenant's merchandise, furniture and fixtures, provided such compensation does not in any way diminish the compensation otherwise available to Landlord.

ARTICLE 23: MISCELLANEOUS

Section 23.01: INTERPRETATION.

(a) The captions, table of contents and index of defined terms appearing in this Lease are inserted only as a matter of convenience and in no way amplify, define, limit, construe, or describe the scope or intent of such Sections of this Lease nor in any way affect this Lease.

(b) If more than one person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, or becomes Landlord or Tenant, then and in such event, the words "Landlord" or "Tenant" wherever used in this Lease are intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several.

(c) The neuter, feminine or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural.

(d) The parties hereto agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof. Furthermore, each covenant, agreement, obligation and other provision contained in this Lease is, and shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or make the same, and not dependent on any other provision of this Lease unless expressly so provided.

(e) Although the provisions of this Lease were drawn by Landlord, this Lease shall not be construed for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

Section 23.02: RELATIONSHIP OF PARTIES.

Nothing herein contained shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Percentage Rent, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant nor cause Landlord to be responsible in any way for acts, debts or obligations of Tenant.

Section 23.03: NOTICES.

Any notice, demand, request, approval, consent or other instrument which may be or is required to be given under this Lease shall be in writing, and, shall be deemed to have been given (a) when mailed by United States registered or certified mail, return receipt requested, postage prepaid and received or refused by the addressee, or (b) when sent by courier guarantying overnight delivery, addressed to Landlord or Tenant at the respective addresses set forth in the Fundamental Lease Provisions and/or such other address or addresses as either party may designate by notice to the other in accordance with this Section and received or refused by the addressee. Any notice by Landlord may be given on its behalf by Agent or by an attorney for Landlord or Agent. Any notice by Tenant may be given on its behalf by an attorney for Tenant. Any notice properly sent to Tenant or Landlord shall be deemed effective whether or not a copy is sent to the address designated in the Fundamental Lease Provisions to receive a copy of such notice.

Section 23.04: SUCCESSORS.

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon (subject to Article 17) Landlord, its successors and assigns, and shall be binding upon Tenant, its heirs, successors and assigns and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant which is authorized specifically, pursuant to Section 15 of this Lease. Nothing in this Section 23.04 shall be deemed to require Landlord to give any such consent. All of Tenant's obligations during the Term pursuant to Section 4.05, 4.06, 4.07, 5.01, 5.02, 7.03, 8.03, 11.03 and 23.17 shall survive the expiration or earlier termination of this Lease.

Section 23.05: BROKER'S COMMISSION.

Tenant warrants that, except for Agent, it has dealt with no broker in connection with this Lease, and agrees to and shall defend, indemnify and save Landlord harmless from all claims, actions, damages, costs and expenses and liability whatsoever, including reasonable attorneys' fees, that may arise from any claim by or through Tenant for a commission, finders or like fee in connection with this Lease. Landlord shall pay the fee or commission due Agent in connection with this Lease.

Section 23.06: UNAVOIDABLE DELAYS.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war (whether actual or threatened), lack of access to the Shopping Center due to evacuation; damage or governmental order, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act, but not Tenant's obligation to pay Rent, shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. During Tenant's Construction Period the provisions of this **Section 23.06** shall not operate to excuse Tenant from completing construction of the Premises within Tenant's Construction Period unless Tenant gives written notice of the delaying event to Landlord within ten (10) days of the occurrence of such delaying event. Such written notice shall specify the nature of the delaying event and the number of days of delay claimed to result therefrom. Tenant's Construction

Period shall be extended for a period equivalent to the period of actual delay. After the Rent Commencement Date the provisions of this **Section 23.06** shall not excuse Tenant from the prompt payment of Rent and all other sums due by Tenant under this Lease and such delay shall not extend the Term. Delays or failures to perform resulting from lack of funds or the unavailability of a particular contractor or personnel shall not be deemed delays beyond the reasonable control of a party.

Section 23.07: SEVERABILITY.

It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision invalid and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. If any term or provision, or any portion thereof, of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 23.08: TIME OF ESSENCE.

Time is of the essence with respect to the performance of the respective obligations of Landlord and Tenant set forth in this Lease.

Section 23.09: OTHER TENANTS; RELOCATION OR TERMINATION.

(a) Except as provided in **Section 23.26**, Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord shall determine in the exercise of its sole business judgment. Tenant hereby acknowledges that (i) except as provided in **Section 23.26**, this Lease contains no restrictive covenants or exclusives in favor of Tenant; (ii) this Lease shall not be deemed or interpreted to contain, by implication or otherwise, any warranty, representation or agreement on the part of Landlord that any department store or regional or national chain store or any other merchant shall open for business or occupy or continue to occupy any premises in or adjoining the Shopping Center during the Term or any part thereof or that Tenant shall generate a certain amount of Gross Sales or that any reimbursable amount payable by Tenant shall be any specific amount, and Tenant hereby expressly waives all claims with respect thereto and acknowledges that Tenant is not relying on any such warranty, representation or agreement by Landlord either as a matter of inducement in entering into this Lease or as condition of this Lease or as a covenant by Landlord.

(b) Deleted.

Section 23.10: APPLICABLE LAW.

The laws of the state in which Landlord's Building is located shall govern the validity, performance and enforcement of this Lease. If either party institutes legal suit or action for enforcement of any obligation contained herein, it is agreed that venue for such suit or action shall be in the state in which the Premises are located.

Section 23.11: WAIVER.

(a) The waiver by Landlord or Tenant of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other terms, covenant, agreement or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term, agreement or condition of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver be in writing and executed by Landlord or Tenant as the case may be.

