

SHOPPING CENTER LEASE

BY AND BETWEEN

Chicago Title and Trust Company,
not personally, but solely as Successor Trustee
under Trust No. 48-64602-0
(LESSOR)

A N D

Eateries, Inc.
(LESSEE)

SHOPPING CENTER LEASE

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SHOPPING CENTER LEASE

THIS LEASE is made and entered into as of the 30 day of December, 1994 by and between Chicago Title and Trust Company, not personally, but solely as Successor Trustee under Trust No. 48-64602-0 (hereinafter referred to as "Lessor"), and Eateries, Inc., an Oklahoma corporation (hereinafter referred to as "Lessee").

WITNESS THAT, in consideration of the rents reserved hereunder and the covenants and agreements hereinafter set forth, the foregoing parties hereby covenant and agree as follows:

ARTICLE I EXHIBITS

1.1. Exhibits to Lease.

The exhibits listed below and attached to this Lease are incorporated herein by this reference:

- | | |
|-----------|---|
| EXHIBIT A | Legal description of real estate (hereinafter referred to as the "Shopping Center Parcel"). |
| EXHIBIT B | Plot Plan of Shopping Center Parcel, showing existing and proposed improvements and depicting Lessor's Tract, as hereinafter defined, if different from the Shopping Center, as hereinafter defined (said Shopping Center Parcel with existing and future improvements being hereinafter referred to as the "Shopping Center"). |
| EXHIBIT C | Legal description of that certain part of the Shopping Center Parcel owned or controlled or to be owned or controlled by Lessor (which, together with all existing and future improvements thereon, is hereinafter referred to as "Lessor's Tract"). |
| EXHIBIT D | [Intentionally Deleted]. |
| EXHIBIT E | Description of Work to be Performed by Lessee. |
| EXHIBIT F | Rules and Regulations. |
| EXHIBIT G | Sign Criteria. |

1.2. Rights Reserved to Lessor.

Notwithstanding the exhibits attached hereto or anything else contained in this Lease, Lessor reserves and retains the following rights:

- (a) to modify, without limitation and at any time, or from time to time, the configuration of Lessor's Tract for the purpose of incorporating additional stores within the Shopping Center; and
- (b) to change, modify, add to or subtract from the size and dimensions of the Shopping Center or any part thereof; the number, location and dimensions of buildings and stores; the dimensions of hallways, malls and corridors; the number of floors in any building; the location, size and number of lessees' spaces and kiosks which may be erected in or

fronting on any mall or elsewhere; the identity, type and location of other stores and lessees; and the size, shape, location and arrangement of the Common Areas, as defined in Section 5.1 of this Lease; and

- (c) to design and decorate any portion of the Shopping Center as it desires; provided, however, that Lessor shall not substantially change the general character of the Shopping Center and the size and the approximate location of the Premises, as defined in Section 2.1 of this Lease, in relation to the major department store(s) and the main entrance to the enclosed mall, if any.

ARTICLE II PREMISES AND TERM

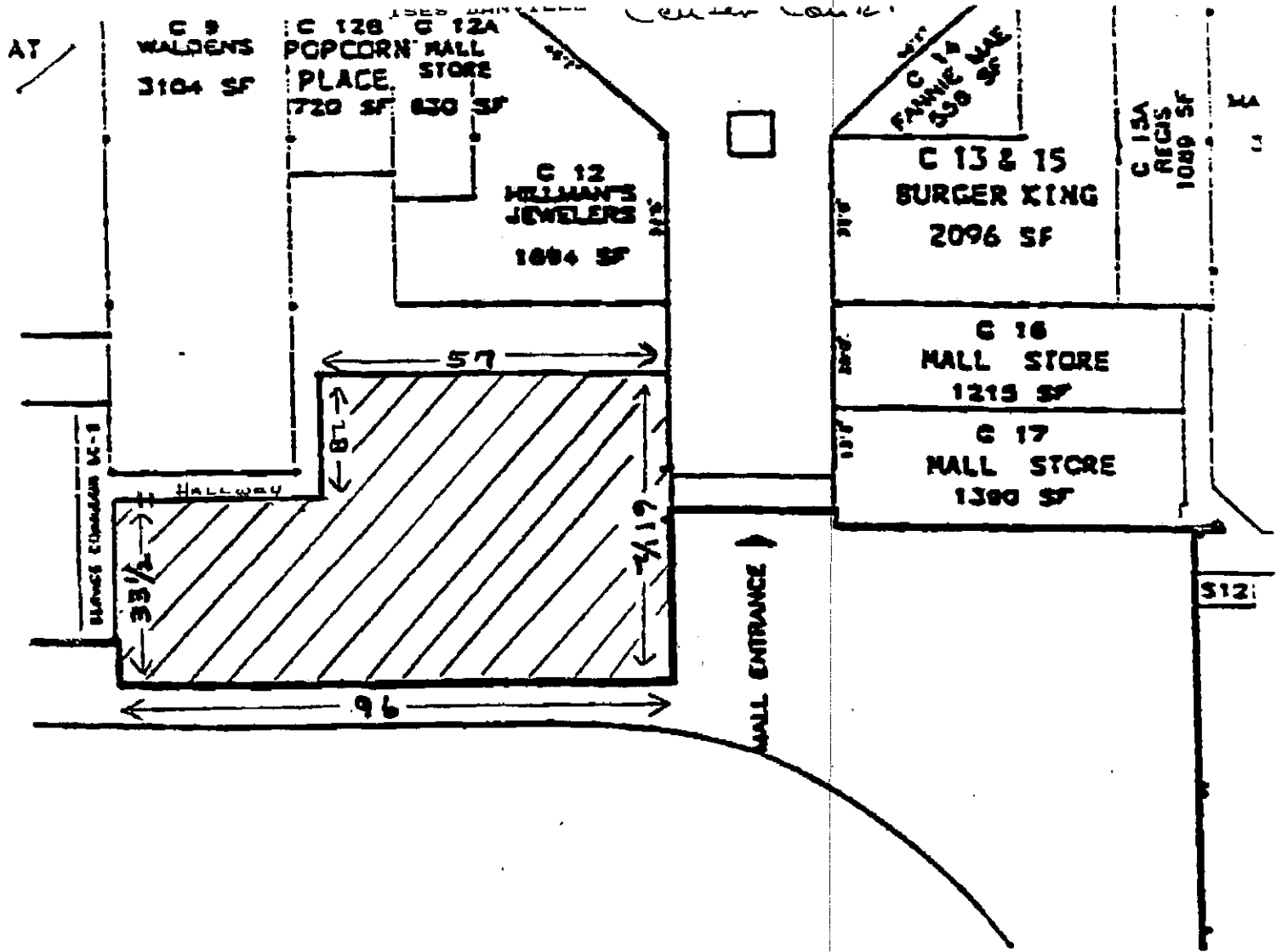
2.1. Premises and Store Floor Space.

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Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, that certain space in the Shopping Center designated as Room C-10/11 outlined in red on Exhibit B attached hereto (hereinafter referred to as the "Premises"), having a front width of approximately ____*____ feet and a depth of approximately ____*____ feet, as measured to the center line of all party or common walls, to the exterior faces of all other walls, and to the building line where there is no wall, and containing approximately ~~4,800~~ square feet. The actual number of square feet of the Premises (hereinafter referred to as the "Store Floor Space") shall be deemed to be equal to the aforementioned approximation. If, in Lessee's opinion, the actual Store Floor Space differs from said approximation, Lessee agrees to execute and deliver to Lessor, within fifteen (15) days of the Commencement Date (as defined in Section 2.3 of this Lease), a certificate stating Lessee's estimate of the Store Floor Space, and the parties hereto agree that in the event of a dispute as to the Store Floor Space, the determination of Lessor's architect shall be final, binding and conclusive and such determination shall thereafter equal the Store Floor Space. The costs and expenses of such determination by the architect shall be paid by the Lessor in the event that such architect determines the Store Floor Space to differ by greater than ten (10) square feet from Lessor's approximation contained herein. Otherwise such costs and expenses shall be paid by Lessee. **Subject to Lessor's approval of Lessee's plans and specifications, Lessee will be permitted to protrude its window treatment along the Premises inside the Shopping Center. So long as such protrusion is above the floor level and is for cosmetic and aesthetic purposes only (i.e., no usable floor area is created in the Premises), such protrusion will not be included in the square footage of the Premises for the purpose of calculating rent and other charges based on square footage. To the extent such protrusion adds floor area beyond the lease line of the Premises at the floor level of the Premises, the square footage of such protrusion shall be added to the square footage of the Premises for the purpose of calculating rent and other charges based on square footage.**

2.2. Roof and Walls Of the Premises.

Lessor shall have the exclusive right to use all or any part of the roof, side and rear walls of the Premises for any purpose, including, but not Limited to, erecting signs or other structures on, over or upon all or any part thereof; erecting scaffolds and other aids incident to the construction and installation of said signs and structures; and installing, maintaining, operating, using, repairing, replacing and reconstructing pipes, ducts, conduits and wires leading across, through, to or from the Premises and serving other parts of the Shopping Center. Any such installations shall be in locations which

*The approximate dimensions of the Premises are depicted on the attached Page 2A. Lessor will provide to Lessee a final description of the dimensions of the Premises upon Lessee's completion of improvements to the Premises.



2-A

To Exterior Lease

do not materially interfere with Lessee's use of the Premises. Nothing contained in this Section shall be deemed to obligate Lessor to erect signs or to install, maintain, operate, use, repair, replace or reconstruct as aforesaid. Except as provided in Section 8.3 of this Lease, Lessee shall have no right whatsoever in or to the exterior portion of exterior walls of the Premises.

2.3. Commencement Date and Term of Lease.

Subject to the provisions of Section 2.5 of this Lease, the "Commencement Date," of this Lease shall be the earlier of (a) **June 1, 1995**, (b) the day after the last day allowed by this Lease to Lessee for completion of Lessee's Work (as hereinafter defined), hereinafter referred to as the "Required Completion Date," or (c) the day on which Lessee opens for business. **The Required Completion Date is hereby defined to be May 31, 1995; provided, however, that Lessee agrees to use its best efforts to open for business on or before April 1, 1995.** The term of this Lease (hereinafter referred to as the "Lease Term") shall begin on the Commencement Date and end on the last day of the 12th Lease Year (as hereinafter defined) after the Commencement Date, unless sooner terminated as provided in this Lease. **The provisions of this Section 2.3 notwithstanding and so long as Lessee is not in default under the terms and provisions of this Lease, Lessee shall not be required to initially open for business in the Premises or pay any Lease Rent or charges until the earlier of (x) June 1, 1995, (y) the date Lessee opens for business in the Premises or (z) the date one hundred twenty (120) days after the later of the following dates:**

- (i) **Lessor's delivery of possession of the Premises to Lessee, and;**
- (ii) **Lessee's receipt of a fully executed counterpart of this Lease, and;**
- (iii) **Lessee's receipt of a liquor license for the Premises, so long as Lessee has complied with the provisions of the Liquor License contingency clause set forth hereinbelow:**

On or before the date ten (10) days after the execution and delivery to Lessee of a fully executed counterpart of this Lease, Lessee agrees to prepare and file or submit an application for an on-premises consumption liquor license or permit with respect to the Premises with the governmental authority having jurisdiction thereover, and to expeditiously, diligently and in good faith prosecute such application to completion. In the event that Lessee is unable to procure said license, for any reason whatsoever, within sixty (60) days after filing of said application and provides Lessor with a written notice of Lessee's intent to cancel and terminate this Lease within five (5) days after the expiration of such sixty (60) day period due to its failure to obtain such license or permit, then this Lease shall be void and of no force and effect as though this Lease had not been executed in the first place; provided, however, Lessee's right to so terminate this Lease shall be expressly subject to and conditioned upon Lessee's reimbursing Lessor the total dollar amount of any Construction Allowance (or part thereof) theretofore paid by Lessor, which amount shall be deemed to be Additional Rent for purposes of securing the collection thereof and which obligation shall survive the expiration or sooner termination of this Lease.

2.4. Lease Year.

"Lease Year," as used in this Lease, means a period of twelve (12) consecutive months during the Lease Term, with the first Lease Year commencing on the first day of the first month beginning on or following the Commencement Date. "Partial Lease Year," as used in this Lease, means that portion of the Lease Term prior to the first

Lease Year or that period beginning on January 1 and ending on the last day of the Lease Term.

2.5. Grand Opening of Shopping Center. [Intentionally Omitted]

**ARTICLE III
WORK PRIOR TO OPENING**

3.1. Lessor's Work.

Lessee hereby acknowledges that it has examined and inspected the Premises to its satisfaction and accepts the Premises on the Commencement Date in "as is" condition, without any work and/or materials to be provided by Lessor with respect to all or any part of the Premises.

3.2. Lessee's Work.

Lessee shall, at its expense, perform all work required under or pursuant to this Lease not specifically allocated to Lessor by this Lease. All such work to be performed by Lessee, including, but not limited to, all work described in Exhibit E attached hereto, shall be deemed to be "Lessee's Work," and shall be promptly and diligently completed in accordance with the terms of this Article III. **In connection with the performance of Lessee's Work and all other construction of improvements and alterations to the Premises to be performed by (or on behalf of) Lessee, Lessee hereby agrees to contract with and employ (whenever possible) contractors, subcontractors, laborers and materialmen who are members of construction-affiliated labor unions, subject to applicable laws.**

3.3. Lessee's Pre-Opening Obligations.

(a) Lessor shall deliver to Lessee a drawing of the Premises as soon after the execution of this Lease as is reasonably possible. **No earlier than forty-five (45) days and no later than sixty (60) days after Lessee's receipt of such drawing of the Premises,** Lessee shall submit to Lessor one (1) reproducible set (sepia) of plans and specifications of all Lessee's Work to be done within the Premises (hereinafter referred to as "Lessee's Plans"), prepared in conformity with Exhibit E attached hereto. As soon as reasonably possible thereafter, Lessor shall notify Lessee of whether Lessor approves of said Lessee's Plans and, if it does not fully approve of them, the respects in which they are not found acceptable. Within fifteen (15) days after receipt of any such notice of disapproval, Lessee shall cause Lessee's Plans to be revised to correct those matters of which Lessor disapproved and prepare final Lessee's Plans based upon Lessor's notice and resubmit same to Lessor. Upon approval of Lessee's Plans by Lessor, whether in original or revised form, Lessor shall initial and return one set of the approved Lessee's Plans to Lessee and the same shall become incorporated in this Lease by this reference and made a part hereof as Exhibit E-2. Lessee shall not commence any of Lessee's Work until Lessor has approved Lessee's Plans.

(b) Lessor shall notify Lessee not less than fifteen (15) days in advance of the date when Lessee can commence Lessee's Work and Lessee shall commence Lessee's Work not later than the date specified in such notice; provided, however, that if Lessor has not completed Lessor's Work on such date, Lessor may perform Lessor's Work in the Premises concurrently with Lessee's performance of Lessee's Work. Lessee shall complete Lessee's Work in strict accordance with Exhibits E and E-2, install all store and trade fixtures and equipment, obtain and stock its stock in trade, merchandise and inventory, and open for business in the Premises by the Required

Completion Date. In addition, upon such completion Lessee shall obtain a certificate of occupancy for the Premises and deliver a copy thereof to Lessor prior to sixty (60) days after opening for business in the Premises.

3.4. Lessee's Failure To Perform Pre-Opening Obligations.

Because of the difficulty or impossibility of determining Lessor's damages resulting from Lessee's failure to open for business fully fixtured, stocked and staffed on the Commencement Date, including but not limited to damages from loss of Percentage Rent, as hereinafter defined, from Lessee and other lessees, diminished salability, diminished leaseability, diminished mortgageability or diminished economic value of the Shopping Center or Lessor's Tract, if Lessee fails to commence Lessee's Work within the time provided in Section 3.3 of this Lease and diligently proceed therewith, or if Lessee fails to open for business fully fixtured, stocked and staffed on or before the Commencement Date or to perform any of its other pre-opening obligations specified in this Lease, then Lessor may, without notice or demand, in addition to its right to exercise any other rights and remedies provided under this Lease or by law, proceed with Lessor's Work, using any contractor Lessor desires and making any changes or revisions to Lessor's Work required as a result of any delay or failure of Lessee to perform its obligations under this Lease, which changes or revisions shall in any event be made at Lessee's expense, and collect rent in amounts equal to the sum of

- (i) the Annual Base Rent, as hereinafter defined,
- (ii) other additional rent and amounts payable by Lessee under this Lease, and
- (iii) an amount equal to 50% of 1/365 of the Annual Base Rent for each day following the 90th day after the Commencement Date that Lessee has failed to open for business on and after the Commencement Date, which amount shall stand in lieu of the Percentage Rent that might have been earned had Lessee opened in timely fashion.

~~In addition, Lessor, in its sole discretion, may:~~

- ~~(a) perform any of Lessee's Work or other obligations of Lessee under this Lease, at Lessee's expense, preparing such drawings and doing such things as Lessor deems advisable, and collecting from Lessee all of Lessor's expenses pursuant to this Section 3.4, and~~
- ~~(b) either in lieu of, or at any time after proceeding as provided in the foregoing subsection (a), terminate this Lease, in which event Lessor shall have the right to recover, as liquidated damages and not as a penalty, a sum equal to the Annual Base Rent payable for one Lease Year, plus all expenses (including, without limitation, legal fees) incurred by Lessor pursuant to this Section 3.4, plus the cost of any alterations or repairs which Lessor in its sole discretion deems necessary or advisable in order to relet the Premises. All remedies provided in this Lease or by law shall be cumulative and not exclusive.~~

3.5. Date for Commencement of Construction. [Intentionally Omitted]

3.6. Acceptance of Premises.

By occupying the Premises, Lessee shall be deemed to have accepted the same and to have acknowledged that the same complies fully with Lessor's covenants and obligations hereunder.

ARTICLE IV RENT

4.1. Base Rent and Percentage Rent.

Lessee covenants and agrees to pay to Lessor, as rent for the Premises, without notice or demand, at Lessor's Notice Address specified in Section 20.1 of this Lease, the following amounts:

(a)	<u>Lease Year</u>	<u>Rent Per Sq. Ft.</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
	1-4	\$14.00	\$67,200.00	\$5,600.00
	5-8	\$16.00	\$76,800.00	\$6,400.00
	9-12	\$18.00	\$86,400.00	\$7,200.00 7368 ⁰⁰

The above amounts are based upon the actual Store Floor Space determined as set forth in Section 2.1 of this Lease, and are payable in equal monthly installments in advance upon the first day of each and every month beginning with the month including the Commencement Date (which monthly installments shall hereinafter be referred to as ("Monthly Base Rent"). For any Partial Lease Year, the Annual Base Rent shall be that amount set forth herein 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 Lease Year, and the denominator of which is three hundred sixty-five (365).

(b) "Percentage Rent" equal to four percent (4%) of Gross Sales (as defined in Section 4.2 of this Lease) during each calendar year in excess of One Million Five Hundred Sixty Thousand and 00/100 Dollars (\$1,560,000.00). For any partial calendar year, the foregoing base amount of sales used in computing Percentage Rent shall be proportionally reduced by multiplying the same by a fraction having as its numerator the number of days in such partial calendar year and having as its denominator the number "365". "Partial calendar year" shall mean that period beginning on the Commencement Date and ending on December 31 and/or that period beginning on January 1 and ending on the last day of the Lease Term. Notwithstanding anything to the contrary contained herein, Gross Sales during the first ninety (90) days of the Lease Term shall be deleted from the calculation of Percentage Rent in such first year.

(c) Notwithstanding anything to the contrary herein for the purposes of this Lease, in the event the Partial calendar year following the Commencement Date shall be less than six (6) months, then such period shall be added to the next succeeding full calendar year and the total periods so obtained shall be considered for the determination of the initial annual payment of Percentage Rent. The base amount of Gross Sales shall be increased accordingly to reflect the increased period of time for the determination of the initial annual payment of Percentage Rent, but if such Partial calendar year shall be six (6) months or more, said Partial calendar year shall be treated and deemed to be a separate Partial calendar year for which Percentage Rent is payable, and the base amount of Gross Sales shall be decreased accordingly to reflect the decreased period of time for the Partial calendar year.

If the Store Floor Space is redetermined in accordance with Section 2.1 of this Lease, the Annual Base Rent and corresponding monthly Base Rent shall be automatically increased or decreased based upon said redetermination, retroactive to the Commencement Date.

4.2. Gross Sales.

(a) As used in this Lease, "Gross Sales" includes the sale prices of all goods, wares and merchandise sold, and the charges for all services performed by Lessee or its employees or any other person or entity in, at, or from the Premises, for cash, credit or otherwise (and without reserve or deduction for uncollected amounts), including, but not limited to, deposits not refunded to customers, and sales and services (i) where the orders originate in, at or from the Premises, regardless of the location from or to which delivery or performance is made, (ii) pursuant to instructions by mail, telephone, telegraph or other media received or filled at the Premises, and (iii) resulting from transactions originating in, at or from the Premises. The following items shall be excluded from Gross Sales: (i) exchanges of merchandise between Lessee's stores made only for the convenient operation of Lessee's business and not to consummate a sale made in, at or from the Premises; (ii) returns to manufacturers; (iii) refunds to customers on transactions otherwise included in Gross Sales; (iv) sales of fixtures, machinery and equipment after use in Lessee's business in the Premises; and (v) sales, excise or similar taxes imposed by governmental authority and collected from customers and paid out by Lessee; (vi) receipts from vending machines, provided, however that if the owner(s) of any such vending machines shall pay to Lessee a part of the gross receipts or a commission thereon, then the part of such receipts or commission thereon, shall be included in Gross Sales; (vii) sales at cost or discount made to Tenant's employees, (the actual sum paid by employees being included); (viii) customer promotional items, giveaways or other discounts from the menu price. No taxes other than those aforementioned shall be deducted from Gross Sales.

(b) If, during the Lease Term, Lessee directly or indirectly operates, manages or has any interest whatsoever in any other store or business operated within the greater of (i) the city limits of the City of Danville and (ii) a radius of ~~ten (10)~~ **seven (7)** miles of the Shopping Center, for a purpose or business similar to or in competition with all or part of the business permitted in the Premises under Section 6.1 of this Lease, Lessee acknowledges and agrees it will injure Lessor's abilities and rights to receive Percentage Rent. Because such abilities and rights represent a major consideration for this Lease and the construction and operation of the Shopping Center, if Lessee operates, manages or has any interest in any such store or business within such radius, fifty percent (50%) of all sales made from any such other store or business shall be included within the definition of Gross Sales for purposes of determining Percentage Rent under this Lease, as though said sales had actually been made at, in or from the Premises. Lessor shall have all rights of inspection of books and records with respect to such other stores or businesses as it has with respect to the Premises; and Lessee shall furnish to Lessor such reports with respect to Gross Sales from such other stores or businesses as it is required to furnish under this Lease with respect to the Premises. ✓

(c) Lessee shall (i) within fifteen (15) days after the close of each calendar month, deliver to Lessor a statement, certified under oath by Lessee or an officer of Lessee, showing Gross Sales made in such calendar month; and (ii) within ~~thirty (30)~~ **sixty (60)** days after the end of each calendar year or partial calendar year, deliver to Lessor a statement of Gross Sales for such calendar year or partial calendar year. Said statement of Gross Sales for each calendar year and partial calendar year shall be certified to be correctly prepared in accordance with generally accepted accounting principles consistently applied by an independent certified public accountant. If Lessee

rails to comply with the foregoing disclosure requirements Lessor shall have the right to employ an independent certified public accountant to examine Lessee's books and certify the amount of Lessee's Gross Sales for any period, at Lessee's expense, and Lessee shall make its books available for such purposes.

