

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Percentage Lease (MASTER LEASE), dated February 22, 1996, entered into with Kathryn Crake Huntington, and subsequently assigned to

Arena Group 2000, L.P., a California limited partnership (LESSEE), consents to that certain Shopping Center Lease (SUBLEASE) between LESSEE (SUBLESSOR) and

Len A. Paul, an individual,

(SUBLESSEE) dated April 24, 2002, on the terms and conditions of this consent to Sublease Agreement (Consent).

This Consent permits sublease of a portion of the premises covered by that certain MASTER LEASE dated February 22, 1996, between the SUBLESSOR and the CITY. The CITY is approving the SUBLEASE and the proposed use as stated on attached Exhibit "A" on the following terms and conditions.

1. **SUBORDINATION**: The SUBLEASE is subject and subordinate to the covenants and conditions of MASTER LEASE in all respects notwithstanding any provision hereof contrary or in conflict with the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE.

2. **ASSIGNMENT AND SUBLETTING**: SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate the SUBLEASE. Notwithstanding the foregoing, CITY hereby consents to an assignment of the SUBLEASE by SUBLESSEE in accordance with and subject to the terms and conditions of Paragraph 14 of the Addendum to SUBLEASE. LESSEE and SUBLESSEE specifically acknowledge and agree that the subleased premises will not be used for any adult entertainment activities and such use may result in the immediate termination of this Consent to Sublease at the option of the City acting by and through the City Manager.

3. **HOLD HARMLESS**: SUBLESSEE shall defend, indemnify and hold harmless the CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents or invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability

arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

4. INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$3 million Combined Single Limit Liability (\$2,000,000 primary plus \$1,000,000 umbrella). SUBLESSEE shall file with CITY a copy of the policy of insurance which shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall submit to CITY a copy of the new policy of insurance. Notwithstanding the foregoing, during SUBLESSEE'S initial construction at the premises SUBLESSEE'S obligation to carry and maintain the forgoing insurance coverage shall be limited to an amount not less than \$1,000,000 per occurrence.

5. PERMITS AND APPROVAL: This Consent is contingent upon SUBLESSEE obtaining all permits and approval necessary to construct SUBLESSEE'S tenant improvements described in paragraph 18 of the Addendum to the SUBLEASE. This consent shall be deemed terminated by the CITY, should SUBLESSEE fail to obtain all the above-referenced necessary permits and approval within the time frame specified in Paragraph 16 of the Addendum to SUBLEASE and SUBLESSEE thereafter exercises its right to cancel and terminate the SUBLEASE in accordance with such paragraph.

6. LEGAL PROCEEDING: Should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of the SUBLEASE or this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

This Consent shall be effective upon execution by the approval by the City Attorney.

THE CITY OF SAN DIEGO

Dated 6-7-02

By [Signature]
for the City Manager

SUBLESSEE

Dated 6/6/02

By [Signature]
Name: Lynn A. Paul
Title: Owner

Dated 6/6/02

SUBLESSOR

By

Name:

Title:

Steve Hahn

GM

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

By

Presilla Dwyer
Deputy City Attorney

VEB/jmj-c
06/05/02

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EXHIBIT A

The planned use for the premises by Mr. Len Paul excludes any adult entertainment use and includes the following:

- showing of motion pictures
- live theatrical and musical performances, including those broadcast and/or televised to or from the premises
- other meetings/activities/exhibitions relating to the theater arts and promoting abstinence of drugs and alcohol.

ADDENDUM TO SHOPPING CENTER LEASE

This Addendum to Shopping Center Lease (the "Addendum"), dated for reference purposes only as of the 24th day of April 2002, is entered into by and between Arena Group 2000, LP, a California limited partnership (hereinafter referred to as "Landlord"), and Mr. Len A. Paul d/b/a SOMA Productions (hereinafter collectively referred to as "Tenant").

RECITALS:

- A. Landlord and Tenant have entered into that certain Shopping Center Lease dated for reference purposes only as of April 24, 2002 (hereinafter referred to as the "Lease") and to which this Addendum is attached.
- B. Landlord and Tenant now desire to supplement and amend the Lease and to agree as to certain other matters as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties agree as follows:

1. Except as noted to the contrary herein, the terms used herein shall be defined as provided in the Lease, and the Lease is incorporated herein by reference.
2. The Recitals set forth above are hereby acknowledged to be true and correct by the undersigned and are incorporated herein by reference.
3. Notwithstanding anything contained to the contrary in Section 3 (c) (Commencement Date) of the Lease or any other provision of the Lease, the Commencement Date shall be the date on which Landlord delivers to Tenant (i) a Consent to Sublease signed by the City of San Diego wherein the City of San Diego, as landlord under that certain Percentage Lease for the Shopping Center, consents to and approves this Lease, and (ii) exclusive possession of the Premises (the "Commencement Date").
4. Notwithstanding anything contained to the contrary in Sections 3 (f) (Index) and (h) (Minimum Annual Rent) of the Lease or any other provision of the Lease, Minimum Monthly Rent during the entire Term of the Lease shall be the sum of \$4,000/month, inclusive of all Common Area Costs, Premises Property Taxes and insurance premiums for insurance to be maintained by Landlord under the Lease. Rent for the first eighty (80) days of the Term is waived.
5. The first installment of Minimum Annual Rent will be due on Tenant's execution of this Lease and the Security Deposit of \$5,000 will be due on the Commencement Date.
6. Notwithstanding anything contained to the contrary in Section 3 (r) (Tenant's Use Clause) of the Lease or any other provision of the Lease, Tenant's Permitted Use shall be "a commercial recreation and assembly facility".
7. Notwithstanding anything contained to the contrary in Section 3 (s) (Term) of the Lease or any other provision of the Lease, the Term of the Lease shall commence on the Commencement Date and shall expire, subject to earlier termination as set forth in the Lease, on February 28, 2006.
8. Notwithstanding anything contained to the contrary in Section 6 (Other Tenancies) of the Lease or any other provision of the Lease, so long as Tenant is using the Premises for the Permitted Use, Landlord shall not permit the operation of any competing use in the Shopping Center which charges an admission fee.
9. Section 7 (Delivery of Possession) of the Lease shall be deemed deleted.
10. Sections 9.2 (Adjusted Minimum Annual Rent) and 9.3 (Property Taxes) shall be deemed deleted.

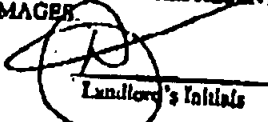
11. Landlord shall protect, defend, indemnify and hold the Tenant, Tenant's board of directors, officers, general partners, stockholders, employees, agents and franchisor (each a "Tenant Entity") harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of (i) the conduct or management or any work or thing whatsoever done by Landlord or on Landlord's behalf in or about the Shopping Center or from transactions of Landlord concerning the Shopping Center; (ii) Landlord's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Shopping Center or its occupancy; or (iii) any breach or default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to this Lease, except to the extent arising from the negligence or willful misconduct of Tenant or its agents, contractors or employees or from a breach of Tenant's obligations under this Lease. The provisions of this Section shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.
12. Notwithstanding anything contained to the contrary in Section 14 (i) (Liability Insurance) of the Lease or any other provision of the Lease, Tenant shall keep and maintain a policy or policies of Commercial General Liability insurance in an amount not less than \$3,000,000.00 per occurrence (\$2,000,000.00 primary plus \$1,000,000.00 umbrella) and otherwise meeting the requirements of Section 14 (i) of the Lease. The insurance to be kept and maintained by Tenant may be carried under policies of blanket insurance that may cover other liabilities and locations; provided, however, in all other respects each of such policies shall comply with the provisions of this Lease. Notwithstanding the foregoing, during Tenant's initial construction at the Premises Tenant's obligation to carry and maintain the foregoing insurance coverage shall be limited to an amount not less than \$1,000,000.00 per occurrence.
13. Notwithstanding anything contained to the contrary in Section 18 (Advertising Media) of the Lease or any other provision of the Lease but subject to Tenant having obtained all required governmental permits and approvals, Tenant shall be permitted to operate scarchlights at Tenant's Grand Opening and for a period of up to fourteen (14) days thereafter. Further, Tenant shall be permitted, from time to time, to place flyers and handbills on vehicles parking in the Shopping Center and those areas of the adjacent Sports Arena parking area to which Tenant is entitled to use in accordance with Exhibit I (Parking) attached to and made a part of this Lease, provided Tenant shall be solely responsible for pickup and removal of any discarded flyers or handbills utilized by Tenant within the Shopping Center and adjacent Sports Arena parking areas.
14. Notwithstanding anything contained to the contrary in Section 20 (Assigning, Mortgaging, Subletting, Change in Ownership) of the Lease or any other provision of the Lease, Tenant shall have the right to assign the Lease or sublet the Premises with notice to Landlord but without the necessity of obtaining Landlord's consent, to an entity formed by Tenant after the date of this Lease for the purpose of operating the business to be conducted by Tenant on the Premises provided (i) Tenant shall own or control a majority interest in such entity, (ii) Tenant shall be responsible for the day to day management affairs of such entity and, (iii) Tenant shall not be released from any of its liability under this Lease as a result of such assignment or subletting.
15. Section 21 (Tenant's Conduct of Business) of the Lease shall be deemed deleted and Tenant shall be permitted to operate its business on the Premises at such times and during such hours as Tenant deems appropriate subject to applicable governmental laws, ordinances and regulations.
16. The Lease, and Tenant's obligations thereunder, are expressly made contingent upon the following which contingencies may be waived in writing by Tenant in Tenant's sole discretion: (i) Landlord shall provide Tenant with the Consent to Sublease described in Paragraph 3 of this Addendum, and (ii) within eighty (80) days following the Commencement Date, Tenant shall have received all permits and approvals necessary to construct the Tenant Improvements described in Paragraph 18 of this Addendum and to open and thereafter operate Tenant's Permitted Use on the Premises. Tenant's entering upon or taking possession of the Premises for any reason whatsoever shall not constitute a waiver by Tenant of any of the foregoing. If Tenant shall cancel the Lease as a result of the failure of any of the foregoing contingencies, Landlord shall (i) retain the first installment of Minimum

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Annual Rent payable by Tenant under this Lease (i.e., \$4,000.00) plus Tenant's Security Deposit (i.e., \$5,000.00) as liquidated damages and (the "Liquidated Amount") (ii) promptly return any and all other monies deposited by Tenant with Landlord whereupon Landlord and Tenant shall each be relieved of any further obligations under this Lease.

IF TENANT CANCELS THIS LEASE IN ACCORDANCE WITH THIS PARAGRAPH 17, THEN LANDLORD SHALL BE ENTITLED TO THE LIQUIDATED AMOUNT AS LIQUIDATED DAMAGES, PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677. IN THE EVENT OF A CANCELLATION OF THIS LEASE BY TENANT AS AFORESAID, LANDLORD SHALL HAVE NO RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT OR ANY DAMAGES HEREUNDER. LANDLORD AND TENANT AGREE THAT IT WOULD BE EXTREMELY IMPRACTICAL AND DIFFICULT TO ESTIMATE THE AMOUNT OF DAMAGES LANDLORD MIGHT SUFFER IN THE EVENT OF TENANT'S CANCELLATION OF THE LEASE IN ACCORDANCE WITH THIS PARAGRAPH 17. THE PARTIES HEREBY AGREE THAT THE DELIVERY OF THE LIQUIDATED AMOUNT TO LANDLORD IN THE EVENT OF TENANT'S CANCELLATION OF THIS LEASE AS AFORESAID REPRESENTS A FAIR AND REASONABLE ESTIMATE OF SAID DAMAGES.