(b) No waiver of any covenant, term, agreement or condition of this Lease or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason. No waiver by Landlord in respect to one or more tenants or occupants of Landlord's Building or any other part of the Shopping Center shall constitute a waiver in favor of any other tenant. Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. No consent or approval by Landlord shall operate to change any condition, requirement or other provision of this Lease on any occasion unless made in writing and executed by a general partner (or executive officer) of Landlord.

Section 23.12: ACCORD AND SATISFACTION.

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent nor shall any endorsement or statement on any check or any letter accompanying any such check or payment as Rent or the like be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's rights and remedies to recover the balance of such Rent or pursue any other right and remedy provided for in this Lease or available at law or in equity. If Landlord shall direct Tenant to pay Rent to a "lockbox" or other depository whereby checks issued in payment of Rent are initially cashed or deposited by a person or entity other than Landlord (albeit on Landlord's authority) then, for any and all purposes under this Lease: (a) Landlord shall not be deemed to have accepted such payment until ninety (90) days after the date on which Landlord shall have actually received such funds, (b) Landlord shall be deemed to have accepted such payment if (and only if) within said ninety (90) day period, Landlord shall not have refunded (or attempted to refund) such payment to Tenant and (c) Landlord shall not be bound by any endorsement or statement on any check or any letter accompanying any check or payment and no such endorsement, statement or letter shall be deemed an accord and satisfaction. Landlord or Landlord's bank may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease, at law or in equity. Nothing contained in the immediately preceding sentence shall be construed to place Tenant in default of Tenant's obligation to pay Rent if and for so long as Tenant shall timely pay the Rent required pursuant to this Lease in the manner designated by Landlord.

Section 23.13: CORPORATE TENANTS.

In the event the Tenant hereunder is a corporation, the persons executing this Lease on behalf of the Tenant hereby covenant and warrant that: the Tenant is a duly constituted corporation qualified to do business in the state in which Landlord's Building is located; all Tenant's franchise, corporate and other lienable taxes have been paid to date; all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws will be filed by Tenant when due; and such persons are duly authorized by the governing body of such corporation to execute and deliver this Lease (including the warrant and/or power of attorney provisions contained in Section 16.02) on behalf of the corporation.

Section 23.14: TENANT'S GUARANTOR.

Deleted.

Section 23.15: RECORDING.

This Lease shall not be recorded; however Landlord shall have the right to record a short form or memorandum thereof, at Landlord's expense, at any time during the term hereof, and Tenant shall execute same.

Section 23.16: AGENT OF LANDLORD.

Agent has acted as an agent of Landlord in connection with the execution of this Lease and shall not in any event be held liable to the Landlord or to Tenant for the fulfillment or non-fulfillment of any of the terms or conditions of this Lease or for any action or proceeding that may be taken by Landlord against Tenant, or by Tenant against Landlord. Any waiver of Landlord's liability hereunder, including any waiver of subrogation rights, shall apply with equal force and effect to, and as a waiver of any liability of, Agent.

Section 23.17: HAZARDOUS MATERIAL.

(a) As used herein the term "**hazardous material**" means any flammable, explosive, medical, human or animal tissues or substances, hazardous or toxic substance, material or waste (including, without limitation, asbestos and chlorofluorocarbons) which has been, or in the future is, determined by any state, federal or local governmental authority or any law, ordinance, statute, governmental rule or regulation to be capable of posing a risk of injury to health, safety or property and/or the use, storage and/or disposal of which is regulated by any governmental authority, including, without limitation, all of those materials and substances designated as hazardous or toxic by the local government having jurisdiction over the Premises, the U.S. Environmental Protection Agency, the Consumer Products Safety Commission, the Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substance. Tenant shall not cause or permit any hazardous material to be installed in the Premises as a part of Tenant's Work or otherwise brought upon, used, kept, stored or disposed of in or about the Premises or the Shopping Center by Tenant, its agents, employees, contractors or invitees. Notwithstanding the foregoing, Tenant may handle, store, use and dispose of products containing small quantities of hazardous materials (such as aerosol cans containing insecticides, toner for copiers, paints, varnishes and cleaning supplies) of insignificant quantities stored in sealed containers and used in accordance with manufacturers' requirements.

(b) If the Premises, any equipment (including, without limitation, HVAC equipment), trade fixtures or other mechanical apparatus therein contain any hazardous materials installed by Tenant, its agents, employees, contractors or invitees, Landlord, at its election, shall have the right to (i) cause Tenant to remove and properly dispose of same, all at Tenant's sole cost and expense, in accordance with applicable law and means and methods approved in advance by Landlord and its professional consultants, and Landlord shall have the right to monitor such work or (ii) perform the removal and disposal thereof itself, in which event Tenant shall comply with all reasonable requirements imposed by Landlord with respect to the performance of such work, including without limitation closing the Premises for business and remaining closed during the performance of such work, and Tenant shall reimburse Landlord, on demand, for the cost incurred by Landlord in performing such removal (including Landlord's cost of professional consultants).

(c) Tenant shall:

(i) Promptly provide Landlord with copies of any document, correspondence, report or communication, written or oral, relating to hazardous materials at or affecting the Shopping Center (x) to or from any regulatory body, or (y) stating a basis for any potential liability or responsibility of Tenant, Landlord, or the Shopping Center; including all such documents, correspondence, reports or communications prepared by or on behalf of Tenant. In addition to the above, at Landlord's request, Tenant shall provide copies of any and all records and communications whatsoever relating to hazardous materials at or affecting the Shopping Center.