~~(d) On or before the 15th day of each April, July and October during the Lease Term, Lessee shall pay Lessor the amount by which four percent (4%) of Gross Sales of Lessee during the three-month period (or shorter period in a partial calendar year) ending on the last day of the calendar month preceding such payment date exceeds the total Monthly Base Rent that Lessee was obligated to pay for such period. Within thirty (30) sixty (60) days after the end of each calendar year or partial calendar year, Lessee shall pay Lessor an amount equal to four percent (4%) of the amount by which total Gross Sales of Lessee for said calendar year or partial calendar year exceed the base amount of sales figure applicable to said calendar year or partial calendar year as set forth in Section 4.1 (b) of this Lease. adjusted to reflect the aforesaid prepayments thereof, if any, made on or before the 15th day of April, July and October of said calendar year or partial calendar year with respect thereto.~~

~~(e) Within thirty (30) days of delivery to Lessor of the statement of Gross Sales for each calendar year or partial calendar year required by subsection (c) of this Section 4.2, Lessor shall determine whether Lessee has paid Lessor a greater or lesser amount of Percentage Rent than Lessee was obligated to pay for such period. If Lessee has paid Lessor more than the Percentage Rent required to be paid for such period, Lessor shall promptly refund the difference to Lessee, and if Lessee has paid less than the Percentage Rent required to be paid for such period, Lessee shall promptly pay the difference to Lessor.~~

(f) Lessee will preserve for at least three (3) years at Lessee's Notice Address specified in Section 20.1 of this Lease all original books and records containing information pertaining to Gross Sales and such other information respecting Gross Sales as Lessor reasonably requires. Lessor and its agents shall have the right to examine and audit such books and records during business hours. Said right to inspect and audit shall survive the termination of this Lease. If such examination or audit discloses a liability of Lessee for any period for which Lessee has previously paid Percentage Rent and such audit reflects that Lessee has understated its Gross Sales reported to Lessor by more than three (3) percent, Lessee shall promptly pay Lessor the cost of said audit and any deficiency for such period. However, if reported sales are greater than audited sales resulting in an overpayment of Percentage Rent, then Lessee shall be granted a credit for excess Percentage Rent paid for such period.

4.3. Sprinkler System.

Lessor shall provide, install and maintain a sprinkler system in the Premises in accordance with Exhibit D attached hereto, and Lessee shall pay to Lessor, as additional rent therefor, ten cents (10¢) per square foot of Store Floor Space per Lease Year, prorated for Partial Lease Years, in equal monthly installments in advance on the first day of each calendar month during the Lease Term, prorated for partial months.

4.4. Miscellaneous Rent Provisions.

(a) Any rent or other amounts to be paid by Lessee which are not paid when due shall bear interest at the rate of Chase Manhattan Bank's prime rate plus 3%. Lessee shall not be obligated to make payment of any interest under this Section or Article XV of the Lease unless and until Lessor gives to Lessee a ten (10) day prior written notice of any such default. If Lessee fails to cure its default within said ten (10) day period, then, and in such event, such unpaid amounts shall bear interest from the original due date thereof.

(b) If the Commencement Date does not fall on the first day of a calendar month, Lessee shall pay on the Commencement Date a partial Monthly Base Rent, prorated for the period beginning on the Commencement Date and ending on the last day of such calendar month.

~~(c) Lessor has designed the Shopping Center to contain four (4) department store(s). If additional department stores are added to the Shopping Center, the Annual Base Rent and the corresponding Monthly Base Rent for the Premises shall automatically be increased by ten percent (10%) on the date that each additional department store opens for business.~~

(d) All amounts required or provided to be paid by Lessee under this Lease shall be deemed rent, and the failure to pay the same shall be treated in all events as a failure to pay rent. If Lessee fails to pay any such amount on or before the date on which such amount is due hereunder, Lessee shall pay to Lessor five percent (5%) of the amount due, as a late charge and not as a penalty; **provided, however, that such late charge will be assessed only following ten (10) days' prior written notice of the assessment of such late charge, if such rent is not paid within such 10-day notice period; and provided, further, that such 10-day notice will be provided to Lessee only once each calendar year and thereafter during such calendar year such late charge will be assessed automatically, without notice.**

(e) If Lessor pays any monies or incurs any costs or expenses to correct a breach of or default under this Lease by Lessee, or to perform any obligation of Lessee under this Lease, all amounts so paid or incurred shall, upon **ten (10) days written notice from Lessor** to Lessee, be considered additional rent payable by Lessee at the time the next following Monthly Base Rent Installment becomes due and payable, and may be collected as provided in this Lease or by law for the collection of rent.

(f) If Lessor makes available electric service, it shall be made available as provided in Exhibit D, and Lessee agrees to purchase the same from Lessor and pay Lessor for the electrical service (based upon Lessor's determination from time to time of Lessee's consumption of electricity), as additional rent, on the first day of the month in advance (and prorated for partial months), commencing on the Commencement Date, at the same cost as would be charged to Lessee from time to time by the utility company which otherwise would furnish such services to the Premises if it provided such services and metered the same directly to the Premises, but in no event at a cost which is less than the cost Lessor must pay in providing such electrical service.

ARTICLE V COMMON AREAS

5.1 Common Areas.

The term "Common Areas," as used in this Lease, shall include all parking areas, access roads and facilities furnished, made available or maintained by Lessor in or near the Shopping Center, including, if any, employee parking areas, truck ways, driveways, loading docks and areas, delivery areas, multi-story parking facilities, package pickup stations, elevators, escalators, pedestrian sidewalks, the interiors and exteriors of malls (whether or not enclosed), courts, ramps, landscaped areas, retaining walls, stairways, bus stops, first-aid and comfort stations, lighting facilities, and all other areas and improvements provided by Lessor for the general common use of lessees and their customers and department stores in the Shopping Center.

5.2. Management and Control of Common Areas.

(a) The Common Areas shall at all times be subject to the exclusive management and control of Lessor, and Lessor shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all Common Areas. Lessee agrees to comply with all rules and regulations set forth in Exhibit F attached hereto and all reasonable amendments thereto.

(b) Lessor shall have the right from time to time to (i) change the sizes, locations, shapes and arrangements of parking areas and other portions of the Common Areas; provided, however, that the size of parking areas on Lessor's Tract, as shown on Exhibit B attached hereto, shall not be substantially reduced; (ii) restrict parking by employees of Lessee to designated areas; (iii) construct surface, subsurface or elevated parking areas and facilities; (iv) establish and change the level or grade of parking surfaces; (v) enforce parking charges, by meters or otherwise, with appropriate provisions for ticket validating; and (vi) do and perform such other acts in and to the Common Areas (whether parking areas or otherwise) as Lessor in its sole discretion deems advisable for the use thereof by lessees and their customers.

5.3. Use of Common Areas.

(a) Lessee and its business invitees, employees and customers shall have the nonexclusive right, in common with Lessor and all others to whom Lessor has granted or may hereafter grant rights, to use the Common Areas, subject to (i) such reasonable regulations as Lessor may from time to time impose and (ii) the rights of Lessor set forth in this Lease.

(b) Lessee shall pay Lessor, upon demand, ten dollars (\$10.00) for each day on which a car of Lessee, or any concessionaire, employee or agent of Lessee is parked outside any area designated for employee parking by Lessor. Lessee authorizes Lessor to cause any such car to be towed from the Shopping Center and Lessee shall, upon demand by Lessor, reimburse Lessor for the cost thereof, and otherwise indemnify and hold Lessor harmless with respect thereto. Lessee, upon written request therefor from Lessor, shall furnish Lessor with the license numbers and descriptions of cars used by Lessee and its concessionaires, officers and employees.

(c) Lessee shall abide by all rules and regulations pertaining to the Common Areas and cause its concessionaires, officers, employees, agents, customers and invitees to similarly abide thereby. Lessee shall not interfere with the rights of other lessees to use any part of the Common Areas.

(d) Lessor may at any time temporarily close any portion of the Common Areas to make repairs or changes, prevent the acquisition of public rights therein, discourage non-customer parking, or for other reasonable purposes.

5.4. Common Area Expenses.

(a) Lessor shall operate, maintain and repair or cause to be operated, maintained and repaired, the Common Areas, to the extent the same is not done by any department store.

(b) In connection with its operation of the Common Areas, Lessor shall pay or cause to be paid all real estate taxes, assessments and other charges levied or charged against Lessor's Tract or any part thereof, which become due or payable during the Lease Term or which accrue during, or are otherwise attributable to, any period during the Lease Term. Notwithstanding anything to the contrary contained in this Lease, Lessee's obligation to pay such real estate taxes, assessments and other charges shall survive any termination, by lapse of time or otherwise, of this Lease. As

used in this Section 5.4, the term "real estate taxes" shall mean all real estate taxes and public and governmental charges and assessments, including, without limitation, all extraordinary or special assessments, all costs and fees incurred by Lessor in contesting or negotiating with public authorities as to any of the same, and all sewer and other taxes and charges; provided, however, that with respect to any assessment which may be legally paid in installments, only the installments due during the Lease Term, or accruing with respect to the Lease Term, shall be included within the meaning of "real estate taxes" for purposes of this section. The term "real estate taxes" shall not include (i) taxes on machinery, equipment, inventory or other personal property or assets of Lessee, which taxes Lessee agrees to pay without apportionment; (ii) income, franchise, corporate, personal property, capital levy, capital stock, gross receipts, excess profits, transfer, revenue, estate or gift taxes payable by Lessor; and (iii) any other tax, assessment, or levy measured wholly or partly by the payment of rent by Lessee or the receipt of rent by Lessor under this Lease, which taxes Lessee agrees to pay without apportionment.

(c) In connection with its operation of the Common Areas, Lessor shall maintain comprehensive public liability insurance on the Common Areas, with limits of not less than \$1,000,000 for liability for bodily injury, including death and personal injury, for any one occurrence, and not less than \$250,000 against liability for property damage, or in lieu of the foregoing minimum limits, combined single limit insurance coverage in the amount of \$1,000,000. Lessor shall also maintain insurance coverage for fire, extended coverage, vandalism and malicious mischief, insuring all buildings, structures and improvements on Lessor's Tract, including the Premises, all leasehold improvements thereon and appurtenances thereto (excluding Lessee's merchandise, trade fixtures, furnishings, equipment, personal property, any alterations or improvements allowed pursuant to Section 8.2 of this Lease and excluding doors, windows and plate glass), Lessee's Work, (other than wall coverings, floor coverings, carpeting and drapes) defined in Exhibits E and E-2 attached hereto, and Lessor's Work as defined in Exhibit D attached hereto, to the extent of 80% of the full insurable value thereof, with such deductibles as Lessor deems advisable.

(d) "Common Area Expenses" shall mean and include all costs of operating, maintaining and repairing the Common Areas, in a manner deemed by Lessor, in its sole discretion, to be in the best interests of Lessee and other occupants in the Shopping Center, less any contributions received by Lessor from department stores to such costs. Included among the costs and expenses which constitute Common Area Expenses, but not limited thereto, shall be, at the option of Lessor, all costs and expenses of heating, ventilating and air conditioning; operation; repair; repaving; lighting; cleaning; painting; striping; insurance coverage (including but not limited to coverage required by the foregoing Section 5.4(c) and workmen's compensation coverage); snow and ice removal; debris and trash removal; police protection; security and security patrol; fire protection; traffic regulation; inspection, repair, maintenance and depreciation of machinery and equipment used in the operation of the Common Areas, including, but not limited to, heating, ventilating and air conditioning machinery and equipment; installation, maintenance and repair of burglar, fire or security alarm systems on Lessor's Tract, if installed; real estate taxes, assessments and other charges levied or charged against Lessor's Tract or any part thereof; landscaping and shrubbery; utilities; and administrative and overhead costs in an amount equal to 15% of the sum of the foregoing items (other than real estate taxes, for which no administrative charge will be assessed) and all other items included in Common Area Expenses.

5.5. Lessee's Share of Common Area Expenses.

(a) Lessee shall pay Lessor, in addition to all other amounts required to be paid under this Lease, that portion of Common Area Expenses for each month during the Lease Term which bears the same ratio to the total Common Area Expenses as

Lessee's Store Floor Space on the first day of such month (or the Commencement Date if later) bears to the total square footage then rented or occupied by lessees on Lessor's Tract (excluding square footage occupied by department stores); provided, however, in no event will the denominator used in calculating Lessee's share of the Common Area Expenses and taxes be less than seventy percent (70%) of the total gross leasable area of the Shopping Center (excluding department stores). It is understood and agreed that no part of the Common Areas shall be included in total square footage for purposes of the foregoing computation. Notwithstanding anything to the contrary contained in this Lease, Lessee's obligation to pay such Common Area Expenses shall survive any termination, by lapse of time or otherwise, of this Lease. During the first partial year (1995) Lessee's share of Common Area Expenses (not including real estate taxes) shall not exceed \$3.42 per square foot and its share of Common Area Expenses consisting of real estate taxes shall not exceed \$3.49 per square foot (the "Base Rates"). During calendar year 1996 those costs shall not increase more than 5% over the Base Rates, and effective January 1, 1997 both Common Area Expenses and real estate tax reimbursements shall be calculated on a full pro rata basis as defined in the Lease.

(b) Lessee's share of Common Area Expenses shall be paid in monthly installments in amounts estimated from time to time by Lessor, one such installment being due on the first day of each month of the Lease Term. Within thirty (30) days after the end of each calendar year the total Common Area Expenses for such year (and at the end of the Lease Term, the total Common Area Expenses for the period since the end of the immediately next preceding calendar year) shall be exactly determined by Lessor. Upon such determination, Lessee's share paid for said period shall promptly be adjusted by refund by Lessor to Lessee of any excess or payment by Lessee to Lessor of any deficiency. Lessor's records of Common Area Expenses shall be available for inspection during business hours by Lessee at Lessor's Notice Address for six (6) months after the date that Lessor notifies Lessee of Lessee's exact share of Common Area Expenses for each calendar year or part thereof.

ARTICLE VI CONDUCT OF BUSINESS BY LESSEE

6.1. Use of Premises.

The Premises shall be occupied and used by Lessee solely for the purpose of conducting the business of a casual dining restaurant serving food and beverage as is typically served in the majority of Garfield restaurants. Lessee, upon obtaining all licenses and permits, is permitted to sell beer, wine and liquor for on-premise consumption only.

The sale of food for off-premise consumption shall be permitted, provided that such sale does not violate the rights of another Lessee, nor the obligations of Lessor, as contained in any other leases for space at the Shopping Center.

6.2. Occupancy and Dignified Use.

(a) Lessee shall occupy the Premises beginning on the Commencement Date and thereafter continuously and uninterruptedly operate and conduct, in 100% of the Premises, during each hour of the entire Lease Term when Lessee is required under this Lease to be open for business, the business permitted under Section 6.1 of this Lease, fully staffed and fully stocked with merchandise, using only such minor portions of the Premises for storage and office purposes as are reasonably required, and in such manner as shall assure transaction of the maximum volume of business in and at the Premises.

(b) No public or private auction or any fire, "going out of business," bankruptcy or similar sales or auctions shall be conducted in or from the Premises, and the Premises shall be used only in a dignified and ethical manner consistent with the general character and high standards of merchandising of the Shopping Center and not in a disreputable or immoral manner or in violation of national, state or local laws and regulations.

(c) Lessor and Lessee agree that Lessor has relied upon Lessee's occupancy and operation in accordance with the foregoing provisions of this Section 6.2; that because of the difficulty or impossibility of determining damages which Lessor would suffer as a result of Lessee's failure to comply with such provisions, including but not limited to, damages from loss of Percentage Rent from Lessee and other lessees, diminished leaseability and saleability, diminished mortgageability and diminished economic value, Lessor shall be entitled to liquidated damages if it elects to pursue such remedy; and that therefore, for each day that Lessee does not fully comply with the provisions of this Article VI, **then after ten (10) days written notice from Lessor to Lessee**, the Annual Base Rent, prorated on a daily basis, shall be increased by 50%, which sum represents the damages which the parties agree Lessor will suffer due to Lessee's failure to comply. In addition to all other remedies, Lessor shall have the right to obtain specific performance by Lessee upon Lessee's failure to comply with the provisions of this Article VI.

6.3. Name and Hours of Business.

(a) The business permitted under Section 6.1 of this Lease shall be conducted in Lessee's own name or under the name "**Garfields**", unless another name is approved in writing by the Lessor.

(b) Lessee's store shall be and remain open **for business during the usual and regular hours and days that such businesses are customarily open for business in the trade area where the Shopping Center is located and, in addition, during all such days (including Sundays), nights and hours when one (1) or more of the Department Stores adjoining the Shopping Center are open for business.**

6.4. Operation by Lessee.

Lessee covenants and agrees that it will:

- (a) not place or maintain any arcade or video games (unless expressly stated to the contrary in this Lease) in the Premises or place or maintain any merchandise, vending machines or other articles in any vestibule or entry of the Premises or outside the Premises; **provided, however, that Lessee shall have the right to install in the Premises and operate, at its sole cost and expense, coin-operated vending machines or similar devices for the sale of items which Lessee is permitted to sell "over the counter" under the Lease; provided, further that (i) the total area occupied by all vending machines shall not exceed two hundred (200) square feet, (ii) the location, design and type of such vending machines shall be subject to Lessor's prior written approval and (iii) sales from such vending machines shall be calculated in accordance with the provisions of Section 4.2 hereof;**
- (b) store garbage, trash, rubbish and other refuse in ~~rat-proof and insect-proof containers~~ **appropriate** containers inside the Premises, and remove the same frequently and regularly and, if directed by Lessor, by such means and methods and at such times and intervals as are designated by Lessor, all solely at Lessee's cost;

- (c) not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises;
- (d) keep all mechanical equipment free of vibration and noise and in good working order and condition;
- (e) not commit or permit waste or a nuisance upon the Premises;
- (f) not permit or cause odors to emanate or be dispelled or expelled from the Premises;
- (g) not solicit business in the Common Areas nor distribute advertising matter to, in or upon any portion of the Common Areas;
- (h) not permit the loading, unloading, parking or standing of delivery vehicles outside any area designated therefor, nor permit any use of vehicles which will interfere with the use of any portion of the Shopping Center, whether Common Areas or otherwise;
- (i) comply with all applicable laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Williams-Steiger Occupational Safety and Health Act;
- (j) light the show windows of the Premises and all signs each night of the year not less than one hour after the permitted closing time for Premises;
- (k) operate the Premises in such a way as to not waste electricity, water, or heating or cooling effect;
- (l) not permit any noxious, toxic or corrosive fuel or gas, dust, direct or fly ash on the Premises;
- (m) not place a load on any floor in the Shopping Center which exceeds the load carrying capacity designated for such floor; and
- (n) not engage in the food or food concession business on the Premises, unless expressly stated to the contrary in this Lease.

6.5. Displays.

Lessee shall install and maintain at all times, subject to the other provisions of this Lease, merchandise displays in any show windows on the Premises. The arrangement, style, color and general appearance of such displays and of displays in the interior of the Premises, including, but not limited to, window displays, advertising matter, signs, merchandise and store fixtures, shall be maintained in keeping with the character and standards of the Shopping Center.

6.6. Restriction on Storage.

Lessee shall have and store in the Premises only merchandise which Lessee intends to sell at, in or from the Premises.

ARTICLE VII MAINTENANCE OF PREMISES

7.1. Lessor's Maintenance Responsibilities.

(a) Throughout the Lease Term, Lessor shall keep or cause to be kept the foundations, roof and structural portions of the walls of the Premises in good order, repair and condition, except for damage thereto due to the acts or omissions of Lessee, its employees or invitees. Lessor shall commence required repairs as soon as reasonably practicable after receiving written notice from Lessee of the need therefor. This Section 7.1 shall not apply to damage or destruction by fire, other casualty, condemnation or eminent domain, in which events the obligations of Lessor shall be controlled by Articles IX and XIV of this Lease, as appropriate. Except as provided in this Section 7.1, Lessor shall not be obligated to make repairs, replacements or improvements of any kind upon the Premises (including any alterations or improvements allowed pursuant to Section 8.2 of this Lease), or to any equipment, merchandise, stock in trade, facilities or fixtures therein, all of which shall be Lessee's responsibility.

(b) Lessor shall not be liable to Lessee in damages or otherwise if any utilities or services, whether or not furnished by Lessor hereunder, are interrupted or terminated because of repairs, installation or improvements, or any cause beyond Lessor's reasonable control, nor shall any such interruption or termination relieve Lessee of any of its obligations under this Lease.

7.2. Lessee's Maintenance Responsibilities.

(a) Lessee shall at all times keep the Premises, including all entrances, vestibules, partitions, windows and window frames and moldings, glass, doors, door openers, fixtures, equipment and appurtenances thereto (including lighting, heating, electrical, plumbing, ventilating and air conditioning fixtures and systems and other mechanical equipment and appurtenances) and all parts of the Premises, and parts of Lessee's Work not on the Premises, not required by Section 7.1 of this Lease to be maintained by Lessor, in good condition and repair and clean, orderly, sanitary and safe (including, but not limited to, doing such things as are necessary to cause the Premises to comply with applicable laws, ordinances, rules, regulations and orders of governmental and public bodies and agencies, such as, but not limited to, the Williams-Steiger Occupational Safety and Health Act). Lessee shall give Lessor prompt written notice, pursuant to Section 20.1 of this Lease, of any accident, casualty, damage or other occurrence in, to or affecting the Premises or the Common Areas, of which Lessee has knowledge.

(b) If replacement of equipment, fixtures or appurtenances thereto becomes necessary, Lessee shall replace the same with items and components of the same quality, and repair all damages done in or by such replacement.

(c) If Lessee fails to perform its obligations under this Section 7.2, Lessor without notice may, but shall not be obligated to, perform such obligations or other work required as a result of Lessee's acts, actions or omissions, and add the cost of such performance, as additional rent, to the next installment of Monthly Base Rent due under this Lease.

ARTICLE VIII FIXTURES, EQUIPMENT, ALTERATIONS AND IMPROVEMENTS

8.1. Fixtures and Equipment.

(a) All fixtures and equipment installed by Lessee shall be new or completely reconditioned.

(b) Lessee shall not install any fixtures or equipment which can exceed the capacity of any utility facilities serving the Premises. Any additional utility facilities required in connection with any equipment installed by Lessee shall be installed at Lessee's expense and shall comply with all applicable code requirements and with plans and specifications which are approved in writing by Lessor. Lessee shall be solely liable for and promptly pay all charges for use or consumption of sewer, electricity, water and all other utility services from and after the earlier of (i) the taking of physical possession of the Premises by Lessee, or (ii) the Commencement Date.