Landlord's Initials


Tenant's Initials

18. Tenant is taking the space in its "As Is" condition. Tenant shall be permitted, at Tenant's sole cost and expense, to perform certain alterations and to construct certain improvements (collectively, the "Tenant Improvements") on the Premises which Tenant Improvements will be performed (i) pursuant to plans and specifications ("Plans and Specifications") prepared by Tenant's architect (a copy of which shall be provided to Landlord), (ii) by licensed contractors and subcontractors, (iii) in a manner so as to minimize inconvenience to customers and other occupants of the Shopping Center, and (iv) so as to comply with applicable building laws, ordinances and regulations. Tenant will give Landlord notice prior to Tenant's commencement of construction within the Premises to allow Landlord to post and record appropriate notice(s) of non-responsibility. Tenant and its consultants shall have access to the Premises from and after the date of this Lease for purposes of architectural review and pre-construction planning provided Tenant shall not commence any demolition or construction work within the Premises during such early access period and, provided further, that Tenant shall have deposited with Landlord Tenant's first installment of Minimum Annual rent (i.e., \$4,000.00) and a certificate of insurance naming Landlord as an additional insured and evidencing the insurance coverage and amounts required of Tenant under this Lease.
19. Tenant is responsible for contracting directly with SDG&E for electricity to the suite.
20. Tenant is responsible for contracting directly for a trash dumpster(s) to service its business.
21. Tenant to be allowed to use the top two (2) sections of the existing monument sign that were used by the previous tenant of the Premises for installation of business signage. All signage must be pre-approved by the Landlord and will be at the expense of the Tenant. Landlord agrees that Tenant shall receive the largest and most prominent signage on the monument sign.
22. Tenant acknowledges that Sports Arena Square Shopping Center is subject to a Ground Lease with the City of San Diego (the "Percentage Lease") and agrees to be bound by all applicable terms and conditions of the Lease. Tenant shall not commit or permit to be committed on the premises any act or omission which shall violate any term or condition of the Percentage Lease. In the event of a termination of the Percentage Lease, then the Lease shall terminate concurrently therewith without liability of Landlord. Tenant acknowledges receipt of a copy of the Percentage Lease.
23. If the Percentage Lease is extended past the current expiration date of 2/28/06, Tenant shall have the right to extend the Term of this Lease until the earlier of (i) expiration or earlier termination of the Percentage Lease and (ii) one (1) year following expiration of the initial

Term of this Lease (the "Extended Term"). During the Extended Term Minimum Annual Rent shall be increased to \$4,800/month, all other terms and conditions of the Lease to remain unmodified and in full force and effect. Notwithstanding the foregoing, if Tenant exercises its right to extend the initial Term of the Lease as provided herein, Landlord shall thereafter have the right to terminate this Lease and Tenant's right to possession of the Premises upon not less than thirty (30) days advance written notice provided (i) such termination is the result of Landlord's commencing redevelopment of the Shopping Center and (ii) Landlord simultaneously terminates all other leases within the Shopping Center.

24. Landlord has designed a Parking Exhibit (see Exhibit I), which defines approved locations of parking for tour buses, general parking, etc., for Tenant. Tenant is responsible for compliance with these parking regulations and must minimize inconvenience to any existing tenants of the Shopping Center, in particular Roel Construction and The Kobcy Corporation.
25. Tenant shall be responsible for general clean-up of the Shopping Center parking and Common Areas after and as a result of events held by Tenant in the Premises including trash/glass pick-up, etc. If Tenant does not adequately address this regulation, then upon prior written notice to Tenant, Landlord reserves the right to contract for the appropriate service and bill the Tenant for the cost.
26. Tenant shall be responsible for adequate traffic control and general security before, during and after events held by Tenant in the Premises. Tenant shall minimize inconvenience to any existing tenants of the Shopping Center, in particular Roel Construction and The Kobcy Corporation. If Tenant does not adequately address this regulation, then upon prior written notice to Tenant, Landlord reserves the right to contract for the appropriate service and bill the Lessee for the cost.

Tenant shall supply the number and type of security personnel in compliance with local, county and state mandated laws, ordinances and guidelines. Tenant shall ensure adequate supervision and safety in and around the Premises during events held by Tenant in the Premises. Tenant shall not allow and shall specifically prohibit the use of any drugs or alcohol in or around the Premises during any event held by Tenant in the Premises. Tenant shall not admit to the Premises any individual who appear to be under the influence of drugs or alcohol or who attempts to gain access to the Premises with the possession of any drugs or alcohol.

27. Landlord is also the operator of the San Diego Sports Arena, which is adjacent to the Shopping Center. As a condition of this Lease, Tenant must produce a New Year's Eve (SOMA Live Show) production each and every year that Tenant occupies the premises at Sports Arena Square with the agreement of San Diego Sports Arena. This live New Year's Eve show will take place at the San Diego Sports Arena and terms and conditions to be negotiated in good faith by Landlord and Tenant.
28. As a condition of this Lease, San Diego Sports Arena shall receive a stipend or commission for any sponsorships or strategic business relationship or deals that net Tenant operating income, which sponsorships, business relationships or "deals" are the direct result of Landlord's efforts. This agreement to be formalized in a separate agreement with Landlord.
29. Tenant agrees to inform Landlord of any agreements or opportunities to sell/exchange any of the existing equipment in the premises including, but not limited to, the theater seats and concession cabinetry. Any and all such agreements must be pre-approved by Landlord. Tenant also agrees to inform Landlord of any plans to remove and trash/"throw away" any of the existing equipment at the premises. Landlord must preapprove any and all such plans.
30. Section 13 (Indemnity by Tenant) of the Lease shall be deemed deleted and the following shall be deemed inserted in place thereof:

As between Tenant and Landlord, Tenant shall be solely responsible for and Tenant shall indemnify, defend and hold Landlord, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and the respective directors, officers shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or

expenses including without limitation, attorneys fees (including fees and disbursements on in-house and outside counsel) of any kind whatsoever resulting from (a) Tenant's use and occupancy of the Premises; (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorneys fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's willful misconduct or sole negligence.

Tenant shall indemnify, defend and hold Landlord, and its current and future, direct and indirect parent companies, subsidiaries, affiliates and the respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings losses, liabilities, penalties, fines, damages, costs or expenses including attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by Tenant of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with its occupancy and/or use of the premises and tenant's violation of any third party license to use intellectual property in connection with the premises, including, without limitation any deliverable.

If any claim or action is brought against Landlord, Tenant shall defend, and, unless in the opinion of counsel for Landlord a conflict of interest between Landlord and Tenant may exist with respect to such claim or action, Tenant shall assume the defense of such claim or action with counsel reasonably acceptable to Landlord. If Tenant does not assume the defense of Landlord, or if a conflict precludes Tenant from assuming the defense, then Tenant shall reimburse Landlord on a monthly basis for Landlord's defense through separate counsel of Landlord's choice. Even if Tenant assumes the defense of Landlord with acceptable counsel, Landlord, at its sole option and expense, may participate in the defense with counsel of Landlord's own choice without relieving Tenant of any obligation hereunder. Tenant's obligation to indemnify Landlord shall not be limited in any way by any limitation on the amount of type of damages, compensation, penalty or benefits payable by or for Tenant under any statutory scheme, including without limitation, any Workers Compensation Acts, benefit acts of other employee benefit acts.

31. Section 31 (Tenant's Conduct of Business) of the Lease shall be deemed deleted and the following shall be deemed inserted in place thereof:

Tenant shall comply with the rules and regulations attached hereto and with such reasonable modifications thereto as Landlord may from time to time make. Landlord shall not be responsible for the violation of those rules and regulations by other tenants or occupants of the building. Landlord warrants to use its best efforts to enforce the rules and regulations in a nondiscriminatory fashion. Landlord agrees that the rules and regulations shall not be changed by Landlord in such a way as to interfere with the purposes permitted under this Lease.

32. Section 37 (Governing Law) of the Lease shall be deemed deleted and the following shall be deemed inserted in place thereof::

The laws of the state of California shall govern the validity, performance and enforcement of this lease. Tenant shall comply with all laws, ordinances, rules or regulations of any governmental authority regulating Tenant's use of the Premises: provided, however, that Tenant may, at its sole cost and expense, contest the validity or application of any law, statute ordinance or governmental rule or regulation.

Tenant shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances and regulations of the City of

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San Diego, County of San Diego, State of California, and Federal governments at Tenant's sole cost and expense. In addition, Tenant shall comply with any and all notices issued by the City Manager of San Diego or his authorized representative under the authority of any such law, statute, ordinance or regulation.

33. AMERICANS WITH DISABILITY ACT OF 1990 ("ADA") Landlord shall be responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") and the rules and regulations implementing same with respect to all physical characteristics of all Common Areas and of all public areas of the Shopping Center. After initial occupancy Tenant shall, at Tenant's cost, comply with the Americans with Disabilities Act of 1990 ("ADA") and the rules and regulations implementing same with respect to operations within the Premises. Landlord and Tenant shall comply with the respective obligations as aforesaid at such time as Landlord or Tenant, as the case may be, has received a non-appealable order from an authorized governmental agency requiring such compliance. Landlord shall indemnify and hold Tenant harmless with respect to claims made on account of Landlord's failure to comply with ADA and Tenant shall indemnify and hold Landlord harmless with respect to claims made on account of Tenant's failure to comply with the ADA.

34. Landlord and Tenant each agree to keep the terms and conditions of this Lease confidential.

Except as modified hereby, all other terms and conditions of the Lease shall remain in full force and effect.

LANDLORD:

Ernest M. Blain III
Attorney Group 2000
Date

5/10/02

TENANT:

Len A. Paul
SOMA Productions
Date

38. BROKERS.

38.1 Broker's Commission. Upon execution and delivery of this Lease by Landlord and Tenant, Landlord shall pay to Landlord's Broker the commission set forth at Section 3.b hereof, if any, or the commission provided for in the written agreement (the "Agreement") between Landlord and Landlord's Broker covering brokerage services rendered in this transaction. Landlord shall also pay Landlord's Broker a further commission as provided in the Agreement if Tenant exercises any option to extend the Term of this Lease or to renew the Lease or to expand the Premises. If a Tenant's Broker is named at Section 3.b, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if Landlord's Broker and Tenant's Broker have so agreed between them. Landlord shall have no obligation to pay a commission or fee to anyone other than Landlord's Broker in connection with this Lease.

38.2 Protection of Brokers. If Landlord sells its interest in the Premises or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Premises or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article 38 or the Agreement. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this Article 38. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Section is included in this Lease for the benefit of Landlord's Broker.

38.3 No Other Brokers. Tenant represents and warrants to Landlord that the brokers named in Section 3.b of this Lease are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease.