(ii) Immediately notify Landlord in the event of a suspected or confirmed release of a hazardous material or violation of environmental laws at or affecting the Shopping Center and caused by or related to the operations of Tenant, its employees, contractors, agents, or any party acting on behalf of Tenant and, at Landlord's sole option, either promptly remediate or correct such release or violation to Landlord's satisfaction or reimburse Landlord's cost of remediation (including reasonable attorneys' and consultants' fees) all as set forth in (b) above; and compensate Landlord and/or third parties for all resultant damage.

(iii) Permit Landlord reasonable access to the Premises for the purpose of conducting an environmental audit or testing, the cost of which shall be

borne by Landlord unless the results indicate activity prohibited by environmental laws or hereunder.

(d) In accordance with the Occupational Safety and Health Administration Asbestos Rule (1995), 59 Fed. Reg. 40964, as amended and supplemented ("**OSHA Asbestos Rule**"), Landlord hereby notifies Tenant of the presence or possible presence of asbestos containing materials ("**ACMs**") and/or presumed asbestos containing materials ("**PACMs**") (as such terms are defined in the OSHA Asbestos Rule) within the Premises or adjoining enclosed common areas, if any. The ACMs and PACMs may take the form of pipe wrap, vinyl asbestos flooring, sprayed on or trowled on fire proofing, acoustical plaster, insulation, textured ceiling paint and other forms. The specific location of any ACMs or PACMs within the Premises or adjoining Common Areas may be ascertained by Tenant requesting in writing from Landlord, without cost or expense to Tenant, the applicable portions of any environmental impact survey conducted by Landlord regarding the Shopping Center. The purpose of Landlord's notification is to make Tenant, its agents, employees and contractors aware of the presence or possible presence of ACMs and/or PACMs in the Shopping Center in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs during the progress of Tenant's Work and/or Construction Work.

(e) Tenant shall comply with all applicable Governmental Requirements affecting the Premises, the operation of Tenant's business at the Premises, and the use and removal of any substances therefrom, including, without limitation, hazardous materials installed by Tenant, its agents, employees, contractors or invitees. Such compliance shall include, inter alia; (i) the filing by Tenant of all governmental applications and registrations for all substances used, stored, manufactured, generated or otherwise in the Premises; (ii) the obtaining of all licenses and permits with respect thereto; (iii) the timely filing from time to time, as required, of all reports and other matters required to be filed with governmental authorities having jurisdiction, and (iv) notifying each of its agents, employees and contractors of the presence or presumed presence of ACMs and PACMs within the Shopping Center as set forth above. Tenant shall not be responsible for the removal or remediation of any Hazardous Materials on the Premises unless such Hazardous Materials have been as a result of Tenant's and its agents, employees, contractors, or invitees use of the Premises.

(f) Tenant shall protect, defend, indemnify and hold Landlord harmless of, from and against all claims, actions, liens, demands, costs, damages, punitive damages, expenses, fines and judgments (including legal costs and attorneys fees) incurred by reason of any actual or asserted failure of Tenant to fully comply with the provisions of this Section 23.17 and/or spills or other contamination of air, soil, or water by or resulting from any hazardous materials installed by Tenant, its agents, employees, contractors or invitees at or around the Premises or the Shopping Center or resulting from removal thereof.

(g) Upon ten (10) days prior written request from Landlord, Tenant shall execute, acknowledge and deliver to Landlord a written statement in form satisfactory to Landlord certifying (i) if true, that Tenant has not disposed of any oil, grease, toxic, or hazardous material, at the Premises or (ii) that any such substances used, processed or generated at the Premises have been disposed of properly in accordance with all applicable Governmental Requirements. If Tenant is unable to certify either of the above, Tenant shall so notify Landlord and give Landlord the details resulting in Tenant's inability to so certify.

(h) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of hazardous materials brought thereon by Tenant and those acting on its behalf and in a condition which complies with all Governmental Requirements, recommendations of consultants hired by Landlord, and such other reasonable requirements as may be imposed by Landlord.

(i) Notwithstanding anything to the contrary contained herein, Landlord shall, as required by Governmental Requirements, prior to delivery of the Premises to Tenant, remove from the Premises or otherwise remediate any ACM's existing on the Premises in violation of any Governmental Requirements.

(j) This Section shall survive the expiration or sooner termination of this Lease.

(k) Landlord hereby indemnifies Tenant and holds Tenant harmless of, from and against damages, punitive damages, punitive fines and judgments (including reasonable attorney fees) resulting or arising by reasons of Landlord's violation of any environmental laws or regulations ordinances or orders in or about the Shopping Center.

Section 23.18: FINALIZATION OF CHARGES.

Notwithstanding anything to the contrary contained in this Lease, Tenant's failure to object to any statement, invoice or billing rendered by Landlord within a period of three hundred sixty-five (365) days after receipt thereof shall constitute Tenant's acquiescence with respect thereto and shall render such statement, invoice or billing a final and binding account stated between Landlord and Tenant. Landlord and Tenant intend that the foregoing provision shall supersede any right to audit or request back up documentation from Landlord which may otherwise be provided by this Lease and the foregoing provisions are not intended to grant any such right to Tenant not otherwise expressly provided in this Lease.

Section 23.19: PRIOR LEASE.

(a) Tenant is presently occupying the Premises pursuant to a lease agreement with Landlord dated September 27, 2004 (the aforesaid agreement and any amendments thereto being hereinafter referred to as the "**Prior Lease**").

(b) Unless the Prior Lease has been terminated prior to the Rent Commencement Date, the execution of this Lease shall be deemed to satisfy the requirements with respect to notice of termination set forth anywhere in the Prior Lease, and therefore, the Prior Lease shall terminate on the day prior to the Rent Commencement Date of this Lease without the necessity of any other or further notice from or to either party.