8.2. Alterations and Improvements.

(a) During the Lease Term, Lessee shall have the right to make, at its own expense, such alterations, changes, improvements and additions (including painting and decorating) to the Premises as Lessee may desire, provided that such work when completed will not impair the structural integrity or soundness of any building, and further provided that if any of Lessee's proposed work would substantially change the exterior appearance of any building or any part of the interior of the Premises visible from the exterior, including, but not limited to, the location of entrances and windows, Lessee shall, before undertaking such work, obtain Lessor's consent to the performance thereof, which consent shall rest in Lessor's sole discretion. Lessee shall promptly remove any paint, decoration, alteration, change, improvement or addition applied or installed without Lessor's approval and restore the Premises to a condition acceptable to Lessor or take such other action with respect thereto as directed by Lessor.

(b) All alterations, changes, improvements and additions, including leasehold improvements, made by Lessee, or made by Lessor on Lessee's behalf, whether or not part of Lessee's Work and whether or not paid for wholly or partly by Lessor, shall remain Lessee's property for the Lease Term. Any alterations, changes, additions and improvements, including, without limitation, Lessee's Work, shall be considered part of the Premises, shall not be removed at or prior to the end of the Lease Term without Lessor's written consent (unless Lessor requests Lessee to remove same), and immediately upon the termination of this Lease shall become Lessor's property. None of such alterations, changes, improvements and additions shall be subject to any charge, claim, encumbrance, lien or security interest (except in favor of Lessor) in connection with the financing, purchase, installation, maintenance, repair or replacement of same and Lessee shall have no right to assign, convey, sell or transfer same. Any shelving, decorations, equipment, trade fixtures or personal property not removed by Lessee from the Premises prior to the end of the Lease Term shall become Lessor's property and Lessee shall repair or pay for the repair of any damage done to the Premises resulting from the removal of same, whether prior or subsequent to the end of the Lease Term. Lessee shall not, however, be required to repaint or redecorate the Premises.

8.3. Signs, Awnings and Canopies.

Lessee shall not place or permit on any exterior door or window or any wall of the Premises or otherwise, any sign, awning, canopy, advertising matter, decoration, lettering or other thing of any kind which does not comply with the Sign Criteria set forth in Exhibit G attached hereto, and which has not been approved by Lessor, in its sole discretion. Lessee agrees to obtain such approval prior to such time as Lessee incurs any material expense in connection therewith. **Notwithstanding the aforesaid, Lessor covenants to not unreasonably withhold or delay its consent for Garfield's typical signage, awnings, logos or neon.** In the event Lessor erects a pylon or monument sign on the Shopping Center, Lessee shall be given an opportunity, but not

an obligation, to have its name placed on said pylon or monument sign at Lessee's expense.

Notwithstanding anything to the contrary herein, subject to code requirements of the governmental authority having jurisdiction over the Shopping Center and subject to the respective provisions and requirements of the same and further subject to Lessor's prior written approval of the size, type, design and location of the same, Lessee shall have the right at its sole cost and expense to furnish and install one (1) sign on the exterior of the mall building in proximity to the Lessee's exterior customer entrance.

Lessee shall be permitted to install an awning at its sole cost and expense, subject to Lessor's prior written approval of the size, type, design and location of the same.

Lessee shall have the right subject to Lessor's prior written approval of the size, type, design and location to display its Trade Name and logo on the doors and windows of the Premises.

Notwithstanding anything to the contrary herein, beer and liquor signs with exposed neon lights shall be permitted within the Premises, so long as the same are of professional quality.

8.4. Mechanic's Liens.

Lessee shall promptly pay all contractors, mechanics and materialmen, and not permit or suffer any lien to be filed against or attach to the Shopping Center or any part thereof. If any mechanic's, materialman's or other similar lien shall at any time be filed against or attach to the Shopping Center or any part thereof on account of any materials furnished or claimed to have been furnished, or on account of any work, labor or services performed or claimed to have been performed, for or at the direction of Lessee or anyone holding or occupying the Premises through or under Lessee, Lessee shall, at its sole cost and expense, promptly cause the same to be discharged of record by payment, bond, order of court, or otherwise. Lessor shall have the right to require Lessee to furnish a bond or other indemnity, in form and substance satisfactory to Lessor, prior to the commencement of any work by Lessee on the Premises, or if any lien attaches or is claimed, to require such a bond or indemnity in addition to all other remedies. Lessor shall have the further right, without notice to Lessee, to cause the removal of any such lien (but Lessor shall have no obligation to do so) and to collect from Lessee all of Lessor's costs and expenses, including, without limitation, attorneys' fees, of removing same.

ARTICLE IX DAMAGE TO OR DESTRUCTION OF THE PREMISES

9.1. Lessor's Obligation to Restore.

If, prior to or during the Lease Term, the Premises, the appurtenances thereto or the Common Areas are totally or partially damaged or destroyed in a manner which renders the Premises untenable for their accustomed uses, which damage or destruction is by fire or other casualty insured under the coverage required by Section 5.4(c) of this Lease, Lessor shall promptly remove the resulting debris and rebuild, replace and repair the same to substantially the condition as existed immediately prior to the occurrence of such casualty; provided, however, that Lessor shall not be obligated to rebuild, replace or repair stock in trade, fixtures, furniture, furnishings, carpeting, floor coverings, wall coverings, drapes, equipment and any alterations or improvements made pursuant to Section 8.2 of this Lease. From the date of such

casualty until the Premises are rebuilt, replaced, or repaired, the Monthly Base Rent payable under Section 4.1 of this Lease as well as **Common Area Expenses and additional rent as provided herein** shall abate in that proportion which the part of the Premises so damaged or destroyed bears to the Store Floor Space. In the event that Lessee shall be paying Percentage Rent based upon the amount of Gross Sales made upon the Premises, the base amount of sales figure(s) set forth in Section 4.1 of this Lease to be used in computing such Percentage Rent shall be reduced from the date of such casualty until the Premises are rebuilt, replaced or repaired in that proportion which the part of the Premises so damaged or destroyed bears to the Store Floor Space. **Lessee shall not be obligated to resume paying rent and charges until it re-opens the Premises in accordance with the provisions of Section 9.3.**

9.2. Limitations on Lessor's Obligation to Restore.

(a) Notwithstanding the foregoing provisions, Lessor shall have no obligations under the foregoing Section 9.1 if such casualty is caused directly or indirectly by the **willful misconduct or gross negligence** of Lessee or its agents or employees, in which event Lessee shall have the obligation to restore the entire Premises to the same condition as existed immediately prior to such casualty and no portion of the Monthly Base Rent and other payments payable hereunder shall abate. Lessee agrees that during any period of rebuilding, replacement or repair of the Premises under Section 9.1 or Section 9.2 Lessee will continue the operation of its business within the Premises to the extent practicable.

(b) Lessor's obligations to rebuild, replace and repair under the foregoing Section 9.1 shall be limited to the amount of the insurance proceeds recovered as a result of such damage; provided, however, that if the Premises are (i) substantially damaged, destroyed or rendered untenable for their accustomed uses by a casualty not covered by Lessor's insurance, or (ii) damaged, destroyed or rendered untenable for their accustomed uses by a casualty covered by Lessor's insurance, during the last five years of the Lease Term and the cost to rebuild, replace and repair exceeds 50% of the cost to replace the entire Premises, then Lessor shall have the right to terminate this Lease, effective as of the date of such casualty, by giving Lessee written notice of such termination within sixty (60) days after the occurrence of such casualty. Upon such termination, Lessor shall promptly refund to Lessee any rent theretofore paid in advance which was not earned as of the date of such casualty. In the event Lessor elects not to terminate this Lease pursuant to this Section 9.2(b), Lessor shall rebuild, replace and repair the Premises in accordance with Section 9.1 of this Lease.

9.3. Lessee's Obligation to Restore.

In the event that Lessor rebuilds, replaces or repairs the Premises in accordance with this Article IX, Lessee shall promptly rebuild, replace or repair its stock in trade, fixtures, furnishings, furniture, carpeting, wall coverings, floor coverings, drapes and equipment to the same condition as existed immediately prior to such casualty, and if Lessee has closed its business, Lessee shall promptly reopen for business upon the completion of such repairs within ~~sixty (60)~~ **ninety (90)** days after the time that Lessor substantially completes such rebuilding, replacement or repair of the Premises. The immediately preceding sentence shall not be construed to mean or imply that Lessee shall have any right to close its business in the event of any damage described in this Article.

**ARTICLE X
MERCHANTS' ASSOCIATION AND ADVERTISING**

10.1. Merchants' Association.

(a) Lessee shall, upon formation of a Merchants' Association (the "Association") or upon its execution hereof if the Association has already been formed, in which merchants in the Shopping Center are members, promptly become and remain such a member during the entire Lease Term, and, in order to create and maintain a fund for the promotion and welfare of the Shopping Center, shall pay the Association such dues and assessments during each calendar year as ~~set forth herein may be fixed and determined from time to time by the Association in accordance with its bylaws (hereinafter referred to as the "Fixed Assessment") payable in equal monthly installments on the first day of each and every month of the Lease Term.~~ **The Fixed Assessment shall be One Dollar (\$1.00) per square foot of Store Floor Space or Four Thousand Eight Hundred and 00/100 Dollars (\$4,800.00) per annum (based on the actual Store Floor Space determined as set forth in Section 2.1 of this Lease) payable in equal monthly installments of Four Hundred and 00/100 Dollars (\$400.00), in advance upon the first day of each and every month beginning with the month including the Commencement Date (which monthly installments shall hereinafter be referred to as ("Monthly Fixed Assessment"). The Fixed Assessment shall increase for the second full Calendar Year and for each Calendar Year thereafter by a percentage equal to the percentage increase in the U.S. Department of Labor Consumer Price Index for all urban consumers, U.S. City Average (all items 1982-1984 = 100), or a comparable index if the above index is not then available, from the first day of the term hereof to the first day of each Calendar Year starting with the second full Calendar Year under this Lease. During the second Lease Year, the annual increase in the Fixed Assessment shall not exceed 105% of the Fixed Assessment for the previous Lease Year. Thereafter, no cap or maximum shall be imposed on the annual increases to the Fixed Assessment. Lessor shall contribute an amount equal to one-fourth (1/4) of the funds collected from all members of the Association during each calendar year, which sum may be paid in whole or in part by Lessor's provision, at its option, of the services of a promotional director or other person under Lessor's exclusive control to help organize and implement a program for the Association. Any overpayment or underpayment of Lessor's contribution shall be adjusted annually. In the event of a partial calendar year (as defined in Section 1.1 of this Lease) during the Lease Term, Lessee's obligations under this Section 10.1 shall be prorated for such partial calendar year. In addition, the Association may adopt special assessments which shall be binding upon its members.**

(b) Lessee shall abide by the by-laws, rules and regulations of the Association, and membership in the Association shall be restricted to occupants of the Shopping Center and Lessor.

(c) **Lessee is responsible for the cost of the advertising required by the Lease.** Lessee shall place one-quarter page tab advertisements in all special Association newspaper sections, tabloids and other advertisements and participate and cooperate in all special sales and promotions sponsored by the Association **not to exceed four (4) placements per year.** No advertising outside this Lease shall diminish Lessee's obligations under this Article X or elsewhere under this Lease. The failure of any other Lessee or any department store to contribute to or be a member of the Association shall not affect Lessee's obligations under Article X.

10.2. Advertising Expenditures.

Lessee shall, within ~~thirty (30)~~ **sixty (60)** days after the end of each calendar year or partial calendar year, furnish to Lessor a statement showing the amounts spent by Lessee on "white space" advertising or other advertising media during said calendar year or partial calendar year. Each such statement shall be made a part of and prepared and certified in accordance with the provisions for the statement of Gross Sales for each calendar year or partial calendar year required to be furnished by Lessee under Section 4.2(c) of this Lease. If Lessee's statement shows that Lessee has expended for such advertising, during the preceding calendar year or partial calendar

year, less than ~~three percent (3%)~~ **two percent (2%)** of its Gross Sales for said calendar year or partial calendar year, Lessee shall, within thirty (30) days after the required delivery date of its statement, pay to the Association the difference between the amount actually expended for such advertising and ~~three percent (3%)~~ **two percent (2%)** of such Gross Sales. Dues or other payments payable by Lessee to the Association shall not be deemed an amount expended for advertising within the meaning of this Section 10.2. All expenditures made by Lessee for advertising in connection with Lessee's other stores, if any, within a fifteen-mile radius from the nearest perimeter boundary of the Shopping Center, may be deemed an amount expended for advertising by Lessee within the meaning of this Section 10.2, provided that such advertising in all instances includes the Premises and encompasses or is distributed to the geographical trade area in which the Shopping Center is located.

ARTICLE XI ASSIGNMENT, SUBLETTING AND LICENSING

11.1. Lessor's Consent Required.

(a) Lessee shall not sell, assign, mortgage, pledge or in any manner transfer this Lease or any interest therein, nor sublet all or any part of the Premises, nor license concessions nor lease departments therein, without Lessor's prior written consent. Consent by Lessor to any assignment, subletting or licensing shall not waive the necessity for consent to any subsequent assignment, subletting or licensing. The prohibition contained in this Section 11.1(a) shall include a prohibition against any subletting or assignment by operation of law.

(b) If this Lease is assigned or the Premises or any part thereof are sublet or licensed to or occupied by any person or entity other than Lessee, Lessor may collect rent from the assignee, sublessee, licensee or occupant and apply the same to the rent reserved by this Lease, but no such assignment, subletting, licensing, occupancy or collection of rent shall be deemed a waiver of Lessee's obligations under this Lease or the acceptance of the assignee, sublessee, licensee or occupant as "Lessee," or a release of Lessee from the performance by Lessee of any covenants and agreements on the part of Lessee contained in this Lease. Notwithstanding any assignment, subletting or licensing, Lessee shall remain fully liable for the performance of all terms, covenants and provisions of this Lease.

11.2 Lessor's Consent Not Required. So long as Lessee is not in default under this Lease, Lessee shall have the right, without the prior written consent of Lessor, to assign or transfer this Lease or sublet any portion of the Premises (herein an "Occupancy Transaction"), but not encumber the leasehold, with a corporation which: (a) is Lessee's parent organization; or (b) is a wholly-owned subsidiary of Lessee; or (c) is a corporation of which Lessee owns in excess of fifty percent (50%) of the outstanding capital stock; or (d) as a result of a consolidation or merger with Lessee and/or Lessee's parent corporation shall own all the capital stock of Lessee or Lessee's parent corporation; or (e) is an entity which purchases all or substantially all of Lessee's assets provided such acquisition includes at least five (5) stores operating under the trade name permitted under this Lease. Any Occupancy Transaction pursuant to (a), (b), (c), (d) or (e) above shall be subject to the following conditions: (1) Lessee shall remain fully liable during the unexpired Lease Term; (2) any such Occupancy Transaction shall be subject to all of the terms, covenants and conditions of this Lease and any such transferee shall expressly assume for the benefit of Lessor the obligations of Lessee under this Lease by a document prepared by Lessor; (3) the resulting entity pursuant to (d) and (e) above shall have both a net worth and net current assets equal to or greater than the greater of Lessee's net worth and net current assets at the date of Lessee's request for consent or Lessee's net worth and net current assets as of the Commencement Date; (4) Lessee shall give Lessor notice

of such Occupancy Transaction at least twenty (20) days prior to its effective date (which notice shall include all documentation necessary to verify the conditions contained in this paragraph); and (5) Lessee shall reimburse Lessor for Lessor's reasonable documentation fees incurred in conjunction with the processing and preparation of documentation for any such Occupancy Transaction, not to exceed Seven Hundred Dollars (\$700.00) per occurrence.

ARTICLE XII DECLARATION OF LEASE, SUBORDINATION AND ATTORNMENT

12.1. Declaration of Lease.

Within ten (10) days after Lessor's request Lessee shall deliver, in recordable form, an executed declaration to any person designated by Lessor (a) ratifying this Lease; (b) stating the Commencement Date and termination date of this Lease; and (c) certifying (i) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be specifically described), (ii) that all conditions to be performed by Lessor under this Lease have been satisfied (stating exceptions, if any), (iii) that no defenses or offsets against the enforcement of this Lease by Lessor exist (excepting those claims specifically described), (iv) the amount of advance rent, if any, paid by Lessee, (v) the date to which rent has been paid, (vi) the amount of security deposited with Lessor, and (vii) such other information as Lessor reasonably requires. Persons receiving such statements shall be entitled to rely upon them.

12.2. Subordination to Mortgage.

Upon Lessor's request, Lessee will execute and deliver such documents as are requested by an existing or prospective mortgagee or security holder to subordinate Lessee's rights under this Lease to the liens of any mortgages or any lien resulting from any method of financing or refinancing, including all renewals, modifications, replacements, consolidations and extensions thereof (hereinafter collectively referred to as "mortgage") now or hereafter existing against all or any part of Lessor's Tract, provided that the mortgagee or security holder agrees in writing that if Lessor defaults under the mortgage, said mortgagee or security holder shall not disturb Lessee's possession as long as Lessee is not in default under this Lease. If Lessee fails to execute and deliver any such document requested by a mortgagee or security holder to effect such subordination, Lessor is hereby appointed as Lessee's duly authorized irrevocable agent and attorney-in-fact to execute such documents and take such other steps as are necessary to effect such subordination on behalf of Lessee.

12.3 Subordination to Operating Agreements.

This Lease is subject and subordinate to one or more construction, operation, reciprocal easement or similar agreements (hereinafter referred to as "Operating Agreements") entered into or hereafter to be entered into between Lessor and other owners or lessees of real estate (including but not limited to owners and operators of department stores) within or near the Shopping Center (which Operating Agreements have been or will be recorded in the official records of the County wherein the Shopping Center is located) and to any and all easements and easement agreements which may be or have been entered into with or granted to any persons heretofore or hereafter, whether such persons are located within or upon the Shopping Center or not, and Lessee shall execute such instruments as Lessor requests to evidence such subordination.

12.4. Attornment.

Lessee shall, in the event of a sale or assignment of Lessor's interest in the Premises or the building in which the Premises are located or this Lease or Lessor's Tract, or in the event that the Premises or such building come into the hands of a mortgagee, ground lessor or any other person, whether because of a mortgage foreclosure, exercise of a power of sale under a mortgage, termination of the ground lease, or otherwise, attorn to the purchaser or such mortgagee or other person and recognize the same as Lessor hereunder. At Lessor's request, Lessee shall execute any attornment agreement required by any such mortgagee, ground lessor or other person to be executed, containing such provisions as such mortgagee, ground lessor or other person requires.

12.5. Lessee's Failure to Execute Instruments.

Lessee's failure to execute instruments or certificates provided for in this Article XII within fifteen (15) days after the mailing by Lessor of a written request therefor shall be a default under this Lease.

ARTICLE XIII INSURANCE

13.1. Coverage to be Maintained by Lessee.

(a) Lessee agrees to maintain comprehensive public liability insurance on the Premises during the Lease Term hereof, naming the Lessor as an additional named insured, with such terms and companies as are satisfactory to Lessor, with limits of not less than \$1,500,000 for bodily injury, including death and personal injury, for any one occurrence, and not less than \$500,000 for property damage, or, in lieu of the foregoing minimum limits, combined single limit insurance coverage of \$1,500,000. Such insurance shall include contractual liability coverage recognizing this Lease, and products and/or completed operations liability coverage, and shall provide that both Lessor and Lessee shall be given a minimum of ten (10) days' prior written notice by the insurance company of cancellation, termination or change of or in such coverage.

(b) Lessee also agrees to maintain (i) business interruption insurance and (ii) insurance against fire and such other risks as are from time to time included in standard fire and extended coverage policies, for **eighty percent (80%)** of the full replacement value of all of Lessee's merchandise, trade fixtures, furnishings, wall coverings, floor coverings, carpeting, drapes, equipment, all items of personal property of Lessee located on or within the Premises and any alterations or improvements allowed pursuant to Section 8.2 of this Lease, **with reasonable deductible amounts for such coverages**. Such insurance shall provide that Lessor shall be given a minimum of ~~thirty (30)~~ **ten (10)** days' prior written notice by the insurance company of cancellation, termination or change of or in such coverage.

(c) Prior to the commencement of Lessee's occupancy of the Premises, Lessee shall provide Lessor with copies of policies or certificates evidencing that the insurance coverage required by this Section 13.1 is in full force and effect and stating the terms thereof. Renewals of said insurance coverage shall be delivered to Lessor at least thirty (30) days prior to the expiration of the respective policy terms. The proceeds to Lessee of such insurance shall be applied for the repair or replacement of Lessee's merchandise, fixtures and other property situated within the Premises and to the repair and replacement of the improvements and alterations made by Lessee to the Premises. The minimum limits of the comprehensive public liability policy of insurance shall in no way limit or diminish Lessee's liability under Section 13.5 of this Lease and shall be subject to increase at any time, and from time to time, after the

commencement of the fifth (5th) year of the Lease Term, if Lessor in the exercise of its reasonable judgment shall deem such an increase necessary for its adequate protection. Within thirty (30) days after demand for such an increase by Lessor, Lessee shall furnish Lessor with evidence of compliance with such demand.

13.2. Mutual Waiver of Subrogation Rights.

Lessor and Lessee and all parties claiming under each of them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance coverage on the Premises or in connection with property on or activities conducted on the Premises, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof; provided, however, that such release shall not operate in any case where the effect is to invalidate or increase the cost of such insurance coverage, and further provided that in the case of increased cost, the other party shall have the right, within thirty (30) days after written notice pursuant to Section 20.1 of this Lease from the party whose cost is increased, to pay such increased cost, thereby keeping this release and waiver in full force and effect.

13.3. Waiver.

Except for the gross negligence or willful misconduct of Lessor, its agents and employees, Lessor and its agents and employees, shall not be liable for, and Lessee waives all claims for, damages to persons, property or otherwise, including, but not limited to, consequential damages, sustained by Lessee or any person claiming through Lessee resulting from any accident or occurrence in or upon any portion of the Shopping Center including, but not limited to, claims for damage resulting from: (a) any equipment or appurtenances becoming out of repair; (b) Lessor's failure to keep any part of the Shopping Center in repair; (c) injury done or caused by wind, water, or other natural element; (d) any defect in or failure of plumbing or heating or air conditioning equipment, electric wiring, gas or water, and steam pipes, stairs, porches, railings or walks, or the installation or operation thereof; (e) broken glass; (f) the backing up of any sewer pipe or downspout; (g) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Shopping Center or Premises; (h) the escape of steam or hot water; (i) water, snow or ice upon the Premises; (j) the falling of any fixture, plaster or stucco; (k) damage to or loss by theft or otherwise of property of Lessee or others; (l) acts or omissions of persons in the Premises, other lessees in the Shopping Center, occupants of nearby properties, or any other person; and (m) acts or omissions of owners of adjacent or contiguous property, or of Lessor, its agents or employees. All property of Lessee kept in the Premises shall be so kept at Lessee's risk only and Lessee shall indemnify and hold Lessor harmless from claims arising out of damage to the same, including subrogation claims by Lessee's insurance carrier.

13.4. Effects of Lessee's Operations.

(a) Lessee will not do or suffer to be done anything which will contravene Lessor's insurance policies or prevent Lessor from procuring such policies in amounts and from companies selected by Lessor in its sole discretion. If anything done, omitted to be done or suffered to be done by Lessee in, upon or about the Premises shall cause the rates of any insurance effected or carried by Lessor on the Premises or any other property to be increased beyond the regular rates from time to time applicable to the Premises for use for the purpose permitted under this Lease, or such other property for the use or uses made thereof, Lessee shall promptly pay the amount of such increase upon Lessor's demand, and Lessor shall have the right to correct any condition causing such increase, at Lessee's expense.