39. COMPLIANCE.

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1984 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

LANDLORD AND TENANT have signed this Lease on the dates set forth below.

Date: _____	Date: _____
Landlord: <u>Arena Group 2000</u>	Tenant: <u>Len A. Paul</u>
a <u>General Limited Partnership</u>	a <u>an Individual</u>
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Print Name: <u>ERNE HATH</u>	Print Name: <u>LEN A. PAUL</u>
Title: <u>GM</u>	Title: <u>OWNER</u>
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____

SEE YOUR ATTORNEY — THIS LEASE IS TO BE GIVEN TO YOUR ATTORNEY FOR REVIEW AND APPROVAL BEFORE YOU SIGN IT. BECAUSE EACH LEASE TRANSACTION IS UNIQUE, AND THE BUSINESS AND LEGAL CONCERNS OF EACH PARTY ARE UNIQUE, CB COMMERCIAL CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR RECOMMENDATION CONCERNING THE LEGAL EFFECT, LEGAL SUFFICIENCY, OR TAX CONSEQUENCES OF THIS LEASE. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND FINANCIAL ADVISORS. IN ANY REAL ESTATE TRANSACTION IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

SHOPPING CENTER LEASE

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This Lease between Arena Group 2000
a Limited Partnership ("Landlord"), and Len A. Paul
an Individual ("Tenant"), is dated April 24, 2002.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 9.5) to be paid by Tenant and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the plan attached hereto as Exhibit "A", and further described at Section 3.j. The Premises are located within the Shopping Center described in Section 3.i. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.d.).

2. LEASE REVIEW OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease and to have this Lease reviewed, approved, and modified as needed by its attorneys before the Lease is signed.

3. DEFINITIONS:

As used in this Lease, the following terms have the following meanings:

a. **Annual Percentage Rental Rate (Section 9.4):** 0 % of Tenant's Net Sales.

b. **Broker(s)**

Landlord's Broker: N/A

Tenant's Broker: N/A

Commission Payable to Landlord's Broker (Section 38.1): \$ As per schedule.

Landlord's Broker hereby discloses to Landlord and Tenant that Landlord's Broker is acting in this transaction as the agent of (check applicable box below):

- ☐ Landlord exclusively; or
☐ both Landlord and Tenant.

Landlord and Tenant each consent to such representation by Landlord's Broker.

c. **Commencement Date:** The earliest of the following dates:

(i) ~~The date Tenant initially opens for business in the Premises;~~

(ii) ~~30 days after substantial completion of Landlord's Work in the Premises (as defined in Exhibit "C" to the Lease). The date of such substantial completion is the date the Premises are substantially complete to the extent of Landlord's Work, except for such work that Landlord cannot complete until Tenant performs necessary portions of Tenant's Work (as defined in Exhibit "C"). Substantial completion of Landlord's Work shall be evidenced by notice to Tenant from Landlord's architect or designated representative that substantial completion has occurred; or~~

(iii) May 1, 2002

Tenant's Tentative Commencement Date (Article 7) is N/A

Tenant shall commence Tenant's Work promptly upon substantial completion of Landlord's Work and shall diligently complete Tenant's Work so that Tenant can promptly open for business in the Premises.

d. **Common Areas:** All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, roofs, walls, plazas, malls (including any enclosed malls where climate control is provided), throughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit "A". Landlord shall have the right to regulate or restrict the use of the Common Areas.

e. **Floor Area:** As to both the Premises and the Shopping Center, the respective measurements of floor area as are from time to time subject to lease by Tenant and all tenants of the Shopping Center, respectively, as determined and applied by Landlord on a consistent basis throughout the Shopping Center.

f. **Index (Section 9.2):** The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside
Average, Subgroup "All Items" (1982 - 84 = 100).

- g. Landlord's Mailing Address: 10 Urea Management
3525 Del Mar Heights Road, #294 San Diego, CA 921
- Tenant's Mailing Address: 3350 Sports Arena Blvd., Suite I
San Diego, CA 92110
- h. Minimum Annual Rent (Initial) (Section 9.1): \$ 48,000.- per year, payable in twelve (12) equal monthly installments each year.
- i. Outside Date for Delivery of Possession (Article 7): None
- j. Premises: That portion of the Shopping Center containing approximately 16,443 square feet of Floor Area, shown by diagonal lines on Exhibit "A", located on the grade level of the Shopping Center and designated space I. The Premises has dimensions of approximately N/A feet in frontage and approximately N/A feet in depth.
- k. Security Deposit (Article 36): \$ 5,000.-
- l. Shopping Center: The building of which the Premises is a part (the "Building") and any other buildings and improvements on the real property (the "Property") located at 3350 Sports Arena Blvd, Suite I and further described on Exhibit "A". The Shopping Center is known as Sports Arena Square
- m. Tenant's First Adjustment Date (Section 9.2): The first day of the calendar month following the Commencement Day plus months. Twelve (12) months from the Commencement Date.
- n. Tenant's Proportionate Share (Initial): N/A%.
- Such share is a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of the buildings in the Shopping Center available for exclusive use and occupancy by tenants (excluding the Floor Area of those areas, if any, designated by Landlord on Exhibit "A" as "Major Stores"), as determined by Landlord from time to time on a consistent basis. As of the date of this Lease the Shopping Center (excluding any Major Stores) contains a total Floor Area of 77,163 square feet.
- o. Tenant's Radius (Section 21.3): miles from the Premises.
- p. Tenant's Sales Breakpoint: That dollar sum equal to the then Minimum Annual Rent payable by Tenant divided by the Annual Percentage Rental Rate. As of the Commencement Date Tenant's Initial Sales Breakpoint is \$
- q. Tenant's Trade Name (Article 11): SOMA
- r. Tenant's Use Clause (Article 11): The Premises shall be used and occupied only for the purpose of Commercial Recreation and Assembly Facility and for no other use or purpose.
- s. Term: The Term of this Lease shall begin as of the date hereof and shall continue thereafter for a period of Three (3) years and Ten (10) months (plus any partial month) following the Commencement Date. The Commencement Date and expiration date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit "F". The Notice shall be served on Tenant promptly following determination of the Commencement Date under Section 3.c.

4. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" - Plan Showing the Premises and Shopping Center (See Sections 3.j, 3.l and Article 5)
- b. Exhibit "B" - Shopping Center Rules and Regulations (See Section 25.5)
- ~~c. Exhibit "C" - Landlord's Work and Tenant's Work~~
- ~~d. Exhibit "D" - Sample Form of Tenant Estoppel Certificate (See Section 20.3)~~
- ~~e. Exhibit "E" - Shopping Center Sign Criteria~~
- ~~f. Exhibit "F" - Landlord's Notice of Lease Term Dates (See Section 3.s)~~
- ~~g. Exhibit "G" - Guaranty of Lease~~

i. Addenda:

See attached Addendum

See Exhibit I - Parking

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit "A" shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit "A" and may eliminate or add any improvements to any portion of the Shopping Center, but Landlord agrees (i) not to materially change the size or location of the Premises without Tenant's consent, and (ii) that any such changes will not materially adversely affect ingress to and egress from the Premises, visibility of the Premises or parking availability in the Shopping Center.

6. OTHER TENANCIES.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord and Landlord's Broker do not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term.

7. DELIVERY OF POSSESSION.

Landlord agrees to deliver to Tenant and Tenant agrees to accept from Landlord possession of the Premises promptly upon substantial completion of Landlord's Work. If for any reason Landlord does not deliver possession of the Premises to Tenant with Landlord's Work substantially complete at least 30 days before Tenant's Tentative Commencement Date, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but the Commencement Date shall be delayed by the number of days delivery is delayed and Rent shall be abated until 30 days following the date of substantial completion of Landlord's Work in the Premises. Notwithstanding anything to the contrary contained herein, if Landlord does not deliver possession of the Premises to Tenant on or before the Outside Date for Delivery of Possession, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall have no further obligations hereunder.

8. TENANT'S WORK.

Tenant shall commence construction of Tenant's Work as defined in Exhibit "C" no later than the date of substantial completion of Landlord's Work in the Premises and shall diligently complete Tenant's Work. Landlord shall give Tenant not less than 10 days' advance written notice of such anticipated date of substantial completion of Landlord's Work. Tenant shall, at any time requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder. Tenant shall open the Premises for business within 30 days following the date of substantial completion of Landlord's Work in the Premises.

9. RENT.

9.1 Payment of Minimum Annual Rent. Tenant agrees to pay the Minimum Annual Rent during the Term for its use and occupancy of the Premises. Minimum Annual Rent shall be payable in advance on the first day of each calendar month of the Term without notice, setoff or deduction, in twelve (12) equal monthly installments during each year of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Minimum Annual Rent for the partial month shall be prorated on a daily basis, based on a 30-day month. Tenant shall pay Landlord the first installment of Minimum Annual Rent when Tenant executes this Lease.

9.2 Adjusted Minimum Annual Rent.

a. The Minimum Annual Rent set forth at Section 3.h. shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based only upon increases (if any) in the Index. The Index in publication 3 months before the Commencement Date shall be the "Base Index." The Index in publication 3 months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Minimum Annual Rent payable during the ensuing twelve-month period shall be determined by increasing the Initial Minimum Annual Rent by a percentage equal to the percentage increase, if any, in the applicable Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for any preceding Adjustment Date (or the Base Index, in the case of the First Adjustment Date), the Minimum Annual Rent for the ensuing twelve-month period shall remain the amount of Minimum Annual Rent payable during the preceding twelve-month period. When the Minimum Annual Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Minimum Annual Rent and the corresponding adjusted Tenant's Sales Breakpoint and the manner in which each was computed. The Minimum Annual Rent as so adjusted from time to time shall be the "Minimum Annual Rent" for all purposes under this Lease.

b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" hereunder.

9.3 Property Taxes.

a. Beginning with the Commencement Date and for the balance of the Term, Tenant shall pay to Landlord as "additional rent" the amount of taxes and assessments levied and assessed for any year upon the Premises and the underlying Property (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360 day year.

If the Premises and the underlying Property are not separately assessed, but are assessed as part of the land and improvements on a larger parcel (hereinafter the "Larger Parcel"), Tenant's share of Premises Property Taxes shall be a fractional portion of the property taxes on the Larger Parcel, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of all the areas available for exclusive use and occupancy by tenants of the Larger Parcel. Tenant shall pay Premises Property Taxes to Landlord as part of Common Area Costs at the times and in the manner provided for the payment of Common Area Costs at Section 25.3 of this Lease. For purposes hereof, an equitable adjustment shall be made for buildings which are only partially completed on the date such property taxes become a lien.