(c) Notwithstanding any rule of law, the decision of any court or any inference therefrom to the contrary, in the event Tenant has failed to comply with any of its obligations under the Prior Lease, if such failure is continuing, Landlord

may treat such failure as having occurred under this Lease, and in such event, Landlord shall have the right, in addition to, and not in lieu of, any other remedy at law, in equity or otherwise, to exercise any and all of Landlord's rights and remedies hereunder, including, but not limited to, those set forth in Article 16 of this Lease.

(d) As an inducement to Landlord to execute this Lease, Tenant hereby releases and forever discharges Landlord from all manner of action, causes of action, suits, covenants, controversies, agreements, promises, damages, claims and demands whatsoever, in law or in equity, which Tenant has or may have against Landlord arising out of the Prior Lease.

Section 23.20: FINANCIAL INFORMATION.

Not more than once per calendar year, Tenant shall, within twenty (20) days of written request from Landlord, deliver to Landlord such financial information concerning Tenant and Tenant's business operations as may be requested by Landlord, any mortgagee or prospective mortgagee or purchaser or prospective purchaser.

Section 23.21: NOTICE TO MORTGAGEE.

If the holder of any mortgage which has a lien against the Shopping Center or any part thereof forwards to Tenant written notice of the existence of such lien, then Tenant shall, so long as such mortgage is outstanding, be required to give to such lienholder the same notice and opportunity to correct any default as is required to be given to Landlord under this Lease, but such notice of default may be given by Tenant to Landlord and such lienholder concurrently.

Section 23.22: WAIVER OF JURY TRIAL.

Landlord and Tenant hereby waive all right to a trial by jury in any litigation related to this Lease including any mandatory counterclaim or cross claim.

Section 23.23: CONFIDENTIALITY.

It is agreed and understood that Tenant may acknowledge only the existence of this Lease by and between Landlord and Tenant, and that Tenant may not disclose any of the terms and provisions contained in this Lease to any tenant or other occupant in the Shopping Center or to any agent, employee, subtenant or assignee of such tenant or occupant. Tenant acknowledges that any breach by Tenant of the agreements set forth in this **Section 23.23** shall cause Landlord irreparable harm. The terms and provisions of this **Section 23.23** shall survive the termination of this Lease (whether by lapse of time or otherwise).

Section 23.24: RIGHT OF FIRST REFUSAL.

As a specifically bargained for right hereunder, if Tenant makes an assignment for the benefit of creditors, files or suffers the filing against it of a petition under any chapter of the United States Bankruptcy Code, or if proceedings for reorganization or composition with creditors under any federal or state law are instituted by or against Tenant and Tenant or Tenant's trustee (as the case may be) subsequently attempts to assign this Lease or Tenant's interests in this Lease pursuant to 11 U.S.C. § 365 or otherwise, Landlord shall have the right of first refusal to purchase and assume this Lease and Tenant's interests thereunder (collectively "**Tenant's Leasehold Interests**") upon the following terms and conditions:

a. If Tenant receives a bona fide, arm's length offer to purchase Tenant's Leasehold Interests (the "**Third Party Offer**"), which Third Party Offer Tenant or Tenant's trustee (as the case may be) deems acceptable, Tenant or Tenant's trustee shall first, deliver a copy thereof to Landlord ("**Landlord's RFR Notice**"). Landlord shall thereafter have the right to assume and acquire Tenant's Leasehold Interests described in Landlord's RFR Notice on the same terms and conditions as set forth in the Third Party Offer.

b. Within thirty (30) days following Landlord's receipt of Landlord's RFR Notice, Landlord shall notify Tenant or Tenant's trustee (as the case may be) in writing of Landlord's intention to exercise the right of refusal to acquire Tenant's Leasehold Interests or be deemed to have waived such right of first refusal with respect to the transaction described in Landlord's RFR Notice. If Landlord timely exercises Landlord's right of first refusal, Tenant or Tenant's trustee shall be deemed to be contractually bound to sell and assign Tenant's Leasehold Interests exclusively to Landlord in accordance with the terms and conditions set forth in the Third Party Offer. If Landlord fails timely to respond to Landlord's RFR Notice or declines to exercise the right of first refusal granted hereunder in such instance, then Tenant or Tenant's trustee (as the case may be) shall be free to sell and assign the Tenant's Leasehold Interests described in the Landlord's RFR Notice to the proposed purchaser (the "**Third Party Purchaser**") on the same terms and conditions set forth in the Third Party Offer; provided, however, that the sale and assignment of Tenant's Leasehold Interests to the Third Party Purchaser shall be and remain subject to this right of first refusal provision, such that any future assignment of this Lease by the Third Party Purchaser or any successor thereto, shall be and remain subject to the right of refusal herein granted to Landlord.

c. The parties hereby specifically acknowledge and agree that the right of first refusal granted to Landlord herein is not intended to operate, and shall not be construed, as a provision that prohibits, restricts, or conditions the assignment of this Lease within the meaning of 11 U.S.C. § 365(f) or any similar statutory provision.

Section 23.25: RENEWAL OPTION.

(a) Provided that Tenant is not in default hereunder at the time of exercise, Tenant shall have and is hereby granted one (1) option to extend the Term of this Lease upon the terms, covenants, conditions and provisions set forth herein, except as set forth in (c) and (d) below, for one (1) period of five (5) years; provided that at the time an option to renew is exercised, the Term of this Lease shall be in effect.

(b) Such option shall be exercisable by Tenant giving written notice to Landlord of its intention to exercise the same at least seven (7) months prior to the expiration of the Term. Upon receipt by Landlord of such notice and provided

that Tenant shall then have the right to exercise such option, the Term of this Lease shall be extended in accordance with the provisions hereof, without the necessity of any further act or documentation by Landlord or Tenant. In the event Tenant fails to exercise the option within the time and in the manner aforesaid (regardless of whether such failure shall be a result of Tenant's failure to give notice or Tenant's not having the right to exercise such option), then this right and option shall terminate and be null and void without the necessity of any further act or documentation by Landlord or Tenant, and the Term of this Lease shall terminate in accordance with the provisions set forth elsewhere herein.