(b) In the event that this Lease so permits and Lessee engages in the preparation of food or packaged foods or engages in the use, sale or storage of inflammable or combustible material, Lessee shall install chemical extinguishing devices (such as ansul) approved by Underwriters Laboratories and Factory Mutual, and the installation thereof shall be approved by the local Insurance Service Office or its equivalent. Lessee shall keep such devices properly serviced and maintained as required by such organizations. If gas is used in the Premises, Lessee shall install both manual and automatic gas cut-off devices.

13.5. Indemnification.

(a) Lessee shall indemnify and hold Lessor harmless from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action of any and every kind and nature (including, without limitation, attorneys' fees) arising or growing out of or in any way connected with Lessee's use, occupancy, management or control of the Premises or Lessee's operations, conduct or activities in the Shopping Center, including, without limitation, all costs expended or incurred by Lessor in connection with the enforcement of any term or provision of this Lease and the collection of any amount due under this Lease.

(b) Lessor hereby indemnifies and agrees to hold Lessee harmless from and against any and all claims which either (i) arise from or are in connection with the possession, use, occupation, management, repair, security, maintenance or control of the Common Areas or any portion thereof; and (ii) arise from, or are in connection with any act or omission of Lessor constituting gross negligence or willful misconduct in connection with the Common Areas. Lessor shall defend any claims which may be brought against Lessee with respect to the foregoing or in which Lessee may be impleaded, or in lieu thereof pay Lessee's reasonable attorneys' fees. Lessor shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against Lessee in connection with the foregoing.

ARTICLE XIV EMINENT DOMAIN

14.1. Condemnation.

(a) If 10% or more of the Premises or 15% or more of the Shopping Center shall be acquired or condemned by right of eminent domain for any public or quasi-public use or purpose, or if an Operating Agreement is terminated as a result of such an acquisition or condemnation, then Lessor shall have the option of terminating this Lease by giving notice to Lessee of its election to do so on or before the date which is six (6) months after Lessor shall have been deprived of possession of the acquired or condemned property, and in that event rentals shall be apportioned and adjusted as of the date of termination.

(b) If this Lease shall not be terminated pursuant to the preceding subsection (a), then it shall continue in full force and effect, and Lessor shall within a reasonable time after possession is physically taken (subject to delays due to shortage of labor, materials or equipment, labor difficulties, breakdown of equipment, government restrictions, fires, other casualties or other causes beyond the reasonable control of Lessor) repair or rebuild the remaining portion of the Premises for Lessee's occupancy. In that event a just proportion of the Annual Base Rent, **Common Area Expenses and additional rent** shall be abated, according to the nature and extent of the injury to the Premises, until such repairs or rebuilding are completed, and upon such completion, the Annual Base Rent and corresponding Monthly Base Rent, **Common Area Expenses and additional rent** shall be adjusted in accordance with a redetermination of Store Floor Space pursuant to Section 2.1 of this Lease. In the event that Lessee shall be

paying Percentage Rent based upon the amount of Gross Sales made upon the Premises, the base amount of sales figure(s) set forth in Section 4.1 of this Lease to be used in computing such Percentage Rent shall be reduced as of the date of the taking in that proportion which the part of the Premises so taken bears to the Store Floor Space prior to said acquisition or condemnation.

14.2. Damages.

Lessor reserves, and Lessee assigns to Lessor, all rights to damages or awards on account of any acquisition or condemnation by right of eminent domain or any act of any public or quasi-public authority for which damages or awards are payable (excluding damages or awards payable for trade fixtures which are not otherwise Lessor's property pursuant to this Lease and installed by Lessee at its own cost and expense, which are not part of the realty). Lessee shall execute such instruments of assignment as Lessor requires, join with Lessor in any action for the recovery of damages or awards if requested to do so by Lessor, and turn over to Lessor any damages or awards recovered in any proceeding. If Lessee fails to execute such instruments as are required by Lessor, or undertake such other actions as are requested by Lessor, Lessor shall be deemed the duly appointed and authorized irrevocable agent and attorney-in-fact of Lessee to execute such instruments and undertake such actions on behalf of Lessee.

ARTICLE XV DEFAULT BY LESSEE

15.1. Events of Default.

Each of the following shall be considered for all purposes to be an "Event of Default" under, and a breach of, this Lease: (a) Lessee's failure to pay any rent or other amount when due hereunder; (b) Lessee's failure to perform or observe any other of the terms, provisions, conditions, covenants and agreements of this Lease for more than ten (10) days after provision of written notice of such failure by Lessor pursuant to Section 20.1 of this Lease; (c) Lessor's determination that Lessee has submitted any false report required to be furnished hereunder; (d) any act or omission of Lessee upon or in connection with the Premises or the construction of any part thereof which directly or indirectly interferes in any way with, or results in, a work stoppage in connection with construction of any part of the Shopping Center or any other lessee's space; (e) bankruptcy or insolvency of Lessee or the filing by or against Lessee of a petition in bankruptcy or for reorganization or arrangement or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or an assignment by Lessee for the benefit of creditors; (f) Lessee's abandonment or vacation of the Premises, or failure to do business during the approved hours as set forth in Section 6.3 of this Lease; (g) execution upon or attachment of any improvements on the Premises or any property of Lessee; or (h) acquisition of any interest in the Premises by any person other than expressly permitted under this Lease.

15.2. Lessor's Right to Terminate and Re-Enter.

Upon the occurrence of any Event of Default, and without grace period, demand or notice (the same being hereby waived by Lessee) other than as expressly provided in Section 15.1, Lessor, in addition to all other rights or remedies it may have, shall have the right thereupon or at any time thereafter to terminate this Lease by giving notice to Lessee stating the date upon which such termination shall be effective, and shall have the right, either before or after any such termination, and whether or not notice to terminate this Lease has been given to Lessee, to re-enter and take possession of the Premises, remove all persons and property from the Premises, store such property at Lessee's expense, and sell such property if necessary to satisfy any deficiency in

payments by Lessee as required hereunder, all without notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby. Nothing herein shall be construed to require Lessor to give any notice before exercising any of its rights and remedies provided for in Section 3.4 of this Lease. Notwithstanding anything to the contrary herein contained, if Lessee commits any default hereunder for or precedent to which or with respect to which notice is herein required, and commits any other default within twelve (12) months thereafter, no notice shall thereafter be required to be given by Lessor as to or precedent to any such subsequent default during such twelve (12) month period (as Lessee hereby waives the same) before exercising any or all remedies available to Lessor.

15.3. Lessor's Right to Relet.

(a) If Lessor re-enters pursuant to the foregoing Section 15.2, or if Lessor takes possession pursuant to legal proceedings or otherwise, it may either terminate this Lease or it may, from time to time, without terminating this Lease, make such alterations and repairs as it deems advisable to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may extend beyond the Lease Term) and at such rentals and upon such other terms and conditions as Lessor in its sole discretion deems advisable.

(b) Upon each such reletting all rentals received by Lessor therefrom shall be applied, first, to any indebtedness other than rent due hereunder from Lessee to Lessor; second, to pay any costs of alterations and repairs made in accordance with the foregoing subsection (a) of this Section 15.3; third to rent due under this Lease. The residue, if any, shall be held by Lessor and applied in payment of future rent as it becomes due under this Lease.

(c) If rentals received from such reletting during any month are less than that to be paid during that month by Lessee hereunder, Lessee shall immediately pay any such deficiency to Lessor. No re-entry or taking possession of the Premises by Lessor shall be construed as an election to terminate this Lease unless a written notice of such termination is given by Lessor pursuant to the provisions of Section 20.1 of this Lease.

(d) Notwithstanding any such reletting without termination, Lessor may at any time thereafter terminate this Lease for any prior breach or default in the manner provided in this Lease. Whether or not Lessor relets the Premises, if Lessor terminates Lessee's possession under, or terminates the terms and provisions of, this Lease for any breach, in addition to any other remedies it may have, it may recover from Lessee all damages incurred by reason of such breach or default, including all costs of retaking the Premises (if applicable) and including the excess, if any, of the total rent and charges reserved in this Lease for the remainder of the Lease Term over the then reasonable rental value of the Premises for the remainder of the Lease Term (discounted to present value, using an interest rate equal to Prime Interest Rate, as quoted in the *Wall Street Journal*, less 3%), all of which shall be immediately due and payable by Lessee to Lessor. In determining the rent payable by Lessee hereunder subsequent to default, the Annual Base Rent for each year of the unexpired portion of the Lease Term shall equal the average Annual Base and Percentage Rents which Lessee was obligated to pay from the Commencement Date to the time of default, or during the preceding three (3) full calendar years, whichever period is shorter.

15.4. Security Deposit. Prepaid Rent.

(a) ~~Lessee has deposited~~ Prior to the Commencement Date and in any event within ten (10) business days following the Lessee's satisfying the liquor license contingency set forth in Section 2.3 of this Lease, Lessee will deposit with Lessor

Eleven Thousand Two Hundred and 00/100 Dollars (\$11,200.00), which shall be held by Lessor without liability for interest, as prepayment of the first two (2) months of Base Rent payable hereunder. security for the faithful performance by Lessee of all the terms, covenants and conditions of this Lease.

~~(b) Upon the occurrence of any Event of Default, Lessor at its sole option may apply said deposit, or any part thereof, to compensate Lessor for loss, cost, damage or expense sustained due to such default. Upon Lessor's request, Lessee shall immediately remit to Lessor an amount of cash sufficient to restore the security deposit to the original sum deposited; Lessee's failure to do so within five days after receipt of a demand therefor shall be a default under this Lease. If at the end of the Lease Term Lessee is not in default hereunder, the balance of such security deposit shall be returned to Lessee.~~

~~(c) Lessor may deliver the funds deposited hereunder to any purchaser of or successor to Lessor's Interest in this Lease, the Premises or the Shopping Center, and upon such delivery Lessor shall be discharged from all liability with respect to the security deposit prepaid rent.~~

15.5. Counterclaim.

If Lessor commences any proceedings for non-payment of rent (minimum rent, percentage rent or additional rent), Lessee will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Lessee's right to assert such claims in a separate action brought by Lessee. The covenants to pay rent and other amounts hereunder are independent covenants and Lessee shall have no right to hold back, offset or fail to pay any such amounts by reason of default by Lessor or for any other reason whatsoever.

15.6. Waiver of Rights of Redemption.

To the extent permitted by law, Lessee waives any and all rights of redemption granted by or under any present or future laws if Lessee is evicted or dispossessed for any cause, or if Lessor obtains possession of the Premises due to Lessee's default under this Lease or otherwise.

15.7. Other Rights.

In the event of any default by Lessee, Lessor reserves the right, in addition to all other rights and remedies available to Lessor, to cut-off and discontinue, without notice or liability to Lessee, any utilities or services provided to Lessee.

ARTICLE XVI DEFAULT BY LESSOR

16.1. Notice of Default Required.

Lessor shall in no event be charged with default in any of its obligations hereunder unless and until Lessor shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice to Lessor by Lessee, pursuant to the provisions of Section 20.1 of this Lease, specifically describing such failure.

16.2. Notice to Mortgagee Required.

If the holder of a mortgage covering the Premises shall have given written notice to Lessee of the address to which notices to such holder are to be sent, Lessee shall give such holder written notice simultaneously with any notice given to Lessor of any

default of Lessor. If Lessor fails to cure any default asserted in said notice within the time provided above, Lessee shall notify said holder in writing of such failure to cure, and said holder shall have the right, but not the obligation, within thirty (30) days after receipt of such second notice, to cure such default before Lessee may take any action by reason of such default.

ARTICLE XVII LESSEE'S PROPERTY

17.1. Taxes on Leasehold.

Lessee shall be responsible for and shall pay before delinquent all municipal, county, federal or state taxes coming due during or after the term of this Lease against Lessee's interest in this Lease or against personal property of any kind owned or placed in, upon or about the Premises by Lessee.

17.2. Lessor's Security Interest.

Subject to prior written notice to Lessor of the name and address of the party with such security interest and Lessor's receipt of a copy of the documents evidencing such security interest and/or leasehold rights, Lessee shall have the right to finance and to secure under the Uniform Commercial Code and/or Lease, those moveable trade fixtures consisting of, by way of example, moveable fixtures, furnishings, furniture, equipment, machinery, signs, inventory and other personal property; provided, however, that Lessee shall not have the right to finance or encumber the lighting fixtures, air conditioning and heating systems and permanent leasehold improvements in, on, or upon the Premises.

ARTICLE XVIII ACCESS AND SURRENDER

18.1. Lessor's Access to Premises.

(a) Lessor and its agents and employees shall have the right to enter the Premises, from time to time and at all reasonable times, to examine the same, show them to prospective purchasers and other persons, and make such repairs, alterations, changes, improvements or additions as Lessor deems desirable. Rent shall not abate while any such repairs, alterations, changes, improvements, or additions are being made. During the last six (6) months of the Lease Term, Lessor may exhibit the Premises to prospective lessees and maintain upon the Premises notices deemed advisable by Lessor.

(b) In addition to and notwithstanding the provisions of the foregoing, subsection (a), during any apparent emergency, Lessor or its agents may forcibly enter the Premises without liability therefor, and without in any manner affecting Lessee's obligations under this Lease. Nothing herein contained, however, shall be deemed to impose upon Lessor any obligation, responsibility or liability whatsoever, for any care, maintenance or repair except as otherwise herein expressly provided.

18.2. Surrender of Premises.

Upon termination of this Lease, whether by expiration of time or otherwise, Lessee shall surrender the Premises in the same condition as they were required to be in on the Required Completion Date, reasonable wear and tear and damage by unavoidable casualty excepted, and deliver all keys and all combinations on locks, safes and vaults in or to the Premises to Lessor at Lessor's Notice Address specified in Section 20.1 of this Lease.

18.3. Lessee's Continued Possession.

If Lessee holds over or continues to occupy the Premises after the termination of this Lease (it being agreed there shall be no such holding over or occupancy without Lessor's written consent), Lessee shall pay Lessor for each day of such holding over a sum (the "Holdover Per Diem Rent") equal to the greater of (a) ~~twice the Monthly Base Rent prorated for the number of days of such holding over, or (b) Annual Base Rent plus Percentage Rent prorated for the number of days of such holding over, plus, whether (a) or (b) is applicable, a pro rata portion of all other amounts which Lessee would have been required to pay under this Lease had this Lease been in effect.~~ 200% of the Monthly Base Rent prorated for the number of days of such holding over, plus Percentage Rent during such holdover period, calculated in the same manner as set forth elsewhere in this Lease (except that such Percentage Rent shall be prorated for the holdover period and payment of such Percentage Rent shall be made within 30 days following the end of such holdover period), plus a pro rata portion of all other amounts which Lessee would have been required to pay under this Lease had this Lease been in effect; provided, however, that so long as Lessee is negotiating in good faith with Lessor to extend the term of this Lease (or to execute a new Lease for the Premises), then during the initial 60 days following the expiration of this Lease, Lessee shall pay to Lessor for each day of such holding over a sum equal to Annual Base Rent plus Percentage Rent in effect on the last day of the Lease Term (i.e., Annual Base Rent and Percentage Rent paid, accrued or payable by Lessee during the last 365-day period of the Lease Term, divided by 365) prorated for the number of days of such holding over, plus a pro rata portion of all other amounts which Lessee would have been required to pay under this Lease had this Lease been in effect, until such time (within such 60-day period) that an extension of lease agreement or new lease agreement is executed, at which time the difference between the newly negotiated lease rental amount and the amount paid by Lessee during such initial 60-day period will be paid to Lessor, and the newly negotiated rental will be effective retroactively to the effective date of such lease extension agreement or new lease; and provided, further, that in the event that at the end of such initial 60-day period following the expiration of this Lease Term Lessee shall not have concluded a lease extension agreement or new lease for the Premises, then notwithstanding anything to the contrary contained herein, Lessee shall pay to Lessor (prospectively until Lessee vacates its occupancy of the Premises) the Holdover Per Diem Rent. If Lessee holds over, whether with or without Lessor's written consent, a month-to-month tenancy shall be created, which shall be upon the same and all other terms and provisions of this Lease as are in effect immediately prior to such period (except for rent, as hereinabove set forth), including, without limitation, Lessor's right to terminate this Lease no less than thirty (30) days after written notice at the end of the following month during which Lessee is holding over.

ARTICLE XIX COVENANT OF QUIET ENJOYMENT

19.1. Lessor's Covenant.

If Lessee pays the rents and other amounts herein provided, and observes and performs all the covenants, terms and conditions of this Lease, Lessee shall peaceably and quietly hold and enjoy the Premises for the Lease Term without interruption by Lessor or any person or persons claiming by, through or under Lessor, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XX
MISCELLANEOUS PROVISIONS**

20.1. Notices.

All notices from Lessee to Lessor required or permitted by any provision of this Lease shall be directed to Lessor as follows:

Chicago Title and Trust Company,
as Successor Trustee
c/o Intershop Real Estate Services Inc.
Two Galleria Tower
13455 Noel Rd., Suite 1100
Dallas, Texas 75240

All notices from Lessor to Lessee required or permitted by any provision of this Lease shall be directed to Lessee ~~at the Premises or~~ as follows:

**Eateries, Inc.
3240 W. Britton Road
Suite 202
Oklahoma City, OK 73120**

Copies of all notices relating to Events of Default or the material monetary obligations of Lessee hereunder shall be sent to Lessee at the address for notice provided hereby. All notices to be given hereunder by either party shall be written and hand delivered or sent by registered or certified mail, postage prepaid, addressed to the party intended to be notified at the address set forth above. Either party may, at any time, or from time to time, notify the other in writing of a substitute address for that above set forth, and thereafter notices shall be directed to such substitute address. Notice given as aforesaid shall be sufficient service thereof and shall be deemed given as of the date deposited. A duplicate copy of all notices from Lessee shall be sent to any mortgagee in accordance with Section 16.2 of this Lease.

20.2. Rights Cumulative.

Lessor's rights and remedies under this Lease shall be cumulative; the exercise or use of any one or more of them shall not bar Lessor from exercise or use of any other right or remedy provided in this Lease or by law. No waiver by Lessor of any breach of any term, covenant or condition of this Lease shall be construed as a waiver of the same or any subsequent breach of the same or any other term, covenant or condition, nor shall any delay or omission to seek a remedy for any breach of this Lease or to exercise a right accruing to Lessor by reason of such breach be construed as a waiver by Lessor of its remedies or rights with respect to such breach. The acceptance of rent by Lessor shall not be deemed a waiver of any earlier breach by Lessee of any term, covenant or condition of this Lease, regardless of Lessor's knowledge of such breach when such rent is accepted. No covenant, term or condition of this Lease shall be deemed waived by Lessor unless waived in writing.

20.3. Accord and Satisfaction.

Lessor shall be entitled to accept, receive and cash or deposit any payment made by Lessee for any reason or purpose or in any amount whatsoever, and apply the same at Lessor's option to any obligation of Lessee and the same shall not constitute payment of any amount owed except that to which Lessor has applied the same. No endorsement or statement on any check or letter of Lessee shall be deemed an accord

and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such checks or payments shall not prejudice Lessor's right to recover any and all amounts owed by Lessee under this Lease and Lessor's right to pursue any other available remedy.

20.4. Entire Agreement.

There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Lessor and Lessee, other than as set forth in this Lease. Except as otherwise provided in this Lease, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless in writing and signed by both of them.

20.5 Force Majeure.

If either party hereto shall be delayed or hindered in or prevented from the performance of any act under this Lease by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other similar reason not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this Section 20.5 shall not operate to excuse Lessee from any obligations for payment of rent, percentage rent, additional rent or any other payments required by the terms of this Lease when the same are due, and all such amounts shall be paid when due.

20.6. Submission of Lease.

Submission of this Lease to Lessee does not constitute an offer to lease; this Lease shall become effective only upon execution and delivery thereof by Lessor and Lessee. Upon execution and delivery of this Lease by Lessee, Lessor is granted an irrevocable option for ~~sixty (60)~~ **thirty (30)** days to execute this Lease and thereafter return a fully executed copy to Lessee. The effective date of this Lease shall be the date filled in on Page 1 hereof by Lessor, which shall be the date of execution by the last of the parties to execute this Lease.

20.7. No Partnership.

Lessor is not, in any way or for any purpose, a partner, employer, principal, master, agent or joint venturer of or with Lessee.

20.8. Captions.

This Lease shall be construed without reference to titles of Articles and Sections, which are inserted only for convenience of reference.

20.9. Number and Gender.

The use herein of a singular term shall include the plural, and vice versa, and use of the masculine, feminine or neuter gender shall include all others.

20.10. Joint and Several Liability.

If Lessee is a partnership or other business organization the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.

20.11. Successors.

All rights and liabilities given to or imposed upon the respective parties hereto shall bind and inure to the respective heirs, successors, administrators, executors and permitted assigns of the parties. Notwithstanding the foregoing, no rights shall inure to the benefit of any assignee or sublessee of Lessee unless the assignment or sublease is approved by Lessor in writing as provided in Section 11.1 of this Lease. Lessor, at any time and from time to time, may make an assignment of its interest in this Lease and, in the event of such assignment, Lessor and its successors and assigns (other than the assignee of Lessor's interest in this Lease) shall be released from any and all liability thereafter accruing under this Lease.

20.12. Exculpation of Personal Liability.

Notwithstanding anything to the contrary contained in this Lease, there shall be absolutely no personal liability on persons, firms or entities who constitute Lessor with respect to any of the terms, covenants, conditions and provisions of this Lease, and Lessee shall, subject to the rights of any mortgagee, look solely to the interest of Lessor and its successors and assigns in Lessor's Tract for the satisfaction of each and every remedy of Lessee in the event of default by Lessor under this Lease. The foregoing exculpation of personal liability is absolute and without any exception whatsoever.

20.13. Corporate Ownership of Lessee.

If any corporate stock of Lessee is transferred by sale, assignment, bequest, inheritance, operation of law or other disposition so as to result in a change in the effective voting control of Lessee as it exists on the date hereof, Lessee shall promptly give Lessor written notice of such change, ~~and Lessor may terminate this Lease at any time after such change by giving Lessee ninety (90) days' written notice of such termination.~~

20.14. Broker's Commission.

Each party represents and warrants that it has caused or incurred no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and each party shall indemnify and hold the other harmless against and from all liabilities arising from any such claims caused or incurred by it including, without limitation, the cost of attorneys' fees in connection therewith.

20.15. Partial Invalidity.

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to whom or which it is invalid or unenforceable, shall not be affected thereby and shall be otherwise valid and enforceable to the fullest extent permitted by law.

20.16. Recording.

The parties agree not to place this Lease of record but each party shall, at the request of the other, execute a memorandum specifying the date of commencement and termination of the Lease Term; provided, however, that the failure to record shall not affect or impair the validity and effectiveness of this Lease. If this Lease is recorded, Lessee shall pay all costs, taxes, fees and other expenses in connection with or prerequisite to recording.

20.17. Applicable Law.

This Lease shall be construed in accordance with the laws of the State of Illinois.