If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate

proration for any partial year) statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

b. The term "Premises Property Taxes" shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, Property or the Shopping Center; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Premises, Property or the Shopping Center or against Landlord's business of leasing space in the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises, Property or Shopping Center by or through any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises, Property or Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, Property or Shopping Center; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Premises Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

~~9.4 Percentage Rental. In addition to the Minimum Annual Rent and other sums required to be paid by Tenant under this Lease, Tenant shall pay as "percentage rental" a sum equal to the Annual Percentage Rental Rate times the amount of Net Sales of Tenant (as "Net Sales" is defined in Section 10.1 hereof) made from or upon the Premises during each calendar year, less the amount of Minimum Annual Rent paid by Tenant during such calendar year. Percentage rental shall be computed each calendar month and on or before the date the following month's installment of Minimum Annual Rent becomes due Tenant shall pay to Landlord the amount by which the sum computed as the Annual Percentage Rental Rate of Tenant's Net Sales during that period exceeds the Minimum Annual Rent payable by Tenant during that period. Within 90 days after the end of each calendar year the Net Sales of Tenant during that calendar year and the amounts payable to Landlord as Minimum Annual Rent and as percentage rental for that calendar year shall be determined. If Tenant has overpaid percentage rental, Tenant shall receive a prompt refund of the overpayment; if Tenant has underpaid percentage rental, Tenant shall immediately pay the deficiency to Landlord.~~

Percentage rental due for any partial month of the Term shall be prorated on a daily basis based on a 30-day month. The obligations hereunder shall survive the expiration of the Lease Term.

9.5 *Additional Rent.* Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12, 22, 25 and Exhibit "C", and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent." All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "Rent."

9.6 *Interest and Late Charges.* If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment.

Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, and processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to 10% of such installment. Such late charge is in addition to any interest due pursuant to the preceding paragraph of this Section 9.6. Landlord and Tenant agree that this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 *Payment of Rent.* All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at Landlord's management office in the Shopping Center, or at such other place as may from time to time be designated by Landlord in writing at least 10 days prior to the next ensuing payment date.

10. NET SALES.

~~10.1 Definition of "Net Sales." "Net Sales" of Tenant, as used in this Lease, means the gross selling price of all merchandise or services sold in or from the Premises by Tenant, its subtenants, licensees and/or concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, but excluding the following:~~

- ~~(i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made on such merchandise;~~
- ~~(ii) The selling price of goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;~~
- ~~(iii) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of accepting a trade-in;~~
- ~~(iv) Delivery charges;~~
- ~~(v) Cash refunds made to customers in the ordinary course of business. This exclusion shall not include any amount paid or payable for what are commonly known as trading stamps;~~
- ~~(vi) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales, where such charges are not included in the merchandise sales price;~~
- ~~(vii) Receipts from public telephones, stamp machines or vending machines installed solely for the use of Tenant's employees;~~
- ~~(viii) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected from customers separately from the selling price of merchandise or services; and~~
- ~~(ix) Sales of fixtures, equipment or property which are not stock in trade.~~

All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may occur at another location and even though actual filling of the sale or service order and actual

delivery of the merchandise may be made from a place other than the Premises. Every sale on installment or credit shall be treated as a sale for the full cash price at the time of sale.

10.2 Statement of Net Sales. Tenant shall furnish Landlord with an accurate statement of Tenant's Net Sales within 30 days after the close of each calendar month, and an annual statement of Net Sales (which shall include a monthly breakdown of Net Sales) within 60 days after the close of each calendar year. Such statements shall be signed and certified as accurate by Tenant. The annual statement of Net Sales shall be audited and certified as correct by Tenant's Certified Public Accountant. In addition, Tenant shall furnish Landlord with a copy of its state and local sales and use tax returns within 30 days after any such return is filed or required to be filed with the appropriate governmental agency.

Tenant shall keep and shall require any subtenants, licensees and/or concessionaires to keep, at the Premises or at such other place approved by Landlord in writing, full and accurate books of account, records and other pertinent data (including cash register receipts) of the gross sales, Net Sales, credits, refunds and other pertinent business transactions made from or upon or otherwise relating to the Premises. Such books, receipts and records shall be kept for not less than 2 years after the close of each calendar year to which they relate and shall be available for inspection and audit by Landlord and its representatives at all times during regular business hours. Landlord's receipt of any statement of Net Sales or Tenant's payment of percentage rental for any period shall not bind Landlord as to the correctness of the statement or amount of the payment. Within 2 years after the receipt of any such statement, Landlord or its designated Certified Public Accountant shall be entitled to audit Tenant's gross sales and Net Sales following 48 hours' advance written notice to Tenant. Such audit shall be conducted during normal business hours at either the Premises or Tenant's principal place of business. If such audit determines that there has been a deficiency in the payment of percentage rental, then such deficiency shall become immediately due and payable with interest at the maximum lawful interest rate from the date said payment should have been made. In addition, if an annual statement of Tenant is found to have understated Net Sales by more than 2% and if Landlord is entitled to any additional percentage rental as a result of such understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due Landlord. If such audit discloses an additional liability for percentage rental of \$1,000 or more for the period covered by the audit, Landlord may, in addition to any other remedies it may have for Tenant's breach of this Lease, terminate this Lease by written notice to Tenant given within 60 days after Landlord's receipt of the audit report. Any information obtained from such statements, audits or inspections shall be treated by Landlord as confidential and shall not be disclosed except to carry out the purposes of this Lease, but Landlord may divulge the contents of any such statements in connection with any financing arrangements involving, or assignment of Landlord's interest in, the Premises, Shopping Center, or this Lease, or in connection with any administrative or judicial proceedings in which Landlord is involved and in which such information is in issue.

Any failure by Tenant to maintain and keep full and accurate books of account, records and other pertinent data as required hereunder shall be deemed a default and breach of this Lease under Article 26 hereof.

11. POSSESSION AND USE.

11.1 Permitted Uses and Prohibited Conduct. Possession of the Premises shall be delivered to Tenant free and clear of all tenants and occupants and the rights of either, and free of liens and encumbrances other than those specified in Article 15 hereof. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit any person to use the Premises for conducting a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws, ordinances, regulations and requirements of the United States or the State, County and City where the Shopping Center is located, or any other lawful authority. Tenant shall, during the Term, keep the Premises in a clean and wholesome condition, free of any objectionable noises, odors or nuisances, and shall comply with all health and police regulations. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities and any enclosed mall of the Shopping Center).

11.2 Insurance Coverage Use Restrictions. Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increases in Landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical equipment in the Premises which overloads the electrical lines of the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.3 Deliveries. Tenant shall use its best efforts to complete all deliveries, loading, unloading and services to the Premise before 10:00 a.m. each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

12. UTILITIES SERVICES.

12.1 Utilities Installation. Landlord agrees that to the extent provided for in Exhibit "C" hereof, it will initially make available to Tenant (i) facilities for the removal of sewage and the delivery to and distribution within the Premises of water, electricity, telephone service and natural gas (which shall be used by Tenant for cooking and demonstration of gas operated sales item only) (these facilities are collectively referred to in this Article 12 as "utilities"), and (ii) a heating, ventilation and air conditioning

system (the "HVAC system"). Unless Landlord agrees otherwise, Tenant shall use only those utilities and any HVAC system provided for under Exhibit "C" to serve the Premises. If required under Exhibit "C", a separate meter shall measure the consumption of utilities and/or the HVAC system.

If not required to be furnished by Landlord under Exhibit "C", Tenant shall be responsible for obtaining any utilities and/or HVAC system required for Tenant's business operations in the Premises.

12.2 Utilities and HVAC System Charges. Tenant shall pay for all utilities used by Tenant on the Premises from and after substantial completion of Landlord's Work in the Premises. If Tenant's utilities and/or HVAC system are separately metered, Tenant shall pay directly to the appropriate utility company the cost of all such utilities used on the Premises. If any of Tenant's utilities and/or HVAC system are furnished by Landlord without separate metering, then during the Term Tenant shall pay as additional rent, monthly in advance, a utilities charge to reimburse Landlord for any such utilities furnished by Landlord to the Premises. This utilities charge shall, at Landlord's election, be established (a) by an estimate of usage made from time to time by Landlord's engineer or the appropriate utility company, and initially based on a typical store layout comparable to Tenant's proposed use of the Premises, or (b) a percentage of such total utility costs equal to a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of Shopping Center actually being furnished with utility service by Landlord at the time of billing. If Tenant's Premises is not separately metered, such utilities and/or HVAC charges may be billed with Tenant's share of Common Area Costs under Section 25.3. The utilities charge to Tenant hereunder for utilities furnished by Landlord shall be based on utility rates which do not exceed those charged by the local public utility company for services it would otherwise furnish directly to Tenant. If the Premises are not initially separately metered, Landlord shall have the right, at its expense, to install separate meters for the Premises at any time during the Term.

12.3 Failure to Pay. If Tenant fails to pay any amount due to Landlord hereunder within 10 days after receipt by Tenant of a bill therefor, Landlord may (in addition to all other rights and remedies provided herein for breach of this Lease and if permitted by law) cut off and discontinue, upon 5 days' advance notice to Tenant and opportunity to cure, any such utilities furnished to the Premises by Landlord until all such amounts are paid in full.

12.4 No Landlord Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) operation of the HVAC system, if any. No such failure or interruption shall entitle Tenant to terminate this Lease or stop making any Rent or other payments due hereunder.

13. INDEMNITY BY TENANT.

Tenant shall indemnify and hold Landlord harmless from any and all costs, claims or liability of any kind arising out of: (a) Tenant's use and occupancy of the Premises, (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorney's fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct.

14. INSURANCE - WAIVER OF SUBROGATION.

14.1 Tenant's Insurance Obligations. Tenant shall, from and after the earlier of (a) substantial completion of Landlord's Work in the Premises, or (b) commencement of any of Tenant's Work in the Premises, and for the remainder of the Lease Term maintain, at its expense, the following types of insurance coverage, in the amounts specified and in the forms hereinafter provided for:

(i) **LIABILITY INSURANCE.** Commercial general liability insurance (sometimes known as comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Such policy shall be an occurrence form and shall include Owner's and Contractor's Protective Liability with respect to construction of improvements by Tenant on the Premises. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be not less than \$3,000,000 per occurrence. The liability insurance obtained by Tenant under this Section 14.1(i) shall (1) be primary and non-contributing; (2) contain cross-liability endorsements; and (3) insure Landlord against Tenant's performance under Article 13(a), (b) and (e) if the matters giving rise to the indemnity under Article 13 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(ii) **PLATE GLASS.** Insurance covering the full replacement cost of all plate glass on the Premises. Tenant shall have the option to self-insure this risk.

(iii) **TENANT IMPROVEMENTS.** Insurance covering all of the items specified as "Tenant's Work" in Exhibit "C". Tenant's leasehold improvements, alterations, additions or improvements permitted under Article 16, and trade fixtures, merchandise and personal property from time to time in, on or upon the Premises. Such insurance shall cover not less than 100% of the full replacement cost of the foregoing from time to time during the Term, and shall provide protection against any peril included within the classification of fire, extended coverage, sprinkler leakage, vandalism, theft, malicious mischief and special extended perils (all risk). Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the provisions of Article 23 hereof.

(iv) GENERAL INSURANCE PROVISIONS.

(a) Any insurance required to be maintained by Tenant hereunder shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(b) A certificate of the insurer or the insurer's legal representative evidencing the existence and amount of each insurance policy required of Tenant hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter at least 30 days prior to the expiration of any such policy. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancellable except after 30 days' written notice to Landlord. If Tenant fails to deliver any such

evidence of insurance to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance coverage in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement therefor.