(c) During the option term, Tenant shall pay Landlord Minimum Rent as follows:

Time Period	Annual Amount	Monthly Amount
From August 1, 2020 through July 31, 2025	$130,000.00	$10,833.33

(d) During the option term, Tenant shall pay Landlord Percentage Rent as follows:

Time Period	Annual Break Point	The "Percentage"
From August 1, 2020 through July 31, 2025	$2,600,000.00	Five Percent (5%)

Section 23.26: TENANT'S EXCLUSIVE.

(a) **Non-Competition Covenant.** Subject to the conditions and limitations set forth below, if the Premises are used by Tenant for the Exclusive Use set forth below, during the Term of this Lease, Landlord shall not permit any portion of the Enclosed Mall, other than the Premises and the premises demised by a Permitted Lease, to be used by a Competing Business.

(b) **Exclusive Use.** "**Exclusive Use**" shall mean the principal purpose of the operation of a casual dining restaurant which serves alcohol.

(c) **Competing Business.** A "**Competing Business**" shall mean a business which uses substantially all of its GLA for the sale of the items constituting the Exclusive Use, such as TGI Fridays, Chili's, Bennigans, Red Robin, O'Charley's and Ruby Tuesdays, but excluding:

(i) any premises occupied under a Permitted Lease;
(ii) the premises occupied by a tenant which replaces a tenant under a Permitted Lease if such tenant uses its premises for the sale of all or any portion of the items constituting the Exclusive Use;
(iii) the premises initially occupied by a Major and/or Junior Major;
(iv) any theme oriented restaurants which may serve alcoholic beverages such as Olive Garden or any other Italian restaurant, Carrabba's, Chi-Chi's or any other Mexican restaurant, Outback Steakhouse, Macaroni Grille, Chuck E. Cheese or the like;
(v) deleted;
(vi) deleted; or
(vii) any store containing less than 3,500 square feet of GLA.

(d) **Permitted Lease.** A "**Permitted Lease**" is a lease disclosed to Tenant that was executed prior to the execution of this Lease (a "**Prior Lease**"), a renewal or extension of a Prior Lease, or a new lease that is executed by a person or entity which leased or occupied a premises in the Shopping Center under a Prior Lease.

(e) **Exclusive Becomes Null and Void.** Landlord's Non-Competition Covenant shall automatically become null and void if:

(i) After applicable notice and opportunity to cure an Event of Default exists under this Lease;
(ii) Less than substantially all of the GLA in the Premises is used for the Exclusive Use for more than thirty (30) days unless as a result of a damage or destruction, taking by eminent domain or temporary closings for (x) renovations or (y) in connection with an assignment or sublet of the Premises, which temporary closing shall not exceed, in the aggregate, more than ninety (90) days.
(iii) Tenant's Gross Sales during any Year is under of $1,000,000.00

(f) **Limitation on Tenant's Remedies.**

(i) **Reduction in Minimum Rent.** If Landlord violates Landlord's Non-Competition Covenant and such violation continues for more than thirty (30) days after Landlord's receipt of written notice of such violation from Tenant, then as Tenant's sole and exclusive remedy resulting from such violation, Tenant's Minimum Rent shall be reduced by fifty percent (50%) and elimination of all other changes including but not limited to Additional Rent, commencing upon the thirty-first (31st) day after Landlord's receipt of such notice and lasting until the earlier of the day such violation is cured or the expiration of twelve (12) months from the date such violation commenced.
(ii) Deleted.
(iii) **Term of Rent Reduction.** Tenant's right to the reduction in Minimum Rent shall continue until the earlier of:

A. the expiration or early termination of the lease in violation of this **Section 23.26**;

B. the tenant's use under the aforesaid lease, ceases to be in violation of this **Section 23.26**;

C. Tenant has committed an Event of Default which has remained uncured after applicable notice and opportunity to cure; or

D. Upon the cessation of Tenant's right to the reduction in Minimum Rent, Tenant shall immediately recommence payment of full Minimum Rent pursuant to the terms of this Lease.

(iv) **Unauthorized violation of the Non-Competition Covenant by Third Parties**. If a third party occupant of the Shopping Center, in violation of its lease or other agreement with Landlord, commences the use of its premises for the Exclusive Use, Landlord agrees to pursue all rights Landlord has against such third party; provided, however, so long as Landlord is diligently proceeding against such third party then Landlord shall have no liability to Tenant for damages nor shall Tenant have any remedy against Landlord and such sales shall not constitute a violation by Landlord of its Non-Competition Covenant. Landlord shall certify to Tenant whether such occupant is permitted by its lease or other agreement to sell any of the items constituting the Exclusive Use. Tenant may pursue directly against such occupant such rights as may be afforded to Tenant under such circumstances and Landlord hereby assigns its interest in the lease or other agreement with said third party to Tenant to the full extent necessary for Tenant to proceed directly against the third party. Landlord further agrees to execute such reasonable documents necessary to evidence and effectuate this assignment and shall use all commercially reasonable efforts to enforce its rights against such third party including but not limited to proceeding with such rights as Landlord has in the lease with such occupant.

Section 23.27: SATELLITE DISH/CABLE TELEVISIONS SERVICE.

(a) Under the conditions set forth below, Tenant may have access to the roof of the Shopping Center for the purpose of installing roof top satellite or other communication facilities:

1. The use of such satellite facilities by Tenant shall be restricted to Tenant's internal communication purposes with Tenant's home office or regional offices or other retail locations and shall not be used for profit making purposes.