20.18. Mortgagee's Approval.

If any mortgage of the Shopping Center requires any modification(s) of the terms and provisions of this Lease as a condition to such financing as Lessor may desire, then Lessor shall have the right to cancel this Lease if Lessee fails or refuses to approve and execute such modification(s) within thirty (30) days after Lessor's request therefor. Upon such cancellation by Lessor, this Lease shall be null and void and neither party shall have any liability either for damages or otherwise to the other by reason of such cancellation. In no event, however, shall Lessee be required to agree, and Lessor shall not have any right of cancellation for Lessee's refusal to agree, to any modification of the provisions of this Lease relating to the amount of rent or other charges reserved herein; the size and/or location of the Premises; the duration and/or Commencement Date of the Lease Term; or the reduction of improvements to be made by Lessor to the Premises prior to delivery of possession.

20.19. Financing. [Intentionally Omitted]

~~Lessor shall not be obligated to proceed with the construction of the Premises unless and until construction financing acceptable to Lessor is obtained. In the event that there are lease modifications requested by the construction lender that cannot be resolved to the mutual satisfaction of all parties prior to Lessor's delivery of the Premises to Lessee, each of the parties hereto shall be released and discharged from any and all liability and responsibility hereunder.~~

20.20. Financial Information.

Upon written request therefor by Lessor, ~~execution of this Lease and thereafter on an annual basis (as soon as they are available),~~ Lessee shall furnish to Lessor any financial statements of Lessee (including, without limitation, Lessee's income statement and balance sheet) and any consolidated financial statements which include the financial statements of Lessee and any of its parent or subsidiaries.

20.21 Hazardous Materials

1. Without limiting the generality of any other provision of this Lease:

(a) Without Lessor's prior written consent, Lessee shall not use (except for materials used to operate customary office **and restaurant** equipment), treat, generate, store, produce, dispose of, spill, leak or release, and shall not cause or permit the use, treatment, generation, storage, production, disposal, spill, leakage, release or threatened release of, Hazardous Materials (as hereinafter defined), on, under, or about the Premises.

(b) Without Lessor's prior written consent, Lessee shall not transport, or cause, permit or arrange for the transportation of, Hazardous Materials to or from the Premises.

(c) The provisions of subparagraphs (a) and (b) of this Paragraph shall apply to acts and omissions of Lessee and its agents, employees, contractors and licensees.

(d) If Hazardous Materials are found at, or emanating from, the Premises (i) as a result of any use, treatment, generation, storage, production, disposal, spill, leakage, release or transportation by or on the instruction of Lessee or any of its

agents, employees, contractors or licensees or (ii) as a result of any violation by any person or entity referred to in subparagraph (d) (i) of this Paragraph or of any provision of subparagraph (a), (b) or (c) of this Paragraph or of any Laws (as hereinafter defined) in any manner affecting or involving Hazardous Materials, then Lessee shall:

- (1) at Lessee's sole cost and expense, promptly clean up and remove all such Hazardous Materials and remediate any resulting pollution, contamination and/or environmental damages, all in full compliance with all Laws; and
- (2) indemnify and hold Lessor and its officers, directors, shareholders, partners, employees, agents, contractors and lenders, and the heirs, devisees, personal representatives, successors and assigns of each thereof, harmless from and against any and all losses, claims, payments, judgments, liens, assessments, liabilities, costs and expenses (including, without limitation, penalties, interest, punitive damages, attorneys' fees, disbursements and court costs) arising out of, as a result of or incident to the presence of Hazardous Materials on, under or about the Premises or the emanation of such Hazardous Materials from the Premises.

As used in this Paragraph, the following terms have the following respective meanings:

- (x) "Laws" means any and all Federal, state or local laws, rules, ordinances and regulations (including, without limitation, judicial and administrative interpretations of any thereof) now or hereafter enacted or promulgated and applicable to (i) Lessor or its agents, employees, contractors or licensees, (ii) Lessee or its agents, employees, contractors or licensees, (iii) the Premises or (iv) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. SS 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. SS 6901 et seq.
- (y) "Hazardous Materials" means any and all hazardous or toxic substances or wastes (as so categorized by any Law); petroleum or crude oil or any constituent, fraction or product thereof; asbestos; and polychlorinated biphenyls (PCB's).

2. Lessor and Lessee recognize that the Premises were previously occupied by another tenant under lease to Lessor. Therefore, it is agreed that Lessor shall be solely responsible for any abatement of hazardous materials which were present upon the date of execution of this Lease. In that connection, in the event Lessee shall discover hazardous materials within the Premises following the execution of this Lease, Lessee shall notify Lessor and Lessee shall take no further action. If required by law, Lessor shall then, at Lessor's cost, be responsible for the abatement of any hazardous materials which were in the Premises prior to Lessee's possession. Lessee shall be responsible for Lessor's cost to abate any hazardous materials introduced into the Premises by Lessee. Lessor will be responsible for the cost of restoring the Premises to the condition the Premises was in prior to any abatement of hazardous materials which were in the Premises prior to Lessee's possession.

3. In the event that Lessee shall discover the presence of Hazardous Materials prior to, or during, its construction of Lessee's Work on the Premises, and if any remediation of such Hazardous Materials shall delay Lessee's construction of Lessee's Work, then for each day of such delay, the Commencement Date and the Required Completion Date will (day-for-day) be extended while such remediation is being conducted by (or for) Lessor; provided, however, that if the construction of the Lessee's Work is delayed (as a consequence of such remediation of Hazardous Materials) for any period longer than 180 days, then either Lessor or Lessee may elect to terminate this Lease within fifteen (15) days following the end of such 180-day period unless work is then in progress to remediate such Hazardous Materials and

Lessor (or its agent/contractor) is diligently pursuing completion of such remediation. In addition, in the event that Lessor shall elect in writing not to remediate the Hazardous Materials, Lessor may terminate the Lease upon ten (10) days' notice to Lessee.

The provisions of this Paragraph shall survive the expiration or earlier termination of the term of this Lease.

20.22 Construction Allowance.

Lessee, at its expense (except as hereafter specified), will ready the Premises for occupancy as promptly as possible in accordance with final approved working drawings prepared by an architect or Lessee's general contractor (the "GC") reasonably acceptable to Lessor, which improvements and additions are herein referred to as "Initial Improvements". Notwithstanding anything to the contrary herein: (a) prior to commencing any work, the GC and all others who will perform work for Lessee in connection with the Premises must be first approved in writing by Lessor, which approval will not be unreasonably withheld; (b) no part of Lessee's Work will be of a character which will require structural changes and/or changes to the exterior of the Premises or adversely affect the building in which the Premises are located or the Common Area or the cost of insurance for the Shopping Center.

As long as Lessee has duly kept and performed all terms and conditions to be kept and performed by Lessee under this Lease, in the event that Lessee furnishes and installs the Initial Improvements, Lessor agrees to pay an amount equal to the lesser of **\$384,000.00** or the actual cost to Lessee of furnishing and installing the Initial Improvements (herein referred to as the "**Construction Allowance**"). Notwithstanding any contrary provision hereof: the Initial Improvements will consist solely of interior demolition work, painting, electrical, plumbing and HVAC installations, exterior signage, store fronts, window treatments and other "permanent" improvements to the Premises (excluding any of Lessee's furniture, furnishings and readily movable trade fixtures); and in no event will Lessor be required to pay or contribute to interest, legal or other professional fees, or any other so-called "soft" or "indirect" costs, paid or incurred by Lessee in connection with the Initial Improvements - excepting permit fees and reasonable architectural fees for the preparation of Lessee's plans and specifications. The amount to be paid by Lessor pursuant to the first sentence of this paragraph will be paid in installments, in accordance with the following:

(A)

(i) Within twenty (20) days after the later of (x) approval of Lessee's plans for the Initial Improvements and (y) the commencement of construction of such Initial Improvements, Lessor agrees to pay to Lessee and/or the GC the sum of **\$128,000.00**; provided, however, Lessee hereby expressly acknowledges and agrees that, in the event Lessee fails to open and operate its business in the Premises in accordance with the provisions of this Lease, then in addition to any other sum due and owing to Lessor, Lessee shall be required to reimburse Lessor said sum in the amount of **\$128,000.00**.

(ii) Upon substantial completion of at least fifty percent (50%) of Lessee's Initial Improvements, based on the contract price of labor and materials actually in place, as certified by Lessee's architect, Lessor agrees to pay to Lessee and/or the GC the additional sum of **\$128,000.00**. Request for said second progress payment shall be made by delivery to Lessor of Lessee's written request therefor accompanied by: (a) a certification from Lessee's architect as to Lessee's Work completed as of the date of such request, and (b) an affidavit from Lessee's GC stating that all subcontractors and materialmen have been paid in full for labor performed and materials furnished in connection

with Lessee's Work to the date of such affidavit, together with complete or partial lien waivers duly executed by all of such subcontractors and materialmen and by Lessee's GC. Lessor shall pay or cause such periodic progress payment to be paid within twenty (20) days following Lessor's receipt from Lessee of the documentation required herein.

(iii) Payment of an additional sum of \$128,000.00, constituting the final installment of the Construction Allowance, shall be made within thirty (30) days after the date on which Lessee shall open the Premises for business, or within thirty (30) days after Lessee's full compliance with the provisions of Exhibit E, and submittal to Lessor of all paid waivers of lien and an unconditional Certificate of Occupancy as to the Premises, whichever is later. The provisions of this Section shall be a condition precedent to Lessee's right to receive its Construction Allowance of \$384,000.00, and no portion of said sum shall vest in Lessee nor shall Lessee assign, encumber or create a security interest in such allowance prior to full compliance with provisions of this Section.

(B) As set forth above, the maximum amount payable by Lessor hereunder is \$384,000.00 and to the extent that the Initial Improvements, and/or any other aspect of work and/or services furnished to Lessee for readying the Premises, should require an expenditure in excess of said amount, the entire excess will be paid by Lessee as and when due. For adequate separate consideration received on the execution hereof, Lessee agrees on request to indemnify, protect, defend and hold harmless Lessor and its agents against all liabilities, costs and expenses (including attorneys' fees and court costs through appeals and collection efforts) resulting from, arising out of or in any way connected with Lessee's failure to comply with the immediately preceding sentence.

(C) Lessor makes no representation as to the design, feasibility or efficiency of the Initial Improvements and/or any other aspect of Lessee's work, or whether Lessee will be able to obtain the required permits, approvals and certificates. If the operation of the building or any of its equipment is in any way adversely affected by reason of the Initial Improvements and/or any other aspect of Lessee's work, Lessee, at its expense, will remove the cause thereof upon Lessor's request.

(D) At all times during the progress of Lessee's work, Lessor will be entitled to have its representative(s) present on the site for supervision and inspection purposes and such representative(s) will have unrestricted access to all parts of the Premises. Such presence, inspection and/or supervision, however, will not impose any obligation whatsoever on Lessor or its representative(s) nor render Lessor or its representative(s) liable in any way for improper work or faulty materials.

(E) Lessee will be responsible for utility connections for its work, including payment of utility charges. If such charges are not separately metered to Lessee, they will be payable by Lessee upon request and as additional rent in amounts estimated by Lessor.

(F) Notwithstanding any contrary provision of this Lease: only Lessee named herein will be entitled to receive the money required to be paid by Lessor pursuant to this Section, under and in strict accordance with the terms and conditions of this Section; Lessee will not assign, pledge or hypothecate all or any of its right to receive all or any part of such money; Lessor will not be obligated to pay any money to Lessee if at the time such payment is due there is a breach or default by Lessee under this Lease; Lessor will have the right to set off against and deduct from the money payable to Lessee hereunder any sums which may then be owing from Lessee to Lessor. In the event that a breach or default on Lessee's part under this Lease should occur,

Lessor, in addition to all other rights and remedies available to it, will be immediately entitled to receive from Lessee, as additional rent, all sums paid to or for the benefit of Lessee pursuant to this Section.

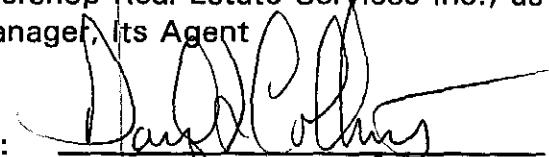
It is specifically agreed between Lessor and Lessee that Lessee will construct the Initial Improvements and all other improvements now or hereafter erected on the Premises in a style, configuration, lighting, and general appearance similar to the illustrations attached hereto as Exhibit "H". Furthermore, Lessee agrees that the Premises shall, throughout the term of the Lease, remain in like condition, style and appearance to that which is illustrated in Exhibit "H".

IN WITNESS WHEREOF, Lessor and Lessee have signed and sealed this Lease as of the day and year first above written.

LESSOR - Chicago Title and Trust Company, not personally, but solely as Successor Trustee under Trust No. 48-64602-0

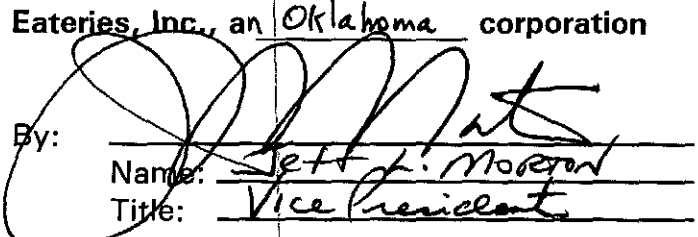
By: Intershop Real Estate Services Inc., as
Manager, Its Agent

By:


Name: DAVID F. COLLINS
Title: Senior Vice President

LESSEE - Eateries, Inc., an Oklahoma corporation

By:


Name: Jeff L. Morgan
Title: Vice President

S:\CLIENT-I\3055270\110\EATLEASE.REV

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL I

A tract of land situated in the Northwest Quarter of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., Vermilion County, Illinois, being further described as follows: Beginning at a Concrete Monument on the South line of said Quarter Quarter Section, 400 feet West of the Southeast Corner of said Quarter Quarter Section; thence Westerly along said line on a local bearing of North 89 degrees 59 minutes West, 797.09 feet more or less to an Iron Rod situated on the East line of State Aid Route #1, commonly known as North Vermilion Street; thence Northerly along said line around a curve to the right an arc distance of 980.28 feet to a point of tangency, said curve having a radius of 5961.1 feet, a chord distance of 979.18 feet, and a chord bearing of North 05 degrees 35 minutes 43 second East; thence Northeasterly along said line, 208.94 feet more or less to the South line of the McDonald's Corporation property, as shown in Deed Record 934 Page 602 in the Office of the County Recorder, Vermilion County, Illinois (formerly the Liberty School property); thence South 89 degrees 30 minutes 03 seconds East, along said line, 202 feet to the Southeast Corner of said real estate; thence North 00 degrees 29 minutes 57 seconds East, along the East line of said real estate, 134.75 feet to the South line of East Liberty Lane as shown in Deed Record 920 Page 976; thence North 85 degrees 45 minutes 32 seconds East, along said line, 13.29 feet to a point of curve; thence around a curve to the right an arc distance of 15.63 feet as shown in Deed Record 935 Page 680 said curve having a radius of 29.11 feet, a chord distance of 15.44 feet, and a chord bearing of South 78 degrees 51 minutes 53 second (sic) East; thence around a curve to the left an arc distance of 26.36 feet, said curve having a radius of 49.11 feet, a chord distance of 26.05 feet, and a chord bearing of South 78 degrees 51 minutes 53 seconds East; thence North 85 degrees 45 minutes 32 seconds East, 64.80 feet; thence North 38 degrees 27 minutes 55 seconds West, 11.47 feet to a point of intersection with the South Right of Way line of East Liberty Lane at Highway State 12 + 10; thence North 00 degrees 51 minutes West, 25 feet to the North line of said Quarter Quarter Section, being the center of the aforesaid East Liberty Lane; thence North 89 degrees 09 minutes East, along said line 362.77 feet to a point 400 feet West of the Northwest Corner of said Quarter Quarter Section; thence South 00 degrees 30 minutes West, along a said Quarter Quarter Section, 1350.50 feet to the place of beginning, situated in Vermilion County, Illinois.

PARCEL II

400 feet of even width off the East end of the Northwest Quarter of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., Except 600.3 feet of even width off the North end thereof, situated in Vermilion County, Illinois.

PARCEL III


Lot 5 (excepting therefrom the South 200 feet thereof) in Clerk's Subdivision of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., situated in Vermilion County, Illinois.

EXHIBIT "B"

LEASING INDEX

[illegible]

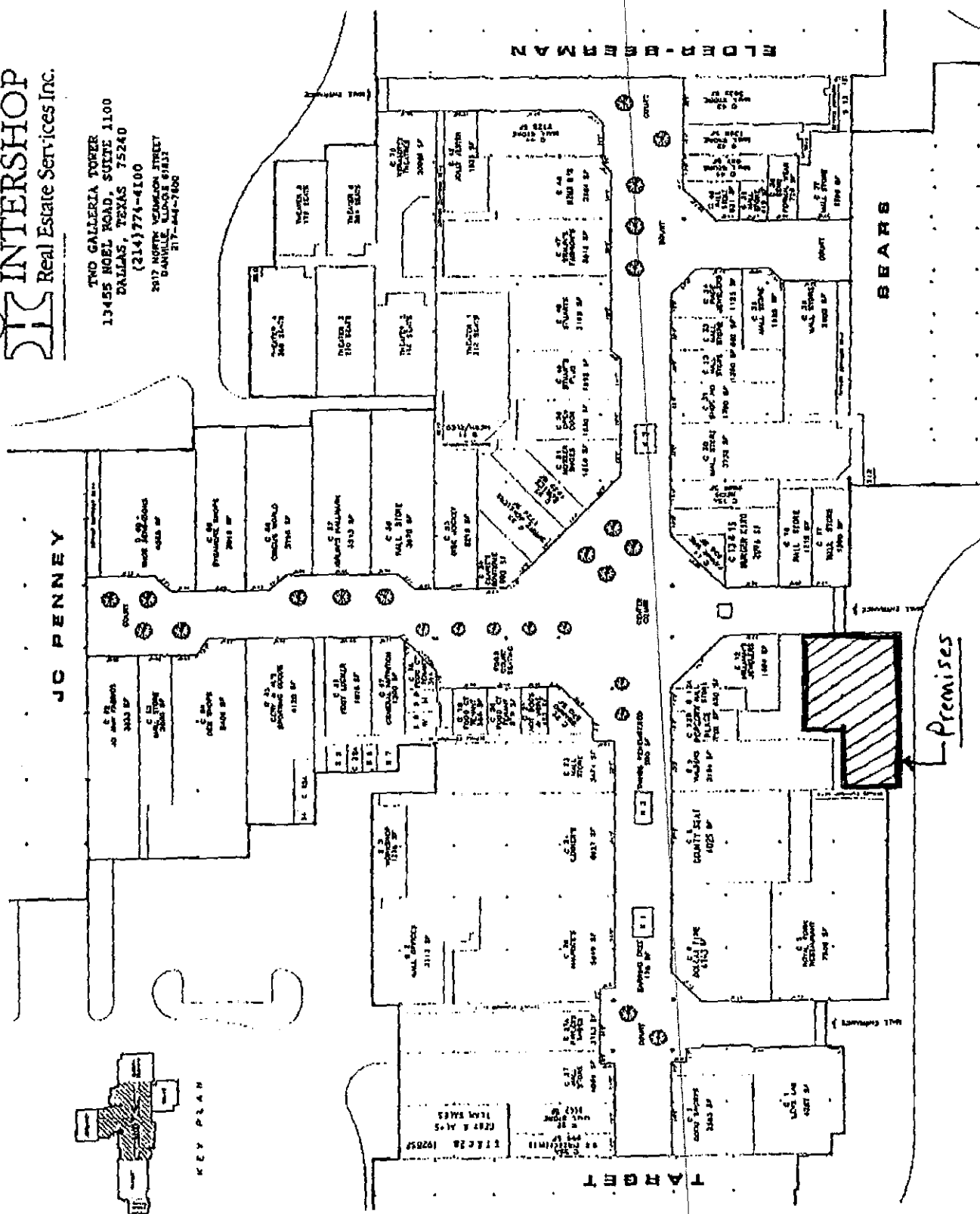
**ken carr and
associates, inc.**
ARCHITECTS • PLANNERS



INTERSHOP
Real Estate Services Inc.

TWO GALLERIA TOWER
113455 NOEL ROAD, SUITE 1100
DALLAS, TEXAS 75240
(214) 774-4100

2017 NORTH VANDERBILT STREET
DANVILLE, ILLINOIS 61832
317-244-7880



Premises

LEASE PLAN



4 10 20 30 40 50 60 70 80 90 100

LEGAL DESCRIPTION OF LESSOR'S TRACT

PARCEL I

A tract of land situated in the Northwest Quarter of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., Vermilion County, Illinois, being further described as follows: Beginning at a Concrete Monument on the South line of said Quarter Quarter Section, 400 feet West of the Southeast Corner of said Quarter Quarter Section; thence Westerly along said line on a local bearing of North 89 degrees 59 minutes West, 797.09 feet more or less to an Iron Rod situated on the East line of State Aid Route #1, commonly known as North Vermilion Street; thence Northerly along said line around a curve to the right an arc distance of 980.28 feet to a point of tangency, said curve having a radius of 5961.1 feet, a chord distance of 979.18 feet, and a chord bearing of North 05 degrees 35 minutes 43 second East; thence Northeasterly along said line, 208.94 feet more or less to the South line of the McDonald's Corporation property, as shown in Deed Record 934 Page 602 in the Office of the County Recorder, Vermilion County, Illinois (formerly the Liberty School property); thence South 89 degrees 30 minutes 03 seconds East, along said line, 202 feet to the Southeast Corner of said real estate; thence North 00 degrees 29 minutes 57 seconds East, along the East line of said real estate, 134.75 feet to the South line of East Liberty Lane as shown in Deed Record 920 Page 976; thence North 85 degrees 45 minutes 32 seconds East, along said line, 13.29 feet to a point of curve; thence around a curve to the right an arc distance of 15.63 feet as shown in Deed Record 935 Page 680 said curve having a radius of 29.11 feet, a chord distance of 15.44 feet, and a chord bearing of South 78 degrees 51 minutes 53 second (sic) East; thence around a curve to the left an arc distance of 26.36 feet, said curve having a radius of 49.11 feet, a chord distance of 26.05 feet, and a chord bearing of South 78 degrees 51 minutes 53 seconds East; thence North 85 degrees 45 minutes 32 seconds East, 64.80 feet; thence North 38 degrees 27 minutes 55 seconds West, 11.47 feet to a point of intersection with the South Right of Way line of East Liberty Lane at Highway State 12 + 10; thence North 00 degrees 51 minutes West, 25 feet to the North line of said Quarter Quarter Section, being the center of the aforesaid East Liberty Lane; thence North 89 degrees 09 minutes East, along said line 362.77 feet to a point 400 feet West of the Northwest Corner of said Quarter Quarter Section; thence South 00 degrees 30 minutes West, along a said Quarter Quarter Section, 1350.50 feet to the place of beginning, situated in Vermilion County, Illinois.

PARCEL II

400 feet of even width off the East end of the Northwest Quarter of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., Except 600.3 feet of even width off the North end thereof, situated in Vermilion County, Illinois.

PARCEL III

Lot 5 (excepting therefrom the South 200 feet thereof) in Clerk's Subdivision of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., situated in Vermilion County, Illinois.

DESCRIPTION OF LESSOR'S WORK

Intentionally Deleted

DESCRIPTION OF WORK TO BE PERFORMED BY LESSEE

The parties agree that Lessee accepts the Premises in an "as is" condition. Lessor is not required to do any additional construction, except for what is already presently in the Premises, and Lessee accepts all responsibility for building out the Premises. There are no Lessee reimbursables for work done by Lessor, unless specifically agreed to between Lessor and Lessee.