(c) All insurance shall be maintained with companies holding a "General Policy Rating" of A-XII or better, as set forth in the most current issue of "Best's Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 14.1 may not be available in the future. Tenant acknowledges that the insurance described in this Section 14.1 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall be responsible for obtaining any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

14.2 Landlord's Insurance Obligations. Landlord shall, in connection with its ownership and operation of the Shopping Center, at all times from and after commencement of Landlord's Work in the Premises, maintain in effect policies of insurance providing protection against the following liabilities and/or risks: (a) commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage, and (b) fire and extended coverage insurance (including coverage for Common Area sprinkler damage, vandalism and malicious mischief, and, if required by any lender holding a security interest in the Shopping Center or if deemed necessary by Landlord, flood and earthquake insurance) on the Building and Shopping Center in an amount not less than their full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the Term. The types and coverages of insurance maintained by Landlord hereunder shall be subject to such further requirements as may be imposed by Landlord's lender. Landlord shall also have the right to maintain such additional types and coverages of insurance (including business interruption insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

14.3 Waiver of Subrogation. Landlord and Tenant (for themselves and their insurers) each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, against any of the parties to the REA referred to in Article 15 hereof (the "Parties") and against other tenants of the Shopping Center (provided such Parties and other tenants have waived such rights against Landlord and Tenant), on account of any loss by or damage to the waiving party or its property or the property of others under its control (including as to Tenant the Premises and its contents, and as to Landlord the other portions of the Shopping Center), arising from any risk generally covered by fire and extended coverage insurance. The foregoing waivers of subrogation shall be required hereunder only if (a) then available in the State where the Shopping Center is located, and (b) such waiver does not invalidate the applicable policy.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to the liens or restrictions of (a) any matters or documents of record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, operation and reciprocal easement agreement (the "REA"); and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate the terms of any REA or any other Matters of Record, and (ii) this Lease is subordinate to the REA, if any, and any amendments or modifications thereto. If the REA, if any, is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to the REA upon recordation of the REA. Tenant agrees to execute and return to Landlord within 10 days after written demand therefor by Landlord, an agreement in recordable form satisfactory to Landlord subordinating this Lease to the REA. Any REA shall not prevent Tenant from using the Premises for the purposes set forth in Tenant's Use Clause.

16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 Permitted Improvements. Subject to the terms of this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done and providing Landlord with all plans for such proposed improvement work. Tenant may not make any improvement which reduces the value of the Premises or is of a structural nature. No single improvement costing more than \$500.00 may be made without first obtaining the written approval of Landlord. In addition, no improvement shall be made to any storefront, mechanical system, or exterior wall or to the roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of an existing mezzanine, unless and until the written consent and approval of Landlord is first obtained.

* No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord.

Tenant shall reimburse Landlord for all costs incurred by Landlord (including architect's and/or engineer's fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 Construction Requirements. All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors or subcontractors being used. Upon completion of such improvements, Tenant shall file a Notice of Completion for record in the office of the County Recorder where the Shopping Center is located, as required or permitted

by law. Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center.

16.3 Insurance Requirements. If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14.1(iii). It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

17. MECHANICS' LIENS.

17.1 Tenant's Covenants. Tenant shall pay all costs for work done by or for Tenant in the Premises (other than Landlord's Work) and Tenant shall keep the Premises, Building and Shopping Center free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises under Article 16 or Exhibit "C"), Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord.

17.2 Tenant's Contest of Lien. If Tenant desires to contest any claim of lien arising from work done by or for Tenant in the Premises, Tenant shall first furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of any such lien for any amount is entered, Tenant shall immediately pay and satisfy such judgment.

17.3 Landlord's Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and Tenant has not given Landlord adequate security to protect the Premises, the property therein, and the Building, Shopping Center and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the maximum lawful rate from the date of Landlord's payment.

17.4 Notice of Lien. If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

18. ADVERTISING MEDIA.

Tenant shall not affix or maintain upon the glass panes or supports of the show windows (or within 24" of any window), doors or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item. Tenant shall not affix any sign to the roof of the Premises.

* Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign(s) in accordance with the provisions of the sign criteria attached hereto as Exhibit "E".

19. FIXTURES AND PERSONAL PROPERTY.

19.1 Removal and Replacement. All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 Fixtures. All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical systems, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit "C" (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any Larger Parcel as defined in Section 9.3, Tenant shall pay Landlord the taxes attributable to Tenant's personal property within 15 days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. All taxes, assessments, fees or charges referred to and billed to Tenant under this paragraph shall be considered to be taxes under the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP.

20.1 One Year Prohibition Against Transfer. Landlord and Tenant acknowledge that the Shopping Center is an interdependent enterprise and that each party's realization of the benefits of this Lease depends upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further acknowledge that the character and quality of Tenant's operation, and of the Shopping Center, will be enhanced by Tenant's use of its best efforts, for a reasonable period of time, to establish a successful business and business image. Landlord and Tenant further agree that one year is a reasonable period of time to attempt to achieve this goal. Accordingly, Tenant agrees that for a period of one year from the date Tenant initially opens to the public for business in the Premises (the "Occupancy Period"), Tenant shall not, and shall not have the power to, transfer or assign this Lease, sublet the Premises, enter into license or concession agreements, or change ownership (such transactions are hereinafter individually and collectively referred to as a "Transfer"), without first procuring the written consent of Landlord, which may be given or withheld in Landlord's sole discretion. After the expiration of the Occupancy Period, Landlord's consent to any Transfer shall not be unreasonably withheld, subject to the terms, covenants and conditions contained below.

20.2 Restrictions on Transfer. If after expiration of the Occupancy Period Tenant desires to effect a Transfer to anyone (a "Transferee") other than a successor, subsidiary, affiliated or controlling corporation of Tenant (an "Affiliate"), Tenant shall give written notice ("Transfer Notice") to Landlord at least 60 days before the effective date of any such proposed Transfer. The Transfer Notice shall state (a) whether Tenant proposes to assign the Lease, sublet the Premises, enter into a license or concession agreement or change ownership, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) all other material terms of the proposed Transfer, and (e) in detail the type of business operation the proposed Transferee intends to conduct on the Premises. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. In addition, the Transfer Notice shall be accompanied by the proposed Transferee's income statements and balance sheets covering the preceding 36-month period, and each shall be certified as accurate by the Transferee. Landlord may, at any time within 30 days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer (which consent shall not be unreasonably withheld under the business judgment standards set forth in Section 20.3 below) by mailing written notice to Tenant of its decision ("Decision Notice"). If Landlord consents to the proposed Transfer Tenant may thereafter promptly effect a Transfer in accordance with the terms of Tenant's Transfer Notice.

If Landlord consents to the proposed Transfer and Tenant does not consummate the proposed Transfer within 30 days after receipt of Decision Notice, the provisions of the first paragraph of this Section 20.2 shall again apply.

20.3 Grounds for Withholding Consent. Landlord may withhold consent to a proposed Transfer if, in Landlord's reasonable business judgment, any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Premises, as compared to the merchandising operation conducted by Tenant prior to the date of Transfer Notice; (ii) the proposed Transferee lacks a good business reputation or sufficient relevant business experience; (iii) the financial worth of the proposed Transferee as of the date of Transfer Notice is less than the combined financial worth of Tenant and Tenant's guarantor (if any) as of either the date of this Lease or the date of Transfer Notice; (iv) the proposed Transferee's proposed use of the Premises conflicts with Tenant's Use Clause or is otherwise incompatible with the tenant mix of the Shopping Center; (v) the annual percentage rent Landlord reasonably anticipates receiving from the proposed Transferee is significantly less than the annual percentage rent Landlord could reasonably anticipate receiving from Tenant; or (vi) the proposed Transfer would breach any covenant of Landlord respecting radius restrictions, use or exclusivity rights in any other lease, or any financing or other agreement relating to the Shopping Center. Any attempted or purported Transfer without Landlord's written consent shall be void and of no force or effect.

20.4 No Release from Liability. No Transfer, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease, from its covenants and obligations hereunder during the Term. Tenant shall, promptly upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with the processing and documentation of any requested Transfer.

20.5 Transferee's Obligations. Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the Transferee. Each such Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One fully executed copy of such written instrument shall be delivered to Landlord. Failure to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 20 shall prevent any Transfer from becoming effective.

* **20.6 Division of Profit Between Landlord and Tenant.** Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of Transfer Notice, depreciated on a straight-line basis over the Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided equally between Landlord and Tenant. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as additional rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon 48 hours' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

X **20.7 Further Restrictions.** Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. For purposes of this Article 20, if Tenant is a partnership any withdrawal(s) or change(s) of partners cumulatively owning a 50% or more interest in the partnership, or if Tenant is a corporation, any transfer(s) cumulating 50% or more of its stock, shall constitute a voluntary Transfer and shall be subject to the provisions hereof. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

21. TENANT'S CONDUCT OF BUSINESS.

21.1 *Tenant's Operating Covenants.* Tenant agrees that from and after its initial opening for business it shall, subject to the provisions of Section 23.5 hereof, operate and conduct its business in the Premises during all Shopping Center Business Hours (as hereinafter defined) and in accordance with the provisions of this Lease. Tenant shall at all times keep and maintain in the Premises an adequate stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

21.2 *Hours and Days of Operation.* Tenant recognizes that it is in the interests of both Tenant and Landlord to regulate the minimum hours of business for all tenants of the Shopping Center and Tenant agrees that commencing with its initial opening for business in the Premises and for the remainder of the Term it shall be continuously open for business during all hours on all days that the Shopping Center is open for business to the public, as determined by Landlord in its sole discretion (the "Shopping Center Business Hours"). Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during Shopping Center Business Hours. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays or national holidays.

21.3 *Radius Provision.* If, during the first 5 years after Tenant initially opens for business in the Premises, Tenant directly or indirectly operates or owns within Tenant's Radius any type of business (other than a business already operated or owned by Tenant on the date of this Lease) similar to its business in the Premises (a "Similar Business"), Landlord may, at its option and for so long as Tenant is operating such Similar Business(es), include the net sales (as "Net Sales" is defined in Section 10.1) of each such Similar Business with the Net Sales made from the Premises for the purpose of computing the percentage rent due from Tenant under this Lease. Tenant shall provide Landlord with a statement of Tenant's Net Sales in accordance with the provisions of Sections 10.1 and 10.2 hereof for each Similar Business operated by Tenant within Tenant's Radius. If after expiration of this 5 year period Tenant continues to operate an existing Similar Business or opens another Similar Business within Tenant's Radius, then the Minimum Annual Rent payable under Article 9 hereof shall be adjusted promptly following expiration of such 5 year period in the case of an existing Similar Business(es), and from time to time upon the opening of another Similar Business, in the following manner: From the statements of Net Sales submitted by Tenant under Article 10 and this Section 21.3, Landlord shall compute a sum which represents the highest annual percentage rental paid or payable by Tenant under Sections 9.4 and 21.3 hereof during any consecutive 12 month period of the immediately preceding 60 month period, and this sum, if any, shall be added to the amount from time to time specified in Sections 3.h., 9.1, 9.2 and this Section 21.3 as the then Minimum Annual Rent. This resulting sum shall be the new Minimum Annual Rent payable beginning with the expiration of the first 5 years of the Term or the date of opening for business of such other Similar Business(es) within Tenant's Radius, whichever is applicable, and shall be subject to further adjustment thereafter in accordance with Section 9.2 hereof. Whenever a Similar Business opens for business within Tenant's Radius, Tenant shall give Landlord written notice of the location and opening date of such Similar Business. Landlord shall give Tenant written notice of the new Minimum Annual Rent payable by Tenant hereunder whenever adjusted as herein provided.