2. Tenant shall perform the installation of such facilities, at its expense. Tenant shall obtain all required governmental approvals and permits for the installation of any wiring and associated facilities required to be installed from the Premises to the satellite communication facility. The size, means and method of placement and locations of all wires, cables and other electric and mechanical components shall be determined by Landlord. If Landlord, for any reason, is unable to obtain any required access through space occupied by other tenants, Landlord will promptly notify Tenant and terminate Tenant's right to install the facilities. If Landlord requires that Tenant's wiring, cables or other electrical and mechanical components be relocated at any time in the future, Tenant shall promptly relocate the same in a manner acceptable to Landlord. Landlord shall have no duty to maintain all or any portion of Tenant's wires, cables, or other electrical or mechanical components or to restore the same in the event of any damage or destruction to the Premises. No such wiring, cabling or electrical or mechanical components shall be installed in a manner which will require penetration of the roof membrane unless such penetration is performed, at Tenant's expense, by Landlord's roofer.

3. Tenant agrees that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property resulting from any cause whatsoever relating to the installation, use, maintenance, relocation or removal of such facilities and Tenant hereby agrees to protect, defend, indemnify and save harmless Landlord and Agent from all claims, actions, demands, costs, expenses and liability whatsoever, including reasonable attorneys' fees, on account of any such real or claimed event, damage or liability and from all liens, claims and demands arising from any occurrence relating to the installation, use, repair, maintenance, relocation or removal of such facilities, including any roof leaks, roof repairs and consequential damages resulting from the same or occasioned in whole or in part by any act or omission of Tenant, its agents, contractors, servants, employees or invitees. Tenant's obligations under this provision shall survive the expiration or earlier termination of the Lease.

4. The facilities shall remain Tenant's personal property and shall be removed by Tenant prior to the expiration or earlier termination of this Lease, and Tenant shall at that time repair any damage caused by the installation and removal of same.

5. Tenant shall pay Landlord or any entity designated by Landlord, on demand, the cost Landlord typically charges for determining the location of Tenant's wiring, cabling and associated facilities, the cost of coordinating any roofing work required to be performed by Landlord's roofer in connection with such installation and other costs incurred by Landlord resulting from Tenant's installation, use or removal of such facilities.

(b) Tenant may also use, at its sole cost and expense, any cable television service within the Premises available at the Shopping Center.

Section 23.28: RESTAURANT INSTALLATIONS.

Tenant shall provide at its own cost and expense automatic sprinkler protection and CO_2 fire extinguishers in all hoods and ducts in the cooking area of the Premises, all approved by Underwriters Laboratories and Landlord's fire insurance carrier. Landlord shall determine if any special ventilation equipment shall be required in said cooking areas, and if same shall be required by Landlord, Tenant shall furnish the same at its cost and expense.

Section 23.29: ENTIRE AGREEMENT.

(a) There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. The Lease sets forth all of the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, Landlord's Building and the Shopping Center. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing, signed by them and mutually delivered between them.

(b) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for leasing of the Premises nor confer any rights or impose any obligations upon either party until the execution thereof by Landlord and the delivery of an executed original copy thereof to Tenant.

(c) THE UNDERSIGNED ACKNOWLEDGES THAT IT FULLY UNDERSTANDS THE CONFESSION OF JUDGMENT CONTAINED IN **SECTION 16.02(c)** AND THAT THE LANDLORD-TENANT RELATIONSHIP CREATED BY THIS LEASE IS COMMERCIAL IN NATURE.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first hereinabove written.

LANDLORD:

PR FINANCING LIMITED PARTNERSHIP
By: PREIT SERVICES, LLC, Agent

By: Debra Lambert
DEBRA LAMBERT
SENIOR VICE PRESIDENT – LEGAL

TENANT:

EATERIES, INC.

By: PS
Name: Preston Stickton
Title: President
Attest: Phil Brackelsberg
Name: Phil Brackelsberg
Title: CFO / Secretary

This drawing is diagrammatic. Sizes and dimensions are approximate and subject to revision. The demising walls and/or lease line may not currently exist as shown. Further, Landlord does not represent that any tenant/occupant whose name appears on this Exhibit "A" is now occupying or will continue to occupy any portion of the Shopping Center or that Landlord owns all of the land and improvements shown on this Exhibit "A". Landlord hereby reserves the right, at any time and from time to time, to alter or otherwise modify the locations and/or dimensions of all buildings, parking areas, service areas, roads, entrances, exits, malls and other facilities shown on this Exhibit "A", to place in the malls, courts, corridors and other Common Areas of the Shopping Center, landscaping, decorative items, and structures, and areas for retails sales and promotional activities, and to construct, lease, operate and maintain buildings, structures, and other facilities not shown on this Exhibit "A", provided, however, that Landlord does not violate any rights expressly reserved to Tenant in this Lease.