LESSEE'S WORK - The following work required to complete and place the Premises in finished condition ready to open for business is to be performed by the Lessee at the Lessee's own expense. Such work shall be commenced no later than the date specified in the notice given by Lessor pursuant to Section 3.3 of the Lease and must be completed by the **Required Completion Date, which date is defined in Section 2.3 of the Lease to be May 31, 1995; provided, however, that Lessee agrees to use its best efforts to open for business on or before April 1, 1995.** Notwithstanding anything contained herein to the contrary, Lessee's final approved plans and specifications shall control in the event of any conflict between said plans and specifications and the terms and conditions of the Lease, this Exhibit E, or the Tenant Handbook. Lessee's Work includes, but is not limited to, the following:

A. GENERAL PROVISIONS

All work done by Lessee shall be governed in all respects by, and be subject to, the following:

1. Lessor shall have the right to require Lessee to furnish payment and performance bonds or other security in form satisfactory to Lessor for the prompt and faithful performance of Lessee's Work, assuring completion of Lessee's Work and conditioned that Lessor will be held harmless from payment of any claim either by way of damages or liens on account of bills for labor or material in connection with Lessee's Work. Lessee's Work shall at all times be conducted in such manner so that Lessee shall not be in violation of Section 15.1(d) of the Lease.
2. It is understood and agreed between Lessor and Lessee that costs incurred by Lessor, if any, as a result of Lessee's failure or delay in providing the information as required in this Exhibit and in the Lease to which this Exhibit is attached, shall be the sole responsibility of Lessee and it will pay such costs, if any, promptly upon Lessor's demand.
3. All Lessee's Work shall conform to applicable statutes, ordinances, regulations and codes, the requirements of various rating bureaus, and the design criteria requirements of Lessor. Lessee shall obtain and convey to Lessor all approvals with respect to electrical, water, sewer, heating, cooling and telephone work, all as may be required by the utility company supplying the service.
4. No approval by Lessor shall be deemed valid unless in writing and signed by Lessor.
5. Prior to commencement of Lessee's Work and until completion thereof, or commencement of the Lease Term, whichever is the last to occur, Lessee shall effect and maintain Builder's Risk Insurance covering Lessor, Lessee, Lessee's contractors and Lessee's subcontractors, as their interest may appear, against loss or damage by fire, vandalism and malicious mischief and such other risks as are customarily covered by a

so-called "extended coverage endorsement" upon all Lessee's Work in place and all materials stored at the site of Lessee's Work, and all materials, equipment, supplies and temporary structures of all kinds incidental to Lessee's Work, and equipment, all while forming a part of or contained in such improvements or temporary structures, or while on the Premises or within 100 feet thereof, or when adjacent thereto, while on sidewalks, streets or alleys, all to the full insurable value thereof at all times on a completed value basis. In addition, Lessee agrees to indemnify and hold Lessor harmless against any and all claims for injury to persons or damage to property by reason of the use of the Premises for the performance of Lessee's Work, and claims, fines, and penalties arising out of any failure of Lessee or its agents, contractors and employees to comply with any law, ordinance, code requirement, regulations or other requirements applicable to Lessee's Work, and Lessee agrees to require all contractors and subcontractors engaged in the performance of Lessee's Work to effect and maintain and deliver to Lessee and Lessor, certificates evidencing the existence of, and covering Lessor, Lessee, Lessee's contractors, and Lessee's subcontractors, prior to commencement of Lessee's Work and until completion thereof, the following insurance coverages:

- a. Workmen's Compensation and Occupational Disease Insurance in accordance with the laws of the State in which the property is located, including Employer's Liability Insurance to the limit of \$100,000.
- b. Comprehensive General Liability Insurance, excluding, "Automobile Liability" against bodily injury, including death resulting therefrom, and personal injury in the limits of ~~\$1,500,000~~ \$1,000,000 for any one occurrence and property damage in the limits of \$500,000 for any one occurrence or a combined single limit policy of ~~\$1,500,000~~ \$1,000,000 per occurrence.
- c. Comprehensive Automobile Insurance, including "non-owned" automobiles, against bodily injury, including death resulting therefrom, in the limits of ~~\$1,500,000~~ \$1,000,000 for any one occurrence and \$500,000 property damage or a combined single limit of ~~\$1,500,000~~ \$1,000,000.

B. FLOOR SLAB

Install 4" reinforced, 3000 PSI at 28 day test, concrete floor slab. Concrete to be 3000 PSI concrete with 6 x 6 10/10 wire mesh reinforcement. Lessee shall fill beneath the slab with compacted granular fill and recompact all excavated underslab material disturbed due to installation of Lessee's underslab items. Compaction to be 95% modified. Lessee shall be required to install a vapor barrier beneath the slab meeting Lessor's specifications. Lessee shall be required to poison the soil if code requires.

C. SECURITY SCREEN OR MALL FRONTAGE

1. The mall frontage of the Premises shall be no less than 50% "open front." Security for "open fronts" shall be by means of painted steel or anodized aluminum roll up grilles or folding A-pointed steel or sliding tempered glass doors. No mall frontage shall be constructed without the

written approval of Lessor. Mall frontage must be supported independently of Lessor's bulkhead. All glass must be tempered.

2. "Closed front" portions of the Premises (remaining 50%) shall not exceed thirty linear feet in any one continuous block.
3. All materials employed in the construction of mall frontage shall be as approved by Lessor and as defined by applicable building codes.
4. Mall Frontage Colors - It is the desire of the Lessor to give Lessee the greatest practicable freedom in the choice of mall frontage colors; but colors must harmonize with the color scheme of the Shopping Center itself and be approved by Lessor.
5. All swinging entrance doors must be recessed in such a manner that the door, when open, will not project beyond the lease line of the Premises, **except as permitted in Section 2.1 of the Lease. Except as set forth in Section 2.1 of the Lease**, no fixturing is permitted within three feet of the lease line.

D. CEILING

1. All finished ceilings and coves, the height of which shall not exceed 120" above the finished floor.
2. Lessee's ceiling shall be non-combustible acoustic tile and/or plaster, suspended by adequate non-combustible suspension systems to conform to final requirements of governing authorities.
3. The space above the ceiling line, which is not occupied or allotted to Lessor's Work (structural members, duct work, piping, etc.), may be used for the installation of suspended ceiling, recessed lighting fixtures and duct work.
4. **Notwithstanding the above provisions of this Exhibit E, Section D, Lessee may elect to utilize its open ceiling design in accordance with Lessee's final approved plans and specifications.**

E. WALLS

All interior walls and curtain walls within the Premises, including all interior lath and plastering and gypsum board thereon, and including lath and plastering, and/or dry wall on Lessor's exposed masonry or stud party wall partitions. Dividing walls between premises shall meet Code requirements and be continuous from floor to the underside of the roof deck. Lessee shall provide bracing and/or studs as necessary to support wall mounted fixtures, and any such studs used for support or interior and curtain walls shall be made of non-combustible material. Cracks, joints and openings in walls to be filled with appropriate fire resistant materials. All walls and studs shall meet Lessor's design criteria requirements.

F. INTERIOR PAINTING

All interior painting and decoration.

G. FLOOR COVERINGS

All floor coverings and floor finishes including recesses for special floor finishes. It is Lessee's responsibility to join neatly to the mall finish provided by Lessor in the manner required by Lessor. Lessees with recessed storefronts shall match the mall floor from the line of the Premises to storefront line.

H. SHOW WINDOW BACKGROUNDS

All show window backgrounds, show windows, show window floors and ceilings, and show window lighting installations.

I. FURNITURE, FIXTURES AND SIGNS

All furnishings, trade fixtures, signs, and related parts, including installation. Location and design of all signs subject to prior written consent of Lessor.

J. PLUMBING

All plumbing and plumbing fixtures as required by applicable codes except utility service to the area, including a properly sized water meter if the same is required by Lessor, in which latter event Lessee shall make any required utility deposits. Lessee shall provide accessible cleanout. All pipe shall be PVC or as otherwise required by Lessor.

K. HOT WATER HEATER

Domestic electric hot water heater, where required, including final connections. Lessee is responsible for furnishing hot water to toilet room.

L. TOILET ROOM FIXTURES

Furnishing and installation of wiring, lighting fixtures, mechanical toilet room exhaust systems, towel cabinets, soap dishes, hand driers, deodorizers, mirrors and other similar items in toilet rooms within the Premises or as additionally required by code.

M. HEATING, VENTILATING AND AIR CONDITIONING

1. A complete heating system shall be furnished and installed by the Lessee adequate for heating the Premises to 70 degrees based on the latest ASHRAE guide designed for the area as tabulated in the Median of Annual Extremes 99% column and shall include air handling unit, motors, filters, grilles, thermostats, electric strip heating element, duct work, wiring and controls. Space above ceiling may not be used as a return air plenum.
2. A complete air conditioning system shall be furnished and installed by Lessee. The system shall be designed to maintain a temperature not to exceed 75 degrees D.B. and 50% R.H. based on the area's latest published design conditions of the ASHRAE guide as tabulated in 2-1/2% column with a rise of not more than 3 degrees during peak periods. Lessee shall furnish Lessor's architect with information as to its lighting load in watts as per square foot and its estimated store population (employees plus customers). Lessee shall meet Lessor's design criteria for winter and summer loads, occupancy loads and outside air requirements.

3. If Lessor so desires, Lessor will design, provide and install within the Premises or other location designated by Lessor, the necessary equipment to adequately heat and/or air condition the Premises for Lessee's normal requirements. Lessee will reimburse Lessor for its costs in amortizing, operating, and maintaining the heating and air conditioning system. Lessor may, at its option, install a Central System and/or a Total Energy System.

4. All roof cuts and openings shall be done by Lessor's roofer at Lessee's expense. Location, size and design of roof vents, HVAC equipment and units, hoods and caps shall be provided by Lessee and approved by Lessor. Lessor reserves the right of approval of any equipment to be placed on the roof. Lessee shall install equipment at locations where structural reinforcements are provided. All roof openings or changes in structural design caused by Lessee's equipment shall be made by Lessor and paid by Lessee. The HVAC system shall be electric.

If an economizer system is used, provision shall be made for 100% powered exhaust air relief from the Premises. No air intakes into the Mall shall be permitted.

Fresh air requirements shall meet local and state codes and/or ASHRAE standards.

5. If directed to do so by Lessor, Lessee shall paint and/or screen from ground level view by parapet walls or other appropriate screening, all of Lessee's roof-top equipment. Any such painting or screening must be done at Lessee's sole expense, and approved in advance by Lessor.

6. All interior duct work at Lessee's expense.

N. GAS - Natural gas is available to the Shopping Center, but is not yet provided to the Premises. The cost of relocating natural gas service within the Shopping Center to the Premises shall be borne exclusively by Lessee.

O. MECHANICAL EQUIPMENT

All mechanical equipment including dumb-waiters, elevators, escalators, freight elevators, conveyors, and their shafts and doors, located within the Premises, including electrical work for these items.

P. ELECTRICAL

1. All interior distribution panels, lighting panels, power panels, conduits, outlet boxes, switches, current breakers, outlets and wires within the Premises, to Lessor's specifications. Lessee shall provide electric conduit and boxes in the concrete floor slab and walls, including all electrical service panels, pull boxes and equipment, as required to permit Lessor to construct his work as outlined in Lessor's Work. Final connections in central metering area shall be done by Lessor's contractor at Lessee's expense.

2. All electrical fixtures, including lighting fixtures and equipment, and installation thereof, to Lessor's specifications. Lessee shall furnish systems for night lighting and emergency lighting.

3. All systems, where required for intercommunication, music antenna, material handling or conveyor, burglar alarm, vault wiring, fire protection alarm, time clock and demand control.
4. All conduit, as required by the utility company supplying the services for necessary telephone wires within the Premises.
5. Feeder conductors from Lessor's facilities to the Premises including the connections to Lessor's and Lessee's equipment.

Q. TEMPORARY SERVICES

During its construction period, Lessee shall provide for temporary heat, temporary connections, toilet facilities and meters for water and electric service brought to such point as Lessor shall determine. Lessee shall pay for all electricity and water used during this period.

R. SUBSEQUENT REPAIRS AND ALTERATIONS

Lessor reserves the right to require changes in Lessee's Work when necessary by reason of code requirements. Lessee shall maintain the Premises and make all repairs thereto other than repairs to the foundation, roof and structural portions of the walls.

S. SPRINKLER SYSTEM

Lessee will reimburse Lessor for the sprinkler system installation, maintenance and inspection in accordance with Section 4.3 of the Lease. Any deviation from regular standard grid layout of sprinkler heads within the Premises required due to Lessee's partitions, floors, light fixtures, or other fixtures, which are a part of Lessee's Work, and following the approval by Lessor of Lessee's preliminary drawings, shall be done by Lessor and Lessee shall reimburse Lessor for the added cost over and above standard grid costs, if any, in accordance with part A.2.e. of Exhibit "D."

T. SIGNS

In order to assure orderly and aesthetically coordinated signing, plans for all Lessee's signs must conform to Exhibit "G" hereto attached and before installation must be approved by Lessor's Architect. No permission is granted, expressed or implied to permit Lessee to erect an exterior sign of any type.

U. DOORS AND EXITING REQUIREMENTS

1. Fire-rated doors, hardware and exit signs, to Lessor's specifications.
2. Lessee will be responsible for adherence to exiting codes.
3. Lessee will maintain a clear exiting path through the stockroom to Lessee's rear door for those premises that contain a rear door.

V. CONSTRUCTION ACTIVITIES

1. During interior construction of the Premises, Lessee shall use rear openings to the Premises for moving in/out of materials, for those premises that contain a rear door.

2. Use of mall and common areas shall be kept to a minimum, and shall be for those premises not served by a rear door. Lessee shall be responsible for any damage caused by Lessee or its contractors to any mall finishes.
3. Lessee will be responsible for removal of construction rubbish **when needed.**
4. If the Premises are not complete and ready to open on the dates set by the "Grand Opening," pursuant to the provisions of Section 2.5 of the Lease, Lessee at its expense shall install a temporary store front shielding the interior of the Premises from the mall and common areas, the design and construction of which temporary store front shall be previously approved by Lessor. If Lessee fails to timely install said temporary store front, Lessor shall have the right to do so and the cost thereof shall be paid by Lessee to Lessor on demand.

EXHIBIT "F"

RULES AND REGULATIONS

1. Lessee shall advise and **use its best efforts to** cause its vendors to deliver all merchandise before noon on Mondays through Fridays, not at other times.
2. All deliveries are to be made to designated service or receiving areas and Lessee shall request delivery trucks to approach their service or receiving areas by designated service routes and drives.
3. Tractor trailers which must be unhooked or parked must use steel plates under dolly wheels to prevent damage to the asphalt paving surface. In addition, wheel blocking must be available for use. Tractor trailers are to be removed from the loading areas after unloading. No parking or storing of such trailers will be permitted in the Shopping Center.
4. Except for small parcel packages, no deliveries will be permitted through the mall unless the Lessee does not have a rear service door. In such event, prior arrangements must be made with the resident mall supervisor for delivery to the Premises. Merchandise being received shall immediately be moved into the Premises and not be left in the service or receiving areas.
5. Lessee is responsible for storage and removal of his trash, refuse and garbage. Lessee shall not dispose of the following items in sinks or commodes: plastic products (plastic bags, straws, boxes); sanitary napkins; tea bags; cooking fats, cooking oils; any meat scraps or cutting residue; petroleum products (gasoline, naptha, kerosene, lubricating oils); paint products (thinner, brushes); or any other items which the same are not designed to receive. All Store Floor Area of Lessee, including vestibules, entrances and returns, doors, fixtures, windows and plate glass, shall be maintained in a safe, neat and clean condition.
6. Except as otherwise permitted under this Lease, Lessee shall not permit or suffer any advertising medium to be placed on mall walls, on Lessee's mall or exterior windows, on standards in the mall, on the sidewalks or on the parking lot areas or light poles. No permission, expressed or implied, is granted to exhibit or display any banner, pennant, sign, and trade or seasonal decoration of any size, style or material within the Shopping Center, outside the Premises.
7. Lessee shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Premises, unless Lessor has previously given its written consent. **Lessor and Lessee agree that if the hookup of cable television to the Premises is not economically feasible, Lessor shall not unreasonably withhold its consent to the installation of a satellite dish for the reception of music and television shows provided that:**
 - (a) **Lessee shall obtain all necessary government approvals and licenses, and approval by Lessor of plans and location;**
 - (b) **Lessee shall keep the equipment in good condition and repair and pay for the installation, removal upon termination of the Lease Term and all damages arising from the installation operation, and removal of the equipment. In addition, Lessee shall indemnify and hold Lessor harmless from and against any and all claims, costs and expenses incurred by Lessor or other lessees as a result of such installation, operation and removal.**
 - (c) **Lessor shall not be obligated to provide additional utility service required by the equipment.**
 - (d) **Any taxes or assessments levied against the Shopping Center on the account of the equipment shall be Lessee's sole responsibility.**
8. Lessee shall not permit or suffer merchandise of any kind at any time to be placed, exhibited or displayed outside its Premises, nor shall Lessee use the exterior sidewalks or exterior walkways of its Premises to display, store or place any merchandise. No sale of merchandise by tent sale, truck load sale or the like, shall be permitted on the parking lot or other common areas.
9. Lessee shall not permit or suffer any portion of the Premises to be used for lodging purposes.
10. Lessee shall not, in or on any part of the Common Area:
 - (a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
 - (b) Exhibit any sign, placard, banner, notice or other written material, except for activities of the Merchants' Association.
 - (c) Distribute any circular, booklet, handbill, placard or other material, except for activities of the Merchants' Association.
 - (d) Solicit membership in any organization, group or association or contribution for any purpose.

EXHIBIT "F"

- (e) Create a nuisance.
- (f) Use any Common Area (including the Enclosed Mall) for any purpose when none of the other retail establishments within the Shopping Center is open for business or employment, except for activities of the Merchants' Association.
- (g) Throw, discard or deposit any paper, glass or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind.
- (h) Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.

EXHIBIT "G"

SIGN CRITERIA

Lessee shall bear sole financial responsibility for all signs erected by Lessee, and no signs shall be erected except in conformity with the following policy:

- (a) Wording on large scale signs shall be limited to store or trade name only. Each party's customary signature or logo, hallmark, insignia, or other trade identification will be respected.
- (b) Signs with exposed neon tubing or exposed lamps and signs of the flashing, blinking, rotating, moving, or animated types or audible type signs are not permitted.
- (c) The size of all Lessee's signs shall be limited. The scale and concept of the mall requires the use of signs which are not larger than necessary to be legible from within the mall. Thus, except for department store signs, Lessee's signs shall be located within the limits of its storefront and shall not project more than six inches (6") beyond the storefront and shall conform to the following proportionate height criteria:

(1)	30' storefront	18" capitals; 12" body
(2)	30' to 60' storefront	24" capitals; 18" body
(3)	60' and over storefront	30" capitals; 24" body

In addition to complying with the above criteria, signs in the mall shall be limited in length of 70% of Lessee's frontage on the mall, and shall in no case exceed a length of thirty feet (30'0").

- (d) Painted or printed signs on the exterior surface of any building shall be prohibited, except small-scale signs relative to store name and stating store hours which are neatly lettered on the glass of the storefront which have been approved by Lessor and in addition, any non-customer door for receiving merchandise may have in two inch (2") block letters, the name of the Lessee.
- (e) Public safety decals or artwork on glass in minimum sizes to comply with applicable codes and regulations, subject to the approval of Lessor, may be used, as required by building codes or other governmental regulations.
- (f) Paper signs, stickers, banners or flags are prohibited.
- (g) No exposed raceways, ballast boxes or electrical transformers will be permitted except as required by applicable codes and regulations.
- (h) Sign company names or stamps shall be concealed (applicable codes and regulations permitting).
- (i) Except as otherwise approved in writing by Lessor, only one sign for Lessee will be permitted within the mall, except corner tenants may have two such signs.
- (j) Sign letters may be back-lighted with lamps or tubes entirely concealed within the depth of the letter or may be opaque or translucent plastic face with no visible openings. Maximum brightness allowed for interior (mall) signs will be 100 foot lamberts taken at the letter face and must comply with all building and electrical codes.
- (k) Exposed sign illumination or illuminated sign cabinets or modules are not permitted.
- (l) Signs and identifying marks shall be placed entirely within the boundaries of Lessee's premises with no part higher than twelve feet (12') above the finished floor line, no shall any projecting sign be located closer than eight feet (8') to the finished floor line, but in no event shall such a sign extend above the wall or parapet upon which it is mounted.
- (m) Signs which are under building canopies may be installed at right angles to the mall storefront provided that they are wholly contained within the lease line of Lessee's premises and otherwise conform to the provisions of these regulations and criteria. Said signs may not exceed fifty inches (50") in width and eighteen inches (18") in height.
- (n) Lessee shall not install any roof top signs.
- (o) Lessee shall install no pylon signs, except only at the locations shown therefore on the site plan and they shall be subject to the approval of the parties hereto as to the design and size.

EXHIBIT "G"

- (p) No signs will be permitted at the rear of any building, except in the case of stores with customer entrances opening directly onto the parking areas and parking deck.
- (q) All signs shall be lighted and subject to the Lessor's approval before fabrication.
- (r) Three (3) complete sets of sign drawings must be submitted to the Lessor for approval before fabrication. Lessee's sign drawings must include the following.
 - 1. Elevation view of storefront showing sign (drawn to accurate scale) with dimensions of height of letters and length of sign.
 - 2. Color sample of sign panel.
 - 3. Color sample of sign letters (unless they are to be white).
 - 4. Cross section view through sign letter and sign panel showing location of sign relative to the storefront line and showing the dimensioned projection of the face of the letter from the face of the sign panel.

The Lessor shall not be responsible for the cost of refabrication of signs fabricated, ordered or constructed that do not conform to the sign criteria. The foregoing shall not be construed in any manner to mean that Lessor is responsible for the cost of signs under any circumstances.

VILLAGE MALL SHOPPING CENTER

2917 n vermillion • danville, illinois 61832 • (217) 446-7800

NOTICE TO TENANT OF CHANGE IN OWNERSHIP

December 30, 2005

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eateries, Inc.
1220 S. Santa Fe Ave.
Edmond, OK 73003

Re: Change of Ownership of Village Mall, located at 2917 N. Vermillion Street,
Danville, Illinois (the "Property")

Dear Ladies and Gentlemen:

This letter is to notify you, as a tenant at the Property, that the present owner, Corvest Property Trust, a Maryland Real Estate Investment Trust ("Seller"), has this date conveyed and transferred ownership of the Property to Village Mall Center Management, LLC, a Delaware limited liability company, CPB Village Mall, LLC, a Delaware limited liability company, and DG Village Mall, LLC, a Delaware limited liability company (collectively, "Buyer").

In connection with this conveyance, all of Seller's interest as landlord under your lease has been transferred and assigned to Buyer. As no deposit was received under the lease, no deposit has been transferred to the Buyer. Beginning January 1, 2006, please make all rental payments payable to Village Mall Center Management LLC and deliver them to the following address: Village Mall Center Management LLC, P.O. Box 201874, Dallas, TX 75320-1874.