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 *Tenant's Obligations.* Tenant shall, at its expense and at all times from and after substantial completion of the Premises, repair, replace and maintain in good and tenable condition, the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation, the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor coverings, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises, and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Landlord shall, at Tenant's expense, contract with a qualified service company for the monthly maintenance of the HVAC system serving the Premises. Landlord may bill Tenant for the cost of such HVAC maintenance contract as part of Common Area Costs under Article 25 hereof.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises, damage due to insured casualty losses covered by Article 23 or for any items of repair which are Landlord's obligation under Section 22.2.

22.2 *Landlord's Obligations.* Subject to Tenant's obligations under Section 22.1 and Landlord's further obligations, if any, under Section 25.2, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good and tenable condition the roof, exterior walls, structural parts of the Premises and Building (including the structural floor) and HVAC system serving the Premises. Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, (1) Tenant shall be responsible for the cost of repairs to the HVAC system serving the Premises (which Landlord may bill to Tenant as a part of Common Area Costs under Article 25 hereof), and (2) Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant, or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required to) make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf Tenant shall pay to Landlord any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs, alterations, replacements or improvement to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repair required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete those repairs within a reasonable period of time following receipt of Tenant's notice.

22.3 *Tenant's Failure to Maintain Premises.* If Tenant fails to repair or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right (in addition to all other rights and remedies provided herefor breach of this Lease), upon giving Tenant reasonable written notice of its election to do so (and opportunity to cure), to make

such repairs or perform such maintenance on behalf of and for the account of Tenant, and the cost thereof shall be paid to Landlord by Tenant promptly following receipt of a bill therefor.

22.4 Landlord's Right of Entry. Landlord or its authorized representatives may enter the Premises at all times during Shopping Center Business Hours to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or the Insurance Services Office or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 Insured Casualty. If the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then within 90 days after the date of such damage Landlord shall commence repair, reconstruction and restoration of the Premises and diligently complete such repairs, in which event this Lease shall continue in full force and effect. Notwithstanding the foregoing, if there is partial or total destruction of the Premises during the last 3 years of the Term, Landlord and Tenant shall each have the option to terminate this Lease by written notice to the other given within 30 days after such destruction. For purposes of this option "partial destruction" shall mean destruction to the extent of 33 1/3% or more of the full replacement cost of the Premises as of the date of destruction.

23.2 Uninsured Casualty. If the Premises are damaged to any extent by act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance (including flood or earthquake damage if not covered under insurance maintained by Landlord), Landlord may within 90 days following the date of such damage, either (a) commence repair, reconstruction or restoration of the Premises and diligently complete it, in which event this Lease shall continue in full force and effect, or (b) elect not to repair, reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of destruction. In either such event Landlord shall give Tenant written notice of its election hereunder within said 90 day period.

23.3 Reconstruction Responsibilities. Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit "C" and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant, at its expense, shall reconstruct all items set forth as Tenant's Work and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment, and resume normal business operations in the Premises.

23.4 Release from Liability. Upon any termination of this Lease under any of the provisions of this Article 23 each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14.1 covering the items set forth as "Tenant's Work" in Exhibit "C" and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.5 Abatement of Rent. In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction or replacement provided for in Section 23.3. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management, and the obligation of Tenant to pay percentage rental and additional rent hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereof or the reconstruction or replacement thereof.

23.6 Waiver of Statutory Rights of Termination. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises, Building or Shopping Center which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

24. EMINENT DOMAIN.

24.1 Takings Resulting in Termination. If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If 25% or more of the Floor Area of the Premises is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election within 30 days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than 25% of the Floor Area of the Shopping Center or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within 30 days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 Takings Not Resulting in Termination. If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken, and (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as exists

equitable basis, taking into account the relative value of the portion of the Premises taken as compared to the portion remaining. Tenant hereby waives any statutory right of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

24.3 Award. If this Lease is terminated under Section 24.1, or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all real property interests in the Premises. The Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 Transfer Under Threat of Taking. For the purposes of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

25. COMMON AREAS.

25.1 Use of Common Areas. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord agrees that the Common Areas shall be initially constructed on the areas generally shown on Exhibit "A", and, subject to the preceding sentence, shall be maintained and operated at all times following completion thereof for the benefit and/or use of the customers and patrons of Tenant and of other tenants, owners and occupants of the Shopping Center. The original construction and installation of the Common Areas shall be at Landlord's expense.

25.2 Landlord's Maintenance Responsibilities; Common Area Costs. Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to Common Area and Shopping Center facilities. Notwithstanding the foregoing, all expenses incurred by Landlord in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include without limitation, all sums expended in connection with the Common Areas and Shopping Center for: general maintenance and repairs; resurfacing; painting; restriping; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; lighting, HVAC and other utility expenses; maintenance, repair, cleaning and replacement of public toilets, music program equipment and loudspeakers, sidewalks, stairways, curbs, Shopping Center signs, sprinkler systems, planting and landscaping, floors, walls, ceilings, roofs, skylights, windows, directional signs, markers and bumpers; fire protection systems and equipment (including fire sprinklers), security systems, lighting systems and fixtures (including replacement of tubes and bulbs), storm drainage systems, plumbing, electrical, HVAC and other utility systems which do not exclusively serve the interior of tenants' premises, and all mechanical equipment (including automatic door openers, escalators and elevators); personnel to implement the foregoing services, including, if Landlord deems necessary, the cost of security guards; all on-site costs and personnel expenses of Landlord incurred to manage the Shopping Center (which may be contracted for with third parties); all real (as generally defined in Section 9.3b of this Lease) and personal (as generally defined in Section 19.3 of this Lease) property taxes and assessments on the improvements and land comprising the Common Area and Shopping Center or any personally in use on the Common Areas or Shopping Center; any sums paid to third parties for the purpose of seeking reduction of property taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas or Shopping Center; depreciation on maintenance and operation machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and premiums for adequate comprehensive general liability and property damage insurance covering Landlord's ownership and operation of the Common Areas and Shopping Center, fire and extended coverage insurance on the Common Areas and the Shopping Center (which may include earthquake and flood damage endorsements) and vandalism and plate glass insurance covering the Common Areas and Shopping Center. Common Area Costs shall also include a charge for appropriate reserves for the costs of repainting, re-roofing and resurfacing Common Areas. In addition, Common Area Costs shall include a sum to be payable to Landlord for supervision of the Common Areas and for accounting, bookkeeping and collection of Common Area Costs, in an amount equal to 10% of the total of all of the foregoing Common Area Costs incurred in each calendar year. Landlord may have any or all services and management performed in connection with the Common Areas and Shopping Center provided by an independent contractor(s).

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit "A", then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 Method of Payment. Portions of the Shopping Center may be owned or leased by the occupants of those buildings designated by Landlord as a "Major Store" on Exhibit "A" (hereinafter referred to as the "Major Store Occupants"). The contributions of the Major Store Occupants towards the Common Area Costs shall be credited toward payment of the entire Common Area Costs and the balance of the Common Area Costs shall be prorated among the other tenants of the Shopping Center in the following manner:

(i) From and after the date Rent has commenced, and thereafter during the Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

(ii) Within 60 days following the end of each calendar year (or as soon thereafter as possible), Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under subparagraph (i) above. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under subparagraph (i) above, Tenant shall pay Landlord the deficiency within 10 days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant may offset the excess against payments thereafter coming due under subparagraph (i) above or receive a refund following the expiration of the Term. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs as of the commencement of the Term and expiration of the Term. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term.

tenant's failure to pay any sums due hereunder shall constitute a default under this Lease equivalent to a failure to pay minimum Annual Rent when due.

25.4 Control of Common Areas. Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

25.5 Rules and Regulations. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit "B".

* **25.6 Employee Parking.** Landlord shall at all times have the right to designate a particular parking area to be used by employees of Tenant and other occupants of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord from time to time with an accurate current list of its and all its employees' automobile license plate numbers within 15 days after taking possession of the Premises and thereafter within 5 days after any change in the accuracy of the list. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant \$25.00 per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within 10 days after demand by Landlord.

26. DEFAULTS BY TENANT.

26.1 Events of Default. Each of the following shall constitute a material default and breach under this Lease:

- (a) If Tenant is at any time in default of its obligation to pay any Rent or other charges, and such default continues for more than 10 days after written notice of such default;
- (b) If Tenant is in default in the prompt and full performance of any other of its obligations under this Lease and such default continues more than 30 days after written notice specifying the particulars of such default;
- (c) If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;
- (d) (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder; or
- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

26.2 Remedies Upon Breach of Lease. On the occurrence of any breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

- (a) Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or
- (b) Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Shopping Center is located.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as

aforsaid, Landlord shall have in addition to its rights under Section 26.4 hereof, the right, but not the obligation, to remove from the Premises any personal property located therein and to place it in storage at a public warehouse at the expense and risk of Tenant.

Notwithstanding any other term or provision hereof to the contrary, this Lease shall terminate on the occurrence of any act which affirms Landlord's intention to terminate this Lease as provided in this Section 26.2, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees, incurred by Landlord in connection with the filing, commencement, pursuing or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Minimum Annual Rent and other Rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 Landlord's Damages. If Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease, Landlord may recover from Tenant as damages, all of the following:

- (i) The worth at the time of award of any unpaid Rent and other charges which has been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves Landlord could have reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid Rent and other charges which Tenant would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, (c) expenses of reletting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus
- (v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest on unpaid amounts at the rate of 10% per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank located nearest to the Shopping Center in effect at the time of award, plus 1%.

For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36 month period, except that if it becomes necessary to compute such rental before such 36 months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 Fixtures and Personal Property. In the event of Tenant's default, all of Tenant's merchandise, Fixtures and other Personal Property shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 No Waiver. The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

27. DEFAULTS BY LANDLORD.

If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period), then such failure shall constitute a default hereunder and Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's default; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, or of partners or principals of such partners comprising Landlord, if any, or of Landlord's officers, shareholders or directors, if any) wherever situated, shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Tenant hereby waives any right to satisfy a judgment against Landlord except from the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center.

the default as provided below, then (subject to the provisions of Section 22.2. hereof) Tenant shall have the right to cure that default at Landlord's expense. In such case Landlord shall pay the reasonable cost of such cure promptly following receipt of a bill from Tenant itemizing the cost of such cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any cost of such cure against any payments of Rent or any other charges due and payable to Landlord under this Lease, except as otherwise specifically provided in this Lease.

Tenant agrees to send by certified or registered mail to any mortgagee or deed of trust beneficiary of the Shopping Center whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, Tenant shall provide any such mortgagee or beneficiary with notice of such failure and such mortgagee or beneficiary shall have an additional 30 days following receipt of such notice to cure such default; provided that if such default cannot reasonably be cured within that additional 30 day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

28. ATTORNEYS' FEES.

If at any time after the date hereof either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the losing party in such action or proceeding shall reimburse the winning party for its reasonable expenses of attorneys' fees and all costs and disbursements incurred, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the winning party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the winning party.