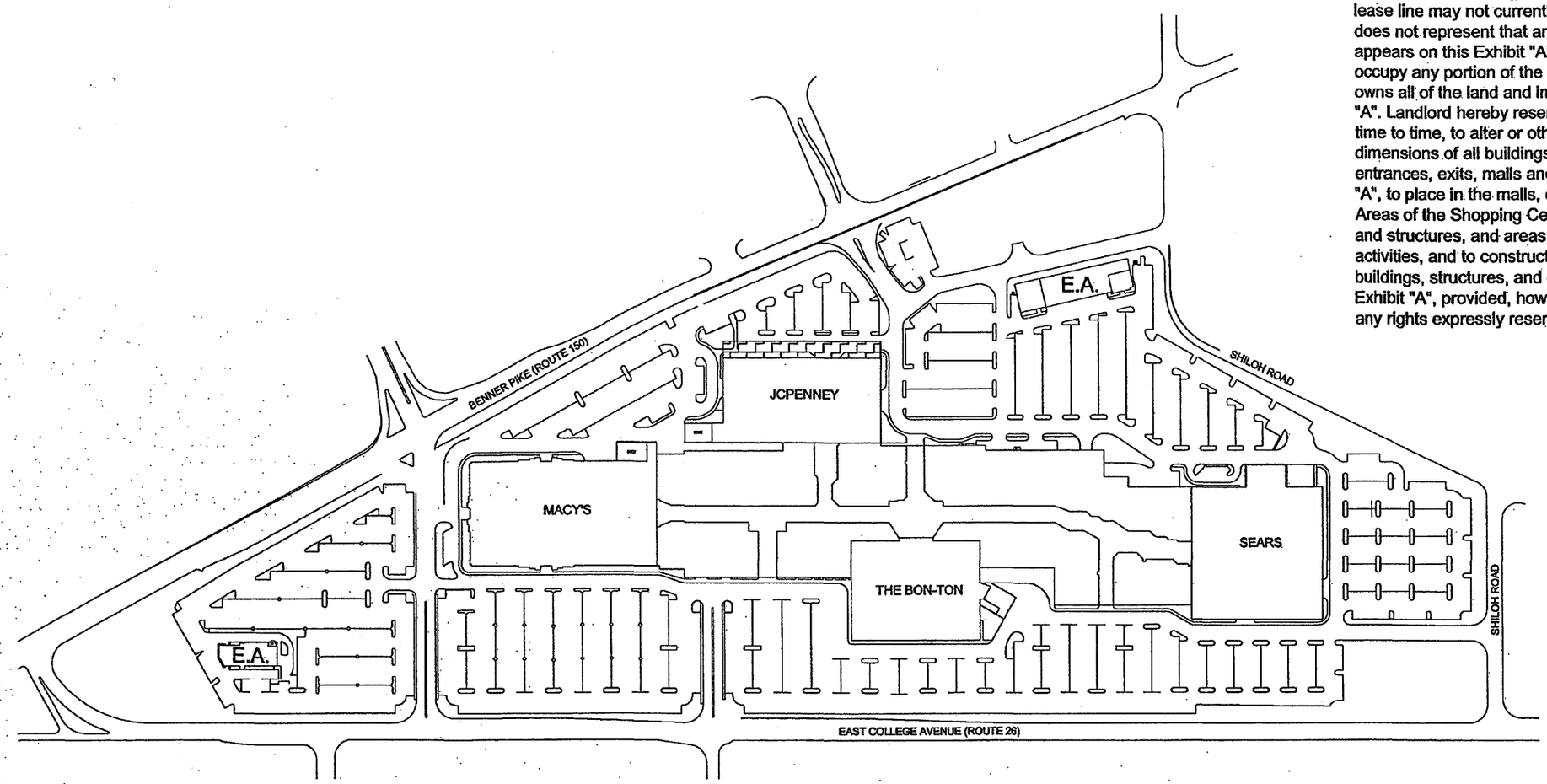


EXHIBIT "A" PAGE 1 OF 2

= PERMISSIBLE BUILDING AREA

E.A. = EXCLUDED AREA

PREIT

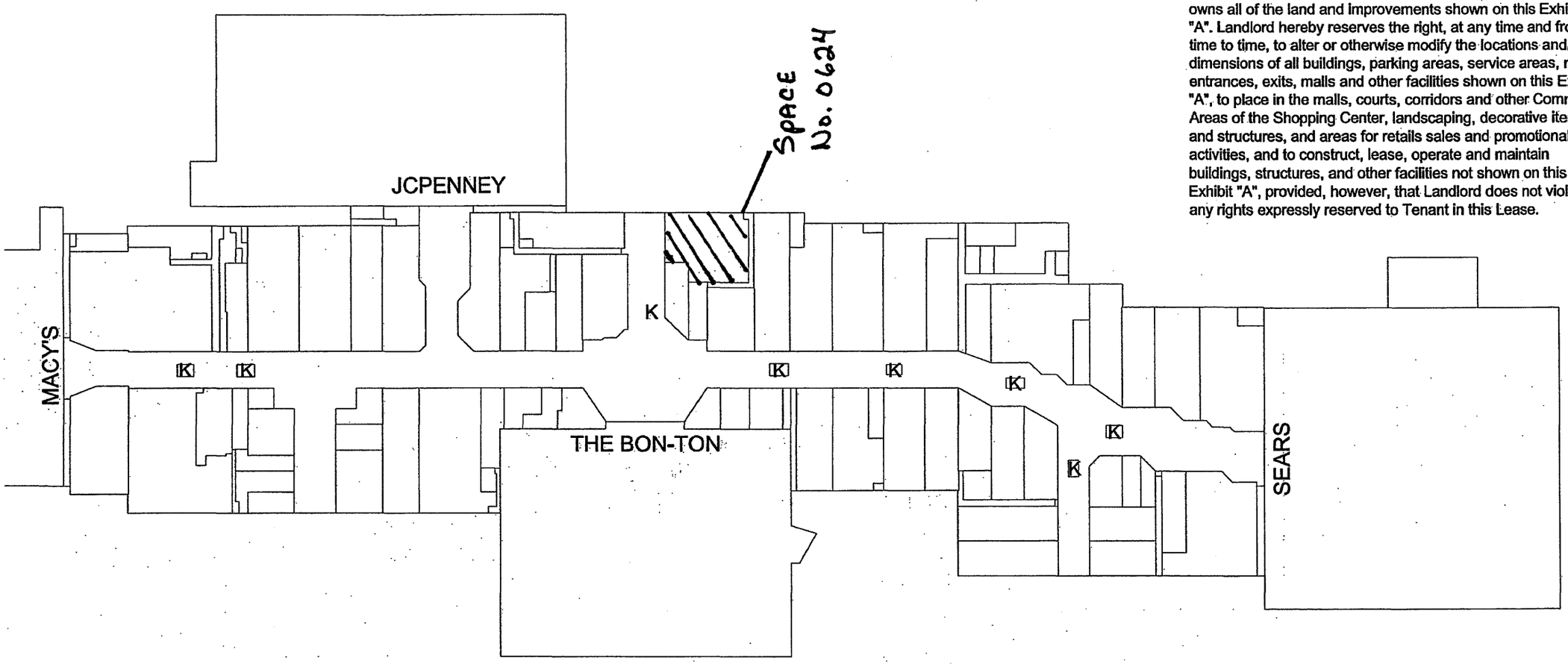
The Pennsylvania Real Estate Investment Trust