Notices should be sent to: RM Realty Group, Inc., Toll Hill West, 5310 Harvest Hill Road, Suite 227, I.B 168, Dallas, TX 75230.

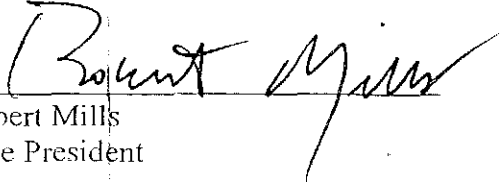
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All other terms and provisions of your lease shall remain in full force and effect.

SELLER:

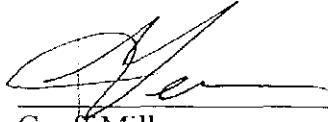
CORVEST PROPERTY TRUST, a Maryland Real Estate Investment Trust

By: 
Name: Robert Mills
Title: Vice President

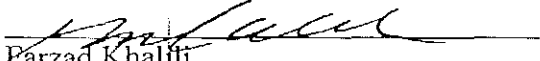
BUYERS:

VILLAGE MALL CENTER MANAGEMENT, LLC, a Delaware limited liability company

By: Village Mall Management Corporation, a Delaware corporation

By: 
Name: Geoff Mills
Title: Chief Executive Officer

CPB VILLAGE MALL, LLC,
a Delaware limited liability company

By: 
Name: Parzad Khalili
Title: Manager

DG VILLAGE MALL, LLC,
a Delaware limited liability company

By: 
Name: Parzad Khalili
Title: Manager



VILLAGE MALL SHOPPING CENTER

2917 n. vermilion • danville, illinois 61832 • (217) 446-7800

NOTICE TO TENANT OF CHANGE IN OWNERSHIP

December 30, 2005

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eateries, Inc.
1220 S. Santa Fe Ave.
Edmond, OK 73003

#49
FLO
/

Re: Change of Ownership of Village Mall, located at 2917 N. Vermilion Street,
Danville, Illinois (the "**Property**")

Dear Ladies and Gentlemen:

This letter is to notify you, as a tenant at the Property, that the present owner, Corvest Property Trust, a Maryland Real Estate Investment Trust ("**Seller**"), has this date conveyed and transferred ownership of the Property to Village Mall Center Management, LLC, a Delaware limited liability company, CPB Village Mall, LLC, a Delaware limited liability company, and DG Village Mall, LLC, a Delaware limited liability company (collectively, "**Buyer**").

In connection with this conveyance, all of Seller's interest as landlord under your lease has been transferred and assigned to Buyer. As no deposit was received under the lease, no deposit has been transferred to the Buyer. Beginning January 1, 2006, please make all rental payments payable to Village Mall Center Management LLC and deliver them to the following address: Village Mall Center Management LLC, P.O. Box 201874, Dallas, TX 75320-1874.

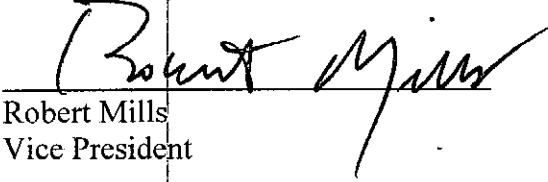
Notices should be sent to: RM Realty Group, Inc., Toll Hill West, 5310 Harvest Hill Road, Suite 227, LB 168, Dallas, TX 75230.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

All other terms and provisions of your lease shall remain in full force and effect.

SELLER:

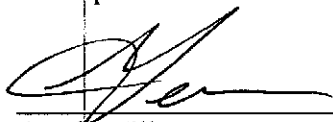
CORVEST PROPERTY TRUST, a Maryland Real Estate Investment Trust

By: 
Name: Robert Mills
Title: Vice President

BUYERS:

VILLAGE MALL CENTER MANAGEMENT, LLC, a Delaware limited liability company

By: Village Mall Management Corporation, a Delaware corporation

By: 
Name: Geoff Mills
Title: Chief Executive Officer

CPB VILLAGE MALL, LLC,
a Delaware limited liability company

By: 
Name: Farzad Khalili
Title: Manager

DG VILLAGE MALL, LLC,
a Delaware limited liability company

By: 
Name: Farzad Khalili
Title: Manager



VILLAGE MALL SHOPPING CENTER

2917 n. vermilion • danville, illinois 61832 • (217) 446-7800

August 27, 2004

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
7002 2410 0002 0799 3055

Eateries, Inc.
1220 S. Santa Fe Ave.
Edmond, OK 73003

Re: Lease dated December 30, 1994, by and between Chicago Title and Trust Company, not personally, but solely as Successor Trustee under Trust No. 48-64602-0 ("Lessor") and Eateries, Inc., an Oklahoma corporation ("Lessee") for premises in the Village Mall Shopping Center ~~Danville, IL~~

Dear Tenant:

Please make note that for all future contact or correspondence with Landlord (referred to as "Lessor" under the Lease); you should direct all correspondence to:

Corvest Property Trust
%RM Realty Group, Inc.
Toll Hill West
5310 Harvest Hill Road
Suite 227
Dallas, TX 75230
Attn: Robert Mills
(972) 385-3056
FAX (972) 385-3062

With a copy to:

Village Mall Shopping Center
2917 North Vermilion Street
Danville, IL 61832
(217) 446-7800
FAX (217) 446-2782

*in database
9/20/04
mcm*

Eateries, Inc.
August 27, 2004
Page 2

VE-1000921

Please continue to send all future rent payments to:

Corvest Property Trust
Lockbox Account
P.O. Box 910790
Dallas, TX 75391-0790

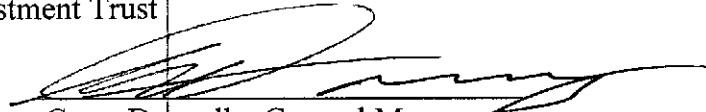


Your prompt attention to this matter is appreciated.

Sincerely,

CORVEST PROPERTY TRUST, a Maryland Real
Estate Investment Trust

By:


Gerry Donnelly, General Manager

GD/cc



January 29, 2003

Corvest Property Trust
Intershop Real Estate Serv
1100 Two Galleria Tower
13455 Noel Road
Dallas, TX 75240

**RE: Garfield's Restaurant & Pub
Danville, IL**

To Whom It May Concern:

Enclosed is one (1) fully executed Landlord's Agreement Regarding Equipment for the above referenced property for your files.

I appreciate your assistance with this matter. Please let me know if you have any questions.

Cordially,


Bradley L. Grow
Chief Financial Officer

/mc
enclosures



GE Capital Franchise Finance Corporation
17207 N. Perimeter Drive
Scottsdale, Arizona 85255

FFC. No. 8001-5230
Unit No. 49

Borrower	<u>Eateries, Inc.</u>
Premises	<u>2917 N Vermilion</u>
	<u>Danville, IL</u>

LANDLORD'S AGREEMENT REGARDING EQUIPMENT

Borrower has applied to GE Capital Franchise Finance Corporation ("GE Capital") for financing of the following described equipment (the "Equipment"):

All restaurant equipment, machinery, furniture, appliances, fixtures, replacements, substitutions, additions, parts and accessories now owned or hereafter acquired by Borrower, including but not limited to fryers, grills, ovens, warmers, refrigerators, freezers, waste disposal units, dishwashers, beverage dispensers, ice cream makers, racks, display cases, ~~light fixtures~~, decor, counters, cash registers, salad equipment, tables, seating, signs and similar property of Borrower used in its operation of the restaurant listed above; provided, however, the term "Equipment" shall not include the HVAC, walk-in coolers, walk-in freezers, supply fans, exhaust fans, air ducts, hoods, vents, built-in sinks, built-in countertops, plumbing and electrical fixtures, sign poles and lighting poles, all of which items are intended to be fixtures as such term is used within the definition of "Premises" set forth below.

and
light
fixtures

The Equipment is or will be located on the the parcels of real estate legally described on Exhibit A attached hereto, all rights, privileges and appurtenances associated therewith, and all buildings, fixtures and other improvements now or hereafter located on such real estate (whether or not affixed to such real estate)(the "Premises").

GE Capital is willing to enter into said transaction only if the undersigned ("Landlord") executes this Landlord's Agreement Regarding Equipment ("Agreement").

Landlord hereby certifies and agrees as follows:

1. Borrower is not in default under its lease with Landlord for the Premises (the "Lease") and no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by Borrower under the Lease. The Lease is in full force and effect and is enforceable against Landlord.

2. In the event Landlord sends any notice of default or notice of termination to Borrower (a "Notice"), Landlord will send a contemporaneous, duplicate copy of such Notice to GE Capital at the address indicated above or such other address as GE Capital may hereafter provide. Landlord will also notify GE Capital if Borrower does not exercise any renewal options set forth in the Lease.

3. Landlord consents to the financing of the Equipment by GE Capital (if such consent is required under the Lease). Landlord hereby waives and relinquishes to GE Capital, its successors and assigns, all rights, claims and demands of every kind against the Equipment now located or to

be located on the Premises, including but not limited to the right of foreclosure, levy, execution, sale and distraint for unpaid rent or other rights arising under real property law or by contract which Landlord now has or may hereafter acquire with respect to any of the Equipment presently or hereafter financed or leased by GE Capital.

4. The Equipment shall at all times be considered to be personal property and shall not constitute a fixture or become part of the Premises. GE Capital may remove the Equipment from the Premises at all reasonable times, and Landlord will give GE Capital not less than sixty (60) days prior written notice to remove the Equipment as a result of a termination of the Lease or Borrower's right to possession of the Premises. GE Capital will either repair any damage caused by such removal or reimburse Landlord for the reasonable cost thereof.

5. Landlord shall notify any purchaser of the Premises, and any subsequent mortgagee or other encumbrance holder or claimant, of the existence of this Agreement. This Agreement shall be binding upon the executors, administrators, successors, assigns and transferees of the undersigned and shall insure to the benefit of the successors and assigns of GE Capital.

6. This Agreement may be recorded at any time by GE Capital, its successors and assigns.

IN WITNESS WHEREOF, the undersigned Landlord has executed this Landlord's Agreement Regarding Equipment this 6th day of Jan., 2003

[CORPORATE SEAL]

LANDLORD:

Attest: Laurie Miller

~~Rehab Associates XII, Inc.~~
Corvest Property Trust, a Maryland Real Estate
Investment Trust
By: Robert Mills Robert Mills
Its Vice President

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF SALLAS

The foregoing instrument was acknowledged before me on JANUARY 6 2003 by Robert Mills, VICE PRESIDENT of CORVEST PROPERTY TRUST, a _____, on behalf of the _____.

[NOTARIAL SEAL]

Eunice M. Kane
NOTARY PUBLIC in and for the State of
TEXAS, residing at _____
My commission expires 3/28/05

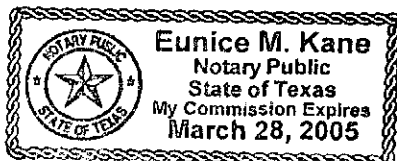


EXHIBIT A
LEGAL DESCRIPTION

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL I

A tract of land situated in the Northwest Quarter of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., Vermilion County, Illinois, being further described as follows: Beginning at a Concrete Monument on the South line of said Quarter Quarter Section, 400 feet West of the Southeast Corner of said Quarter Quarter Section; thence Westerly along said line on a local bearing of North 89 degrees 59 minutes West, 797.09 feet more or less to an Iron Rod situated on the East line of State Aid Route #1, commonly known as North Vermilion Street; thence Northerly along said line around a curve to the right an arc distance of 980.28 feet to a point of tangency, said curve having a radius of 5961.1 feet, a chord distance of 979.18 feet, and a chord bearing of North 05 degrees 35 minutes 43 second East; thence Northeasterly along said line, 208.94 feet more or less to the South line of the McDonald's Corporation property, as shown in Deed Record 934 Page 602 in the Office of the County Recorder, Vermilion County, Illinois (formerly the Liberty School property); thence South 89 degrees 30 minutes 03 seconds East, along said line, 202 feet to the Southeast Corner of said real estate; thence North 00 degrees 29 minutes 57 seconds East, along the East line of said real estate, 134.75 feet to the South line of East Liberty Lane as shown in Deed Record 920 Page 976; thence North 85 degrees 45 minutes 32 seconds East, along said line, 13.29 feet to a point of curve; thence around a curve to the right an arc distance of 15.63 feet as shown in Deed Record 935 Page 680 said curve having a radius of 29.11 feet, a chord distance of 15.44 feet, and a chord bearing of South 78 degrees 51 minutes 53 second (sic) East; thence around a curve to the left an arc distance of 26.36 feet, said curve having a radius of 49.11 feet, a chord distance of 26.05 feet, and a chord bearing of South 78 degrees 51 minutes 53 seconds East; thence North 85 degrees 45 minutes 32 seconds East, 64.80 feet; thence North 38 degrees 27 minutes 55 seconds West, 11.47 feet to a point of intersection with the South Right of Way line of East Liberty Lane at Highway State 12 + 10; thence North 00 degrees 51 minutes West, 25 feet to the North line of said Quarter Quarter Section, being the center of the aforesaid East Liberty Lane; thence North 89 degrees 09 minutes East, along said line 362.77 feet to a point 400 feet West of the Northwest Corner of said Quarter Quarter Section; thence South 00 degrees 30 minutes West, along a said Quarter Quarter Section, 1350.50 feet to the place of beginning, situated in Vermilion County, Illinois.

PARCEL II

400 feet of even width off the East end of the Northwest Quarter of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., Except 600.3 feet of even width off the North end thereof, situated in Vermilion County, Illinois.

PARCEL III

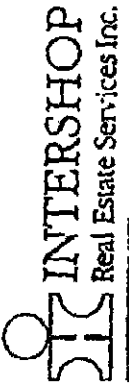
Lot 5 (excepting therefrom the South 200 feet thereof) in Clerk's Subdivision of the Northeast Quarter of Section 29, Township 20 North, Range 11 West of the 2nd P.M., situated in Vermilion County, Illinois.

EXHIBIT "B"

LEASING INDEX

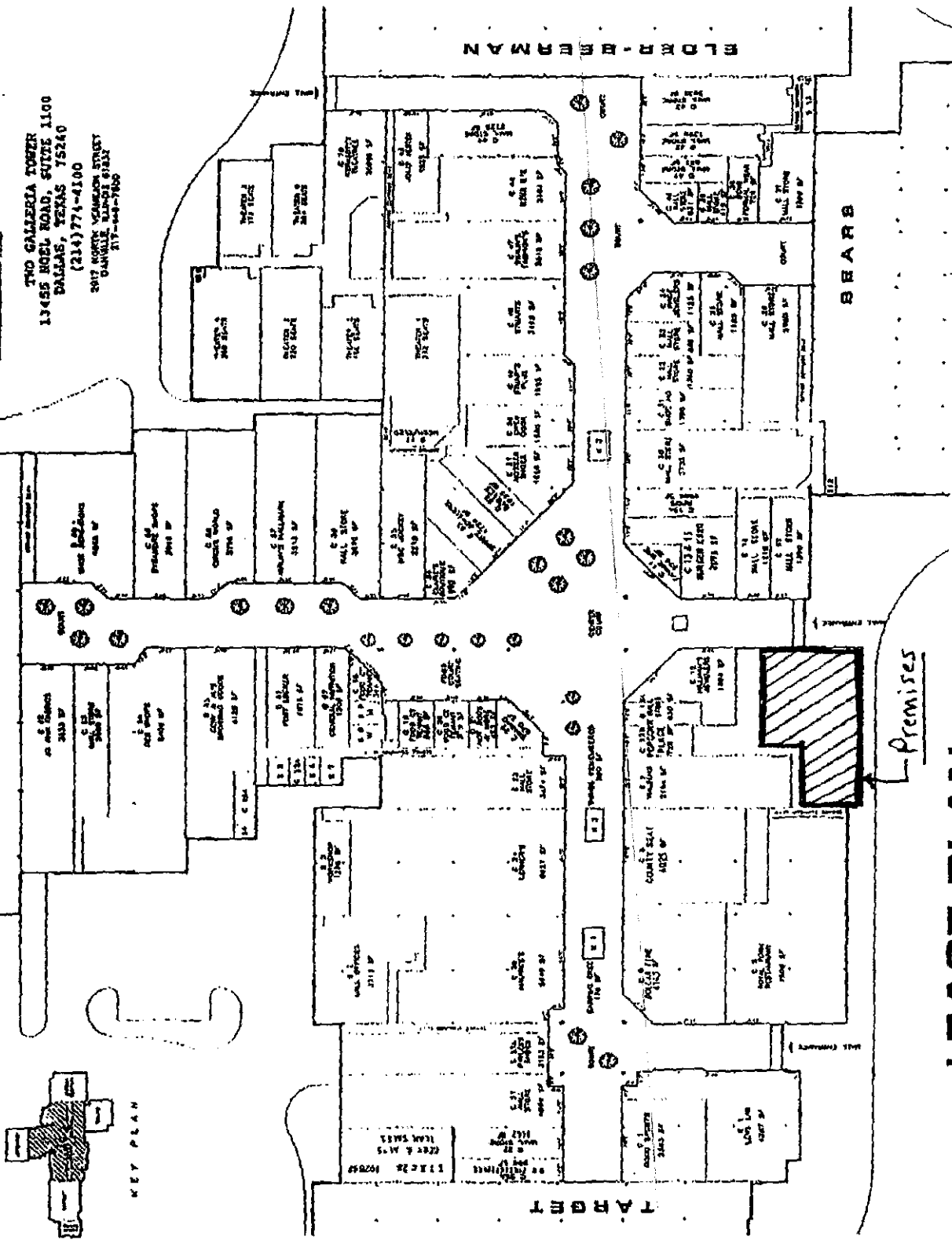
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1003	1/1/80	1000	1000
1004	1/1/80	1000	1000
1005	1/1/80	1000	1000
1006	1/1/80	1000	1000
1007	1/1/80	1000	1000
1008	1/1/80	1000	1000
1009	1/1/80	1000	1000
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1097	1/1/80	1000	1000
1098	1/1/80	1000	1000
1099	1/1/80	1000	1000
1100	1/1/80	1000	1000

ken carr and
associates, inc.
ARCHITECTS PLANNERS



TWO GALERIA TOWER
13455 NOEL ROAD, SUITE 1100
DALLAS, TEXAS 75240
(214) 774-4100
3017 NORTH VANDERBILT STREET
DANVILLE, KENTUCKY 40018
219-648-7400

JC PENNEY



LEASE PLAN



*Mr. Cat's
cle w/
Golden
on
fins*

June 2, 2000

Via FedEx

Eateries Inc.
3240 W. Britton Road, Suite 202
Oklahoma City OK 73120

**Re: Garfields
Village Mall
Danville, Illinois**

Dear Tenant:

Intershop Holding A.G. has executed a contract to sell Corvest Property Trust, the owner of Village Mall, to Rehab Associates XII, Inc. by June 30, 2000. In connection with the sale, we must provide the enclosed Estoppel Certificate to the Purchaser. Due to the timing of the sale, we ask that you please review this certificate, confirm that it agrees with your records, sign and return it as soon as possible to:

Amerishop Real Estate Services, L.P.
Attn: Scott Henry
1100 Two Galleria Tower
13455 Noel Road
Dallas, Texas 75240

A self-addressed Federal Express label has been enclosed for your convenience. Should you have any questions about the certificate or feel that corrections need to be made, please contact me at (972) 774-4170. Thank you in advance for your cooperation.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Scott Henry'.

Scott Henry
Sr. Acquisitions Analyst

enclosures



*Mr. - Cut
CLE w/
Bill
can
lines*

June 2, 2000

Via FedEx

Eateries Inc.
3240 W. Britton Road, Suite 202
Oklahoma City OK 73120

**Re: Garfields
Village Mall
Danville, Illinois**

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Dallas, Texas 75240

A self-addressed Federal Express label has been enclosed for your convenience. Should you have any questions about the certificate or feel that corrections need to be made, please contact me at (972) 774-4170. Thank you in advance for your cooperation.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Scott Henry', is written over the typed name.

Scott Henry
Sr. Acquisitions Analyst

enclosures

TENANT ESTOPPEL CERTIFICATE

TO: Rehab Associates XII, Inc.
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Paul Starck-King

RE: **Garfields**
Village Mall
Danville, Illinois

Gentlemen:

The following statements are made with the knowledge that you, as purchaser ("Purchaser"), are relying on them in connection with your purchase of the Property and the assignment to you of the lease referred to below in connection therewith, and you and your successors and assigns and successor owners of the Property, as well as any mortgage lender on the Property and the current Landlord (as hereafter defined) may rely on them for all purposes.

The undersigned ("Tenant"), being the Tenant under the lease referred to in Paragraph 1 below, covering certain premises ("Leased Premises") at the Property, hereby certifies to you that the following statements are true, correct and complete as of the date hereof:

1. Tenant is the tenant under a lease currently with Corvest Property Trust as landlord ("Landlord"), dated December 30, 1994, demising to Tenant approximately 4,912 square feet at the Property. The initial term of the lease commenced on May 10, 1995, and will expire on May 31, 2007, exclusive of unexercised renewal options and extension options contained in the lease. There have been no amendments, modifications or revisions to the lease, and there are no agreements of any kind between Landlord and Tenant regarding the Leased Premises, except as provided in the Lease or except as follows (if none, write "none"): First Amendment to Lease dated 01/01/96.

The lease, and all amendments and other agreements referred to above, are referred to in the following portions of this letter collectively as the "Lease."

2. The Lease has been duly authorized and executed by Tenant and is in good standing and in full force and effect.
3. Tenant has accepted and is presently occupying the Lease Premises. Neither the Lease nor any interest in it has been assigned, transferred, or mortgaged by Tenant, and no sublease, concession agreement or license covering the Lease Premises, or any portion of the Leased Premises, has been entered into by Tenant, except as follows (if none, write "none"): None.
4. Tenant is currently obligated to pay fixed or base rent under the Lease in the annual amount of \$78,591.96, payable in monthly installments of \$6,549.33. Rent has been paid

under the Lease through JUNE 2000 and no sums have been prepaid to Landlord, either as the last month's rent or otherwise, except as follows: (if none, write "none"): None. No sums have been deposited with Landlord other than None, deposited as security under the Lease. Except as specifically stated in the Lease, Tenant is entitled to no rent concessions, free rent, allowances or other similar compensation in connection with renting the Leased Premises. Tenant is currently paying monthly installments of \$4,079.32 as common area maintenance, tax and other expense pass-through rentals due under the Lease in addition to the base rent described above.

5. To Tenant's knowledge, neither Landlord nor Tenant is in default under the Lease beyond any applicable cure period and, to Tenant's knowledge, no event has occurred which, with the giving of notice or passage of time, or both, could result in such a default. Tenant has no knowledge of any setoffs, claims or defenses to enforcement of the Lease in accordance with its terms. The improvements and space required to be furnished according to the Lease have been completed in all respects.
6. Without limiting the generality of the statement made in Paragraph 1 above, except as specifically stated in the Lease, Tenant has not been granted (a) any option to extend the term of the Lease, (b) any option to expand the Lease Premises or to lease additional space within the Property, (c) any right of first refusal on any space at the Property, (d) any option or right of first refusal to purchase the Lease Premises or the Property or any part thereof, or (e) any option to terminate the Lease prior to its stated expiration.
7. Neither Tenant nor any guarantor of Tenant is the subject of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation proceeding, and to the best knowledge of Tenant, no such proceeding is contemplated or threatened.