29. SUBORDINATION - ATTORNMENr.

29.1 Subordination. Within 10 days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien or security interest of the first mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease), the interest of any lease in which Landlord is the lessee, or any REA that may burden the Premises, Building, Shopping Center, Property or any future improvements made to the Property.

29.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than 10 days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit "D" certifying (i) that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (ii) the dates to which the Rent and other charges are paid in advance, if any; (iii) the Commencement Date and expiration date of the Lease Term, (iv) whether Tenant has assigned or transferred this Lease or any interest of Tenant therein; and (v) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rent, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Building and the Premises are a part. Tenant's failure to deliver such statement within the time required shall be conclusive and binding upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent, and (c) no more than one month's Rent has been paid in advance.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any REA and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

~~31. MERCHANTS' ASSOCIATION.~~

~~**31.1 Merchants' Association.** If either Landlord or a majority of tenants in the Shopping Center determine at any time that it is in the best interests of the Shopping Center, Tenant will become a member of, participate fully in, and remain in good standing in a non-profit Merchants' Association (the "Association") formed and organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the by-laws, rules and regulations of such Association. Landlord and each member tenant shall have one vote in the operation of the Association. The articles of incorporation and by-laws of the Association shall be approved by a majority vote of the Association members and shall be subject to amendment as provided in the by-laws. The objectives of the Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and centerwide advertising. Tenant agrees to pay annual dues to the Association in an amount and at the time determined by a vote of the members of the Association from time to time. Default in payment of such dues shall be deemed a default in payment of Rent hereunder.~~

~~**31.2 Grand Opening Promotional Fund.** Tenant shall separately pay when billed the sum of \$.25 per square foot of Floor Area in its Premises to provide Landlord with funds to promote the "grand opening" of the Shopping Center, and/or Tenant's business.~~

32. CAPTIONS; JOINT AND SEVERAL LIABILITY.

32.1 Captions. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 Joint and Several Liability. If two or more persons or entities execute this Lease as Landlord or tenant with such persons or entities shall be jointly and severally liable for compliance with and performance of the terms, covenants and provisions of this Lease.

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Section 3.g. hereof. Either party may change such address by written notice to the other as herein provided.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing and shall not be unreasonably withheld, unless otherwise expressly permitted in this Lease. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent.

If Landlord or Tenant unreasonably fails to give any such consent, the other party shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT.

36.1 Payment of Security Deposit. Tenant has deposited with Landlord the sum specified in Section 2.k. hereof as the "Security Deposit", receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

36.2 Application of Security Deposit. If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much as is necessary to compensate Landlord for loss of Minimum Annual Rent or additional rent, or other damages sustained by Landlord due to such default by Tenant. Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the Security Deposit (or the balance thereof remaining) shall be returned in full to Tenant not later than 14 days following the end of the Term and delivery of possession of the Premises to Landlord.

36.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

36.4 Transfer of Landlord's Interest. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises and Landlord shall thereupon be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

37. MISCELLANEOUS.

37.1 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

37.2 Severability. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 Corporate Authority; Partnership Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership certificate of limited partnership or other evidence of partnership satisfactory to Landlord.

37.4 Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease.

is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drawn by Landlord, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

37.5 Governing Law. The laws of the state where the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

37.6 Waiver or Consent Limitations. A waiver of any breach or default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant's contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance hereunder.

* **37.8 Waiver of Redemption Rights.** Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

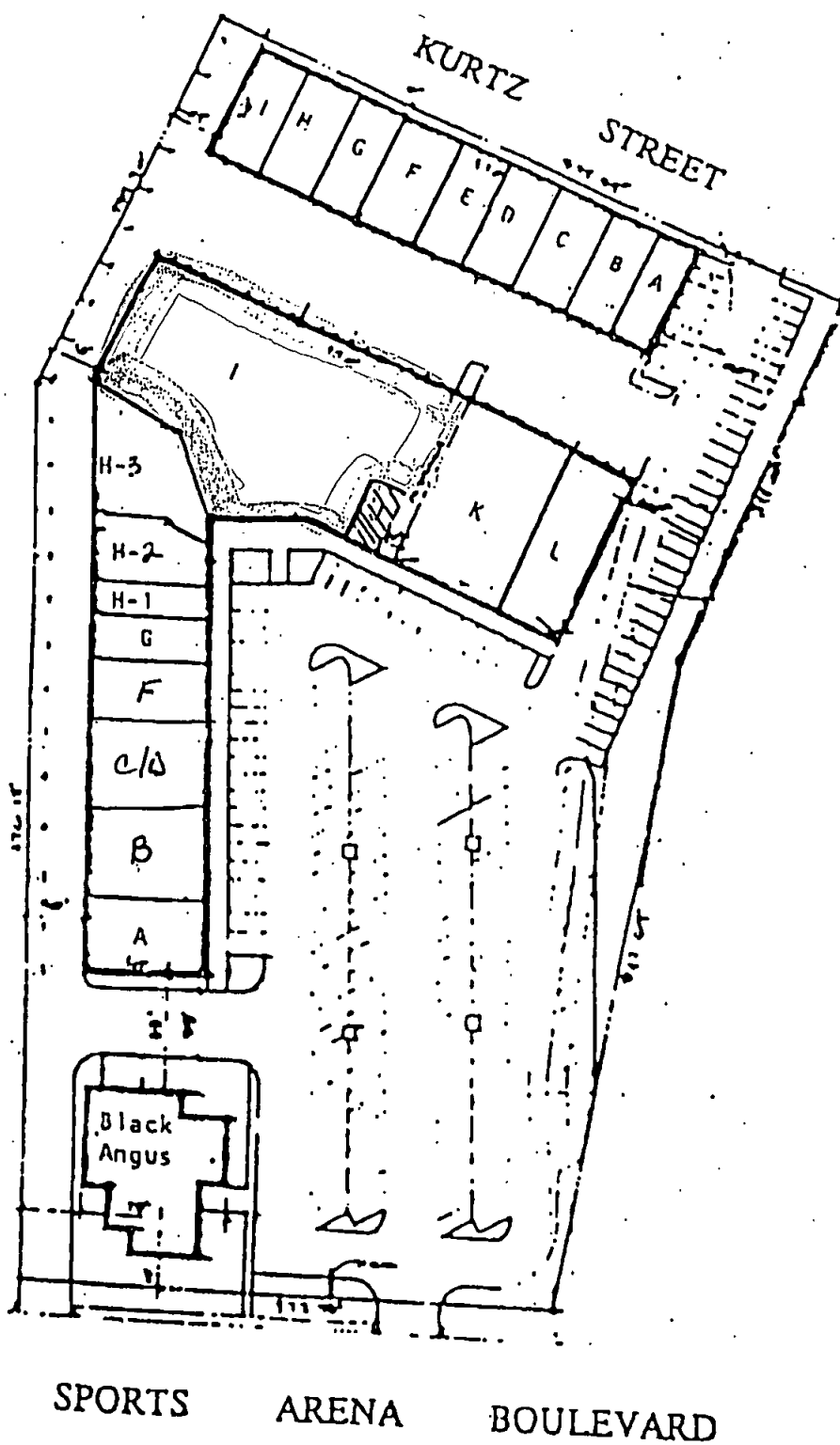
37.10 Right to Enter. Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 Definition of Landlord. As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Shopping Center. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

EXHIBIT A

SPORTS ARENA SQUARE SITE PLAN



Tenant: *Len A. Paul*
Space: *3350-I*
Lease Date: *April 24, 2002*
Applicable Lease Provision: EXHIBIT "B"

RULES AND REGULATIONS
FOR
SPORTS ARENA SQUARE

The following is a list of Rules and Regulations adopted by the Landlord. The purpose of these specific prohibitions is not exclusive, but solely as a means to ensure that all Tenants and its customers may enjoy a clean, well managed shopping center which is conducive to maximum convenience, comfort and safety at Sports Arena Square:

1. Tenant and its authorized representatives and invitees shall use any roadway, walkway, only for ingress to or egress from the stores in the shopping center. Use of the common areas shall be in an orderly manner in accordance with the directional or other signs or guides. Roadways

shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers or inventory in designated areas. Walkways shall be used for pedestrian travel only.

2. Tenant and its authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. For the purpose of this section, the size of the motor vehicles shall not exceed 6,000 lbs. and shall not contain more than 3 axles. During peak periods of business activity, Landlord can impose limitations in all or parts of the parking areas as to the length of time for parking use.

3. No person shall use any utility area, truck loading area, or other area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. No Tenant or employee of any Tenant shall use any area for motor vehicle parking except the area specifically designated for Tenant or employees Tenants

parking, if any. No Tenant shall designate an area for employee parking except the area designed in writing by Landlord, if any.

5. Without the consent of Landlord, no person shall use any of the common areas for:

(a) Vending, peddling, or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet, or other matter;

(b) Exhibiting any sign, placard, banner, notice, or other written material;

(c) Distributing any circular, booklet, handbill, placard, or other material;

(d) Soliciting membership in any organization, group, or association, or soliciting contributions for any purpose;

(e) Parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the common areas or be

detrimental to any of the business establishments in the shopping center;

(f) Using the common areas for any purpose when none of the business establishments in the shopping center is open for business;

(g) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles;

(h) Using a sound-making device of any kind or making or permitting any noise that is annoying, unpleasant, or distasteful;

6. Damage caused by any Tenant or its authorized representatives to any sign, light standard, or other improvement or property within the common area shall be repaired at Tenant's cost.

7. Tenant and its authorized representatives and invitees shall not make or permit any noise in the center that is annoying, unpleasant, or distasteful, that interfere in any way with other tenants or invitees.

... possession and/or consumption
of alcohol by minors; and

(d) Lewd or illegal behavior by any
patrons causing the presence of police or other
law enforcement agencies.

9. Upon termination of its tenancy, Tenant shall
deliver to Landlord or its agent the keys of the unit leased
that were furnished to Tenant or that Tenant had made. In
case Tenant loses any keys furnished to it by Landlord,
Tenant shall pay Landlord for them.

10. Tenant shall notify Landlord's agent
of the time and manner of all moving of

furniture, freight or equipment of any kind done by or at the request of Tenant. Any and all damage done to the Premises and/or the common area caused by the moving of such furniture, freight or equipment shall be repaired at Tenant's costs.

11. Except as may be reasonably required for security purposes, Tenant shall observe strict care that all water faucets, water apparatus and electrical apparatus have been entirely shut off before Tenant or its authorized representatives and invitees leave the store premises so as to prevent waste or damage.

12. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of these rules and regulations by any other Tenant or other person. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition to its occupancy of the spaced leased.

Initials: _____

EXHIBIT I - Parking

This Exhibit I and the attached site plan is hereby incorporated into the Shopping Center Lease dated April 24, 2002 between Arena Group 2000, a California limited partnership ("Landlord") and Len A. Paul d/b/a SOMA Productions ("Tenant").