NITTANY MALL

STATE COLLEGE, PENNSYLVANIA

DATE: SEPTEMBER 11, 2009

This drawing is diagrammatic. Sizes and dimensions are approximate and subject to revision. The demising walls and/or lease line may not currently exist as shown. Further, Landlord does not represent that any tenant/occupant whose name appears on this Exhibit "A" is now occupying or will continue to occupy any portion of the Shopping Center or that Landlord owns all of the land and improvements shown on this Exhibit "A". Landlord hereby reserves the right, at any time and from time to time, to alter or otherwise modify the locations and/or dimensions of all buildings, parking areas, service areas, roads, entrances, exits, malls and other facilities shown on this Exhibit "A", to place in the malls, courts, corridors and other Common Areas of the Shopping Center, landscaping, decorative items, and structures, and areas for retails sales and promotional activities, and to construct, lease, operate and maintain buildings, structures, and other facilities not shown on this Exhibit "A", provided, however, that Landlord does not violate any rights expressly reserved to Tenant in this Lease.



K = KIOSK

EXHIBIT "A" PAGE 2 OF 2

PREIT

The Pennsylvania Real Estate Investment Trust

NITTANY MALL

STATE COLLEGE, PENNSYLVANIA

DATE: SEPTEMBER 11, 2009

EXHIBIT "B"

COMPLETION CERTIFICATE

DATED AS OF

PART I

SHOPPING CENTER LEASE (the "**Lease**") dated as of _____.

Parties:

PR FINANCING LIMITED PARTNERSHIP ("**Landlord**")

Eateries, Inc. ("**Tenant**")

Premises: Nittany Mall
2901 East College Avenue
State College, PA 16801

Tenant Store No: 0624

GLA of Premises: 4,832 square feet

Actual Opening Date: _____

Rent Commencement Date: _____

Expiration Date: _____

PART II

Tenant, intending legally to be bound hereby, hereby ratifies the Lease and hereby certifies and agrees with Landlord as follows:

A. the dates and other information set forth in this Completion Certificate are true and correct; and,

B. the Rent Term commences on the Rent Commencement Date set forth in PART I hereof and ends absolutely and without notice at 11:59 P.M. (local time) on the Expiration Date, unless sooner terminated as provided in this Lease or extended by written agreement of the parties; and,

C. the Lease has not been assigned, supplemented, amended or otherwise modified; the Lease represents the entire agreement between the parties as to the Premises and its leasing; there are no breaches or other defaults by Landlord under the Lease; all conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied; the Lease is in all other regards in full force and effect; and,

D. Tenant has accepted possession of and has entered into occupancy of the Premises; the Premises has been accepted by Tenant as being in accordance with the terms and conditions of the Lease; no Rent has been nor will be paid or prepaid other than as provided in the Lease and there are no defenses, offsets, deductions or counterclaims against the enforcement of the Lease by Landlord or the payment of Rent by Tenant; and,

E. the Lease is subordinate to the REA and to any and all mortgages on or deeds of trust as to the Shopping Center subject to the non-disturbance provision of Section 18.02 of the Lease.

PART III

In addition to the foregoing certifications, Tenant has delivered to Landlord all of the following documents relating to work that has been performed by, through or under Tenant in or about the Premises:

A. properly executed and acknowledged affidavits (satisfactory to Landlord) from contractors engaged by Tenant that all work in or about the Premises has been fully completed in accordance with the Final Plans approved by Landlord and that each of Tenant's contractors, as well as all subcontractors, laborers and materialmen, has been paid in full; and

B. properly executed and acknowledged releases of mechanics', materialmen's and laborers' liens (satisfactory to Landlord) with respect to the Premises from each of Tenant's contractors and from every subcontractor and materialman satisfying labor or materials whose costs is in excess of $5,000.00; and

C. a set of approved "as-built" drawings and specifications for the work done by Tenant in and about the Premises, prepared, signed and sealed by Tenant's architect, together with a complete set of Tenant's "as-built" sprinkler and other fire protection drawings and specifications prepared, signed and sealed by Tenant's architect or engineer; and

D. true and complete copies of certificates of occupancy and licenses from governmental bodies having jurisdiction over Tenant's use or occupancy of any part of the Premises; and

E. a detailed cost break-down sheet satisfactory to Landlord specifying the line items and cost of each line item of the work done by, through or under Tenant in and about the Premises; and,

F. electrical underwriters certificate from an organization satisfactory to Landlord.

All terms defined in any other part of the Lease are used herein as defined therein.

This COMPLETION CERTIFICATE has been executed as of the date first above written.

TENANT:

EATERIES, INC.

By:_____

Name:_____

Title:_____

(Corporate Seal)

Attest:_____

Name:_____

Title:_____