Executed this 18th day of July, 2000.

TENANT

Eateries, Inc.

By: 

Print Name: James Burke

Title: J.P. / C.O.O.



VILLAGE MALL SHOPPING CENTER

2917 n. vermilion • danville, illinois 61832 • (217) 446-7800

November 20, 1996

Eateries Inc.
3240 W. Britton Road
Suite 202
Oklahoma City, OK 73120

Dear Norma:

Please find attached your copies of signed First Amendment to Lease Agreement dated December 1994 which also contains Exhibit A (Marketing Fund) and Exhibit B (Promotion Fund).

I would like to take this opportunity to advise you of your current monthly charges which were changed due to Exhibit A & B. These charges are as follows:

Base Rent	\$5,730.66
Common Area Maintenance	\$2,129.00
Real Estate Tax	\$1,367.00
Marketing Fund	\$ 420.79
Promotion Fund	\$ 80.00
Fire-Reimbursable	<u>\$ 40.93</u>
Total Per Month	\$9,768.38

These changes went into effect January 1, 1996; as of November 1, 1996 you show a balance due for Promotion Fund of \$880.00 (\$80.00 X 11 Months). Please include this amount in your December check which should be in the amount of \$10,648.38. After that is resolved your current monthly charge will be \$9,768.38.

If you have any further questions, please advise.

Sincerely,

David Galchutt
Marketing Director

CC: Donna Nixon, Accounting Administrator

TENANT ESTOPPEL CERTIFICATE

To: Corvest Property Trust
c/o Intershop Real Estate Services
1100 Two Galleria Tower
13455 Noel Road
Dallas, Texas 75240
Attention: Clark A. Zimmermann, Vice President-Asset Management

Re: Certification of Status of Lease at Village Mall Shopping Center, Danville, Illinois

Gentlemen:

The undersigned, Eateries, Inc., an Oklahoma corporation ("**Tenant**"), is presently the tenant of certain premises (the "**Premises**") within the shopping center known as Village Mall Shopping Center, located in the City of Danville, Illinois (the "**Property**"), pursuant to a written lease dated December 30, 1994 (the "**Lease**"), between Tenant and Chicago Title and Trust Company, not personally, but solely as Successor Trustee under Trust No. 48-64602-0 ("**Landlord**").

Tenant acknowledges and understands that this Tenant Estoppel Certificate is requested by Corvest Property Trust, a Maryland Real Estate Investment Trust, ("**Owner**") to confirm the status of the Lease as of the date hereof and that Tenant is required, pursuant to Section 12.1 of the Lease, to provide this Estoppel Certificate to Landlord in a timely manner. In connection therewith, Tenant hereby represents as of the date hereof as follows:

- (1) The Premises, defined in the Lease as Rooms C-10 and C-11, consist of approximately 4,912 square feet of space.
- (2) Tenant has not sold, transferred, hypothecated, or assigned its interest in the Lease or subleased any portion of the Premises or contracted to do so.
- (3) The Lease represents the entire agreement between Landlord and Tenant, and there have been no amendments, modifications, supplements or extensions of any nature to the Lease, or any other agreement affecting the terms thereof, written or oral.
- (4) Subject to the exercise of any renewal or cancellation rights specified in the Lease, the term of the Lease commenced on the Commencement Date (as defined in the Lease), which date was May 10, 1995, and will expire on May 31, 2007. Tenant does not have any option or right to renew or cancel the Lease, nor to lease additional space in the Property, nor to use any parking, nor to purchase any part of the Premises, except as specified in the Lease.

(5) The Annual Base Rent payable currently pursuant to the Lease is \$68,767.92 per annum. Monthly Base Rent has been paid through October 31, 1996. No rent has been prepaid and no deposits of any nature have been made under the Lease except (i) a Security Deposit in the amount of \$-0-, and (ii) any deposits with Landlord or otherwise into escrow to pay (according to the Lease) monthly installments of CAM charges, insurance and taxes.

(6) Additional rent for certain (i) operating, maintenance, and/or repair expenses, and (ii) property taxes, is payable as provided in the Lease.

(7) Tenant claims no rights with respect to the Premises or the Property other than as set forth in the Lease.

(8) The Lease is currently in full force and effect, and Tenant has no claims or demands against Landlord of any nature relating to the Lease or the Premises, and Tenant has no existing defenses or offsets against rent due or to become due under the terms of the Lease. Furthermore, there has been no default or other wrongful act or omission by Landlord or Tenant under the Lease or otherwise in connection with Tenant's occupancy of the Premises.

(9) All improvements to the Premises to be performed by or for Tenant under the Lease has been performed as required and has been accepted by Tenant, and Tenant knows of no defects therein. Tenant has taken occupancy of the Premises. There are no currently existing conditions or events that would prevent the Lease from becoming effective or would permit a cancellation or termination of the Lease by Landlord or Tenant.

(10) Landlord has fulfilled all duties of an inducement nature set forth in the Lease, and is not in default in any manner in the performance of any of the terms, covenants or provisions (whether express or implied) of the Lease.

(11) Tenant understands that Owner will rely upon the statements, representations and certifications contained herein.

(12) For the purposes of future notice to Tenant, Tenant's current notice address is as follows:

Date Signed: 12/4, 1996

EATERIES, INC.

By: 

Name: August A. Hehemann
Title: Vice President - Treasurer

THE STATE OF Oklahoma
COUNTY OF Oklahoma

§
§
§

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Oklahoma, on this day personally appeared August A. Hehemann, ~~Vice President - Treasurer~~ Eateries, Inc., a August A. Hehemann known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as a duly authorized officer of such Eateries, Inc. and as the act and deed of such August A. Hehemann for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 6 day of December, 1996.

Lara L. Boykin
Notary Public, State of Oklahoma

My Commission Expires:

March 6, 2000

LARA L. BOYKIN
(Typed/Printed Name of Notary)

WHEREAS Lessor has proposed to terminate Lessee's membership and participation in the Association and Lessee's Association Assessments obligation under the terms of the Lease in exchange for the agreement of Lessee to (i) contribute equal monthly fixed assessments ("**Fixed Assessments**") to a Center related marketing fund to be administered by Lessor ("**Marketing Fund**"), (ii) make certain additional contribution ("**Additional Contributions**"), to a Center promotional fund ("**Promotional Fund**"), and to further modify the Lease in certain other respects, and Lessee has agreed to accept Lessor's proposal; and,

WHEREAS Lessee and Lessor have entered into this Amendment for the purposes aforesaid.

NOW THEREFORE, for and in consideration of the premises, Lessor and Lessee hereby covenant and agree as follows;

1. Concurrently with the Effective Date of this Agreement, but subject to the further terms and conditions of this Amendment, the obligation of Lessee to be a member of, and participate in, the Association, as set forth in the provisions of Article X, Sections 10.1 (a), (b) and (c) of the Lease, shall terminate, together with the obligation of Lessee for payment of Association Assessments that would otherwise accrue, under the terms of Article X of the Lease, from and after the Effective Date, provided that, accrued and unpaid Association Assessments to, and prorated as of, the Effective Date, payable by Lessee under the terms of Article X of

- #2: Proposed conversion clause for merchants with lease required advertising and per cent of sales clauses with credit for Additional Contributions

First Amendment
To
Lease Agreement Dated Dec. 30, 1994
Between
Chicago Title & Trust Lessor
and Eateries, Inc., Lessee

This First Amendment To Lease Agreement ("Amendment"), is entered into by and between Chicago Title & Trust ("Lessor"), and Eateries, Inc. ("Lessee"), to be effective as of the first day of January, 1996 ("Effective Date").

W I T N E S S E T H

WHEREAS Lessor and Lessee entered into a certain Lease Agreement dated December 30, 1994, as heretofore modified or amended ("Lease"), which provided for the lease by Lessor to Lessee of certain space ("Leasehold") in the Village Mall Shopping Center, Danville Vermilion County, Illinois ("Center");

WHEREAS the Lease provides for the membership and participation by Lessee in a Merchants' Association ("Association"), incident to which dues and assessments are required to be paid by Lessee ("Association Assessments");

the Lease, shall be, and remain, a continuing obligation of Lessee notwithstanding this Amendment.

2. In consideration of the termination of certain obligations of Lessee under the Lease, as provided in Section 1 of this Amendment, commencing with the Effective Date, Lessee shall pay to Lessor Fixed Assessments for inclusion in the Marketing Fund in the amounts and times set forth in Exhibit A to this Amendment. In the event that the Effective Date commences a partial calendar year (as defined in Section 4.1 of the Lease) during the Lease Term, Lessee's obligation for payment of Fixed Assessments under this Section 2 shall be prorated.

3. Lessor shall contribute to the Marketing Fund annually, an amount equal to one-fourth (1/4) of the Fixed Assessments actually collected from all Lessees of the Center during each calendar year ("**Lessor Contribution**"). The Lessor Contribution may be paid, in whole or in part, by Lessor's provision, at Lessor's option, of the services of a Marketing Director, or other persons or entities under Lessor's exclusive control, to organize and implement an advertising and promotional program for the Center. Any overpayment or underpayment by Lessor of the Lessor Contribution to the Marketing Fund shall be adjusted annually.

4. The Fixed Assessment, shall be subject to annual adjustment commencing January 1, 1997, and annually thereafter during the term of the Lease, by an increase in the annual amount of the Fixed Assessment required of Lessee commencing with the Effective Date,

by an amount equal to the percentage increase, if any, in the United States Department of Labor Consumer Price Index for all urban consumers, U.S. City Average (all items 1982-1984 = 100), or a comparable index if such index shall be discontinued, from the first day of the next preceding calendar year to the first day of the then current calendar year (e.g., the percentage increase in C.P.I. from January 1, 1996 to January 1, 1997).

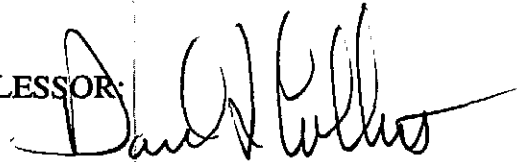
5. Commencing with the Effective Date, Lessee shall, in addition to Fixed Assessments, make Additional Contributions to Lessor, determined, in amounts and times, as set forth in Exhibit B to this Amendment, based on Leasehold square footage. In the event that the Effective Date commences a partial calendar year during the Lease Term, Lessee's obligation for payment of Additional Contributions shall be prorated. Additional Contributions shall, as to amount, be subject to annual adjustment as, and in the manner, provided in Section 4 of this Amendment with regard to Fixed Assessments. Additional Contributions shall be paid to Lessor by Lessee and held by Lessor in the Promotional Fund for purposes of disbursement by Lessor, as and when Lessor deems appropriate, to supplement expenditures from the Marketing Fund.

6. Lessee shall be entitled to a noncumulative credit, annually, against Lessee's obligation for Additional Contributions equal to the actual advertising expenditures of Lessee pursuant to Section 10.2 of the Lease during the current Lease Term calendar year, provided, however, that in no event or circumstance shall Lessee ever be entitled to a monetary refund from Lessor, the Promotional Fund, or otherwise, if such advertising expenditures exceed

Lessee's obligation for Additional Contributions.

7. Except as provided in, and amended and modified by, this Amendment and the attached Exhibits, the Lease, as so amended and modified, shall be and remain in full force and effect.

LESSOR:



David F. Collins

Senior Vice President

LESSEE:



EXHIBIT A
to
LEASE AMENDMENT

Marketing Fund
Lessee Fixed Assessments Payments

1. Commencing with the Effective Date, but subject to the annual adjustment contemplated by Section 4 of the Amendment, contributions by Lessee of Fixed Assessments to the Marketing Fund shall be in an annual, aggregate amount equal to four thousand eight hundred (\$4,800⁰⁰).

2. Fixed Assessments to the Marketing Fund shall be paid by Lessee to Lessor in equal monthly installments on the first day of each and every month of the Lease Term from and after the Effective Date.

EXHIBIT B
to
LEASE AMENDMENT

Promotion Fund
Lessee Additional Contributions

1. Commencing with the Effective Date, but subject to the annual adjustment contemplated by Section 5 of this Amendment, contributions by Lessee of Additional Contributions shall be determined, as to amount, by the square footage of the Leasehold as follows:

Leasehold Square Footage

0-299 sq. ft.
300-599 sq. ft.
600-1199 sq. ft.
1200-1799 sq. ft.
1800-2399 sq. ft.
2400-2799 sq. ft.
2800-3199 sq. ft.
3200-3999 sq. ft.
4000+ sq. ft.

Annual Additional Contributions

\$3 per square foot
\$2 per square foot
\$1 per square foot
.75 cents per square foot
.60 cents per square foot
.50 cents per square foot
.35 cents per square foot
.30 cents per square foot
~~.25~~ cents per square foot
20 " " " "

Lessee acknowledges that Leasehold square footage, in the aggregate, is 4,800 square feet for purposes of calculation of the Additional Contributions required of Lessee. Lessee further acknowledges that, commencing with the Effective Date, subject to annual adjustment, as contemplated by Section 4 of this Amendment, annual Additional Contributions by Lessee shall

be calculated at the initial rate of twenty cents (\$.20) per Leasehold square foot. Lessee further acknowledges that, based on such calculation, the Additional Contributions initially required of Lessee are Nine hundred sixty Dollars (\$ 960.00), annually, provided that such Additional Contributions shall be paid by Lessee to Lessor in equal monthly installments commencing on the first day of, and continuing thereafter on the first day of each and every month of the Lease Term from and after the Effective Date.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), made this 1 day of MARCH, 2006, is among **NOMURA CREDIT & CAPITAL, INC.**, a Delaware corporation, its successors and assigns (hereinafter referred to as "Lender"), **Eateries, Inc.** an Oklahoma corporation (hereinafter referred to as "Tenant"), and **Bullhead Center Management, LLC**, an Arizona limited liability company ("BCMLLC"), **California Plaza Building, LLC**, a California limited liability company ("CPBLLC"), and **Delbar's Group, LLC**, a California limited liability company ("DGLLC", and with BCMLLC and CPBLLC hereinafter referred to collectively as "New Landlord").

STATEMENT OF BACKGROUND:

Tenant has entered into a certain lease (hereinafter referred to as the "Lease") dated December 30, 1994 and amended by a First Amendment dated January 1, 1996, with Corvest Property Trust, a Maryland Real Estate Investment Trust as successor to Chicago Title and Trust Company as Successor Trustee under Trust No. 48-64602-0, as Landlord ("Landlord"), relating to the premises described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises") which are described in, or are a part of, the property described in Exhibit "A" attached hereto and by this reference made a part hereof. Lender has made or has committed to make a loan to New Landlord in the approximate principal amount of \$20,000,000 secured by a mortgage or deed of trust (hereinafter referred to as the "Mortgage") and an assignment of leases and rents from New Landlord to Lender covering certain property described therein (the "Property") including the Premises. Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage held by Lender, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

STATEMENT OF AGREEMENT:

For and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lender, Tenant and New Landlord do hereby covenant and agree that the Lease with all rights, options (including options to acquire or lease all or any part of the Premises), liens and charges created thereby, is and shall continue to be subject and subordinate in all respects to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder.


2. Lender does hereby agree with Tenant that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant complies with and performs its obligations under the Lease, (a) the Lease shall continue in full force and effect as a direct Lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, and Lender will not disturb the possession of Tenant, and (b) the Premises shall be subject to the Lease and Lender shall recognize Tenant as the tenant of

the Premises for the remainder of the term of the Lease in accordance with the provisions thereof; provided, however, that Lender shall not be subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including New Landlord) nor shall Lender be liable for any act or omission of any prior landlord (including New Landlord), nor shall Lender be bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including New Landlord) nor shall it be bound by any amendment or modification of the Lease made without its written consent. Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy.

3. Tenant does hereby agree with Lender that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender as the landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to execute and deliver upon request of Lender an appropriate agreement of attornment to Lender and any subsequent titleholder of the Premises.

4. Tenant acknowledges that New Landlord will execute and deliver to Lender an assignment of the Lease as security for said loan, and Tenant hereby expressly consents to such assignment. Tenant agrees to notify Lender of any default(s) by Landlord under the Lease; Lender shall have the same right to cure such default(s) as is provided to Landlord under the Lease.

UNLESS AND UNTIL LENDER BECOMES THE OWNER OF THE PREMISES,

5. ✓ Lender shall have no obligation or incur any liability with respect to the construction or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy. Lender shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, including, without limitation, any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession. In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Premises for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Premises. 

6. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

7. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

8. Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired the interest of New Landlord in the Premises, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liability or obligations accruing subsequent to the date that Lender has acquired the interest of New Landlord in the Premises as modified by the terms of this Agreement.

9. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been properly given and shall be effective upon the earlier of receipt thereof or deposit thereof in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth hereinbelow or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective with respect to Communications sent prior to the time of receipt thereof. Any notice, if given to Lender, must be addressed as follows, subject to change as provided hereinabove:

Nomura Credit & Capital, Inc.
2 World Financial Center
Building B
New York, New York 10281
Attention: Matthew Wallach

and, if given to Tenant, must be addressed as follows, subject to change as provided hereinabove:

Eateries, Inc.
1220 S. Santa Fe Ave.
Edmond, OK 73003

and, if given to New Landlord, must be addressed as follows, subject to change as provided hereinabove:

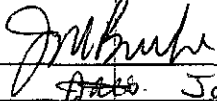
Bullhead Center Management, LLC
California Plaza Building, LLC
Delbar's Group, LLC
Jason O. Lind, Director of Acquisitions
Howard & Mills Inc.
Real Estate Investments & Development
11145 Tampa Ave. Suite 19b Porter Ranch, CA 91326

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "landlord" refers to New Landlord and to any successor to the

interest of Landlord or New Landlord under the Lease. The term "Lender" refers to Lender and to any successor-in-interest of Lender under the Mortgage.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

EATERIES, INC.,
an Oklahoma corporation

By: 
Name: ~~James B. Burk~~ James B. Burk
Title: Pres.

NOMURA CREDIT & CAPITAL, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

AGREED AND CONSENTED TO:

[NEW LANDLORD]

“BCMLLC”

Bullhead Center Management, LLC,
an Arizona limited liability company

By: Howard Mills Inc.,
a California corporation

By: _____
Geoff Mills,
Chief Executive Officer

“CPBLLC”

California Plaza Building, LLC,
a California limited liability company

By: _____
Farzad Khalili, Manager

“DGLLC”

Delbar’s Group, LLC,
a California limited liability company

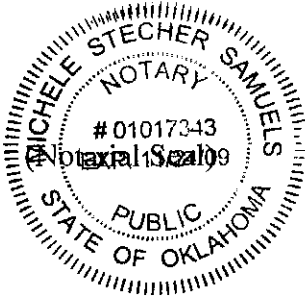
By: _____
Farzad Khalili, Manager

ILLINOIS FORM OF CORPORATE ACKNOWLEDGMENT

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

On this 13th day of March, 2006, before me, the undersigned officer,
James M. Burke, personally appeared James M. Burke,
personally known to me to be the [strike one(President)(Secretary)] of the above named
corporation, and that (s)he, as such officer, being authorized so to do, executed the foregoing
instrument for the purpose therein contained, by signing the name of the corporation by
him/herself as such officer.

IN WITNESS WHEREOF I have set my hand and official seal.



Michele Stecher Samuels
Notary Public

My commission expires: 11/24/2009

EXHIBIT A

[ADD LEGAL DESCRIPTION]

TENANT ESTOPPEL CERTIFICATE

From:
Eateries, Inc., an Oklahoma corporation ("Tenant")

To:
Delbars Group, LLC ("Purchaser")
California Plaza Buildings, LLC ("Purchaser")
Bullhead Center Management, LLC ("Purchaser")
Nomura Credit & Capital, Inc. ("Lender")
and
Corvest Property Trust, a Maryland Real Estate Investment Trust as successor to Chicago Title and Trust Company as Successor Trustee under Trust No. 48-64602-0 ("Landlord")

Lease: Lease dated December 30, 1994 between Landlord and Tenant, covering the Premises (as defined below), as modified, altered or amended (as further described in Paragraph 1 below) (the "**Lease**"). All capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Lease.

Premises: Suite C-10, consisting of a total of 4,912 rentable square feet (as set forth in the Lease) (the "**Premises**"), located in the shopping center project known as Village Mall Shopping Center having an address of 2917 North Vermilion Street, Danville, IL 61832 ("**Building**").

Tenant hereby certifies to Landlord and Purchaser as follows:

1. Tenant is the current Tenant under the Lease. The Lease is in full force and effect and is the only lease, agreement or understanding between Landlord and Tenant affecting the Premises. The Lease has not been modified, altered or amended, except by: First Amendment dated January 1, 1996
SECOND AMENDMENT DATED JAN, 6, 2003 - LL AGREEMENT REGARDING EQUIPMENT
2. The Commencement Date of the Lease occurred on May 10, 1995, and the Expiration Date of the Lease will occur on May 31, 2007.
3. Tenant commenced payment of Rent under the Lease on May 10, 1995. The Annual Base Rent under the Lease for the current Lease Year is \$18.00 per square foot of Rentable Area per year, or \$7,368.00 per month. Tenant is also obligated to pay the following additional monthly rent ("**Additional Rent**"):

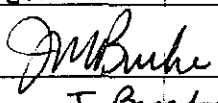
CAM:	\$2,129.00
MKG Fund:	\$ 504.51
Promo Fund:	\$ 95.73
Fire-Reimb:	\$ 40.93
Taxes:	\$1,367.00
% Rent:	4% in excess of B/P \$1,560,000.00

Tennant has fully paid all Annual Base Rent, Additional Rent and other sums due and payable under the Lease on or before the date of this Certificate and Tenant has not paid any Rent more than one month in advance.

4. As of the date of this Certificate, (i) to Tenant's knowledge, Landlord is not in default under any of the terms, conditions or covenants of the Lease to be performed or complied with by Landlord, and no event has occurred and no circumstance exists which, with the passage of time or the giving of notice by Tenant, or both, would constitute such a default, and (ii) to Tenant's knowledge, Tenant is not in default under any of the terms, conditions or covenants of the Lease to be performed or complied with by Tenant, and no event has occurred and no circumstance exists which, with the passage of time or the giving of notice by Landlord, or both, would constitute such a default.
5. As of the date of this Certificate, to Tenant's knowledge, Tenant has no existing defenses, offsets or credits against the payment of Rent and other sums due or to become due under the Lease or against the performance of any other of Tenant's obligations under the Lease.
6. Tenant is presently occupying the Premises, and, to Tenant's knowledge, the Premises have been completed in accordance with the terms of the Lease.
7. Tenant has paid to Landlord a security deposit in the amount of \$ 0. Tenant has delivered to Landlord a security deposit in the form of a letter of credit in the amount of \$ 0.
8. Tenant understands that this Certificate is required in connection with Purchaser's acquisition of the Building, and Tenant agrees that Purchaser and its assigns (including any parties providing financing for the Building) will, and will be entitled to; rely on the truth of this Certificate.
9. The party executing this document on behalf of Tenant represents that he/she has been authorized to do so on behalf of Tenant.

EXECUTED on this 30th day of November, 2005.

"TENANT"

EATERIES Inc
By: 
Name: J Burke
Title: pres