1. Attached is a hand-drawn site plan of Sports Arena Square Shopping Center illustrating the existing buildings and available parking for the Shopping Center. The attached map is not drawn to scale.
2. Parking at the Sports Arena Square Shopping Center is available to all tenants of the Center on a non-exclusive basis. Except as may be specifically provided to the contrary herein, Tenant may not close off or designate specific parking spaces/areas for their business unless specifically identified in this agreement.
3. As parking is limited, Landlord (as leaseholder and operator of the San Diego Sports Arena) has agreed to allow Tenant to use a designated portion of the San Diego Sports Arena parking lot, at no charge to Tenant or its patrons, for additional parking of approximately 100 spaces when needed (See Section [1] as noted on the attached map). This parking option is available at the discretion of Landlord and management of the adjacent San Diego Sports Arena and will not be available when the San Diego Sports Arena is hosting a capacity crowd at its venue, which requires such parking area. It is the responsibility of the Tenant to coordinate utilizing this additional parking with management personnel with the San Diego Sports Arena. Tenant agrees that patrons of the San Diego Sports Arena shall have the right to exit through the gate next to this parking area during and after Sports Arena events.
4. Tenant recognizes that parking at the Shopping Center is limited. If during the course of Tenant's business, the available parking is filled to capacity, it will be Tenant's responsibility to find and/or direct their patrons to suitable offsite parking.
5. To accommodate the tour buses/vans, etc. that will be utilized by the Tenant's performers, a portion of the parking area has been approved for designated parking for these vehicles (see section [2] and [2a] on the attached map). Tenant recognizes that while these are approved designated parking areas for the Tenant, The Kobey Corporation and Roel Corporation (each being current tenant's of the Shopping Center) shall at all times have access through sections [2] and [2a]. Landlord acknowledges and agrees that except for The Kobey Corporation and Roel Construction, during events held by Tenant at the Premises no other tenants, customers or invitees of the Shopping Center or the Sports Arena shall have access to section[2] as shown on the attached map.

All other terms and conditions of the lease shall remain in full force and effect.

Tenant Initials: LP

EXHIBIT 7 - PARKING

SAN
DIEGO
SPORTS
ARENA

Additional
Sports Arena
Parking

[1]

Approx 100 spaces

Tenant Initials:

KURTZ STREET

КОБЕЧ

ROEL

THEATRE

КОВЕУ

4.

MISC.
SHOPS.

BLK
ANGLVS

ENTRANCE

SPORTS ARENA BLVD.

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Lease Agreement dated February 22, 1996 and filed in the office of the City Clerk as Document No. 00-18261 ("Master Lease") entered into with Kathryn Crake Huntington, and subsequently assigned to

Arena Group 2000, a California limited partnership

("LESSEE") pursuant to a Consent to Assignment of Lease Agreement effective December 8, 1999, hereby consents to that certain shopping lease ("Sublease") between the above LESSEE ("SUBLESSOR") and

Len A. Paul, an individual

("SUBLESSEE") dated June 17, 2003. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego. An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be two million dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall

submit to CITY a copy of the new insurance policy.

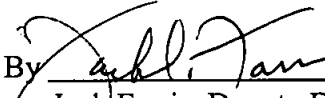
LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated February 20, 1996, between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

LESSOR:

THE CITY OF SAN DIEGO

Dated 5/24/04

By 
Jack Farris, Deputy Director
Real Estate Assets Department
for the City Manager

SUBLESSOR:

ARENA GROUP 2000

Dated 5/13/04

By 

SUBLESSEE:

LEN A. PAUL

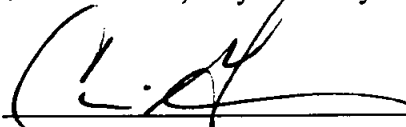
Dated 5/6/04

By 

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Dated 6/17/04

By 
Deputy City Attorney

CRG/cdj

1/28/04

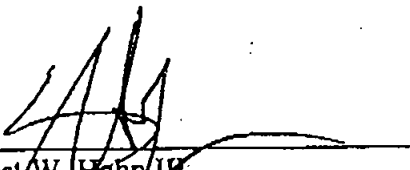
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**AMENDMENT #1 TO LEASE DATED JUNE 17, 2003 BETWEEN ARENA GROUP 2000
(LANDLORD) AND LEN A. PAUL (TENANT)**

1. Landlord has agreed to allow Tenant to transfer his lease from Suite L to Suite H-3 effective April 1, 2004. Therefore, all references in the lease to Suite L now refer to Suite H-3.
2. Suite H-3 is comprised of approximately 4,095/SF with an angular configuration.

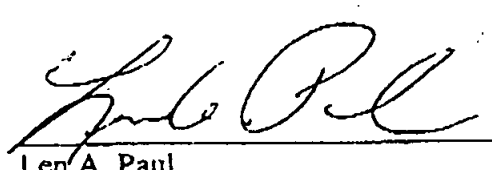
All other terms and conditions of the lease remain in full force and effect.

LANDLORD:


Ernest W. Hahn III
Arena Group 2000

4/12/04
Date

TENANT:


Len A. Paul

4/1/04
Date

1

SHOPPING CENTER LEASE

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This Lease between Arena Group 2000,
a CA Limited Partnership ("Landlord"), and Len A. Paul
an Individual ("Tenant"), is dated June 17, 2003.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 9.5) to be paid by Tenant and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the plan attached hereto as Exhibit "A", and further described at Section 3.j. The Premises are located within the Shopping Center described in Section 3.i. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.d.).

2. LEASE REVIEW OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease and to have this Lease reviewed, approved, and modified as needed by its attorneys before the Lease is signed.

3. DEFINITIONS.

As used in this Lease, the following terms have the following meanings:

a. **Annual Percentage Rental Rate (Section 9.4):** 0 % of Tenant's Net Sales.

b. **Broker(s)**

Landlord's Broker: N/A

Tenant's Broker: N/A

Commission Payable to Landlord's Broker (Section 38.1): \$ As per schedule.

Landlord's Broker hereby discloses to Landlord and Tenant that Landlord's Broker is acting in this transaction as the agent of (check applicable box below):

- ☐ Landlord exclusively; or
☐ both Landlord and Tenant.

Landlord and Tenant each consent to such representation by Landlord's Broker.

c. **Commencement Date:** The earliest of the following dates:

(i) ~~The date Tenant initially opens for business in the Premises,~~

(ii) ~~30 days after substantial completion of Landlord's Work in the Premises (as defined in Exhibit "C" to the Lease). The date of such substantial completion is the date the Premises are substantially complete to the extent of Landlord's Work, except for such work that Landlord cannot complete until Tenant performs necessary portions of Tenant's Work (as defined in Exhibit "C"). Substantial completion of Landlord's Work shall be evidenced by notice to Tenant from Landlord's architect or designated representative that substantial completion has occurred; or~~

(iii) July 1, 2003

Tenant's Tentative Commencement Date (Article 7) is N/A

Tenant shall commence Tenant's Work promptly upon substantial completion of Landlord's Work and shall diligently complete Tenant's Work so that Tenant can promptly open for business in the Premises.

d. **Common Areas:** All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, roofs, walls, plazas, malls (including any enclosed malls where climate control is provided), throughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit "A". Landlord shall have the right to regulate or restrict the use of the Common Areas.

e. **Floor Area:** As to both the Premises and the Shopping Center, the respective measurements of floor area as are from time to time subject to lease by Tenant and all tenants of the Shopping Center, respectively, as determined and applied by Landlord on a consistent basis throughout the Shopping Center.

f. **Index (Section 9.2):** The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside Average, Subgroup "All Items" (1982 - 84 = 100).

- g. Landlord's Mailing Address: UWC Management
3525 Del Mar Heights Road, #234 San Diego, CA 92130
- Tenant's Mailing Address: 3350 Sports Arena Blvd, Suite L
San Diego, CA 92110
- h. Minimum Annual Rent (Initial) (Section 9.1): \$ 24,000.- per year, payable in twelve (12) equal monthly installments each year.
- i. Outside Date for Delivery of Possession (Article 7): None
- j. Premises: That portion of the Shopping Center containing approximately 4000 square feet of Floor Area, shown by diagonal lines on Exhibit "A", located on the grade level of the Shopping Center and designated space L. The Premises has dimensions of approximately 40 feet in frontage and approximately 100 feet in depth.
- k. Security Deposit (Article 36): \$ 2,000.-
- l. Shopping Center: The building of which the Premises is a part (the "Building") and any other buildings and improvements on the real property (the "Property") located at 3350 Sports Arena Blvd. and further described on Exhibit "A". The Shopping Center is known as Sports Arena Square
- m. Tenant's First Adjustment Date (Section 9.2): ~~The first day of the calendar month following the Commencement Date plus _____ months.~~ Twelve (12) months from the Commencement Date.
- n. Tenant's Proportionate Share (Initial): N/A %.
- Such share is a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of the buildings in the Shopping Center available for exclusive use and occupancy by tenants (excluding the Floor Area of those areas, if any, designated by Landlord on Exhibit "A" as "Major Stores"), as determined by Landlord from time to time on a consistent basis. As of the date of this Lease the Shopping Center (excluding any Major Stores) contains a total Floor Area of 77,163 square feet.
- o. Tenant's Radius (Section 21.3): _____ miles from the Premises.
- p. Tenant's Sales Breakpoint: That dollar sum equal to the then Minimum Annual Rent payable by Tenant divided by the Annual Percentage Rental Rate. As of the Commencement Date Tenant's Initial Sales Breakpoint is \$ _____.
- q. Tenant's Trade Name (Article 11): To Be Determined
- r. Tenant's Use Clause (Article 11): The Premises shall be used and occupied only for the purpose of Storage and Music Practice Space
and for no other use or purpose.
- s. Term: The Term of this Lease shall begin as of the date hereof and shall continue thereafter for a period of Two (2) years and Seven (7) months (plus any partial month) following the Commencement Date. The Commencement Date and expiration date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit "F". The Notice shall be served on Tenant promptly following determination of the Commencement Date under Section 3.c.

4. EXHIBITS AND ADDENDA. * Lease to terminate on 2/28/06

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" – Plan Showing the Premises and Shopping Center (See Sections 3.j, 3.l and Article 5)
- b. Exhibit "B" – Shopping Center Rules and Regulations (See Section 25.5)
- c. ~~Exhibit "C" – Landlord's Work and Tenant's Work~~
- d. ~~Exhibit "D" – Sample Form of Tenant-Esteoppel Certificate (See Section 29.3)~~
- e. ~~Exhibit "E" – Shopping Center Sign Criteria~~
- f. ~~Exhibit "F" – Landlord's Notice of Lease Term Dates (See Section 3.s)~~
- g. ~~Exhibit "G" – Guaranty of Lease~~
- i. Addenda:

See attached Addendum

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit "A" shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit "A" and may eliminate or add any improvements to any portion of the Shopping Center, but Landlord agrees (i) not to materially change the size or location of the Premises without Tenant's consent, and (ii) that any such changes will not materially adversely affect ingress to and egress from the Premises, visibility of the Premises or parking availability in the Shopping Center.

6. OTHER TENANCIES.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord and Landlord's Broker do not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term.

7. DELIVERY OF POSSESSION.

Landlord agrees to deliver to Tenant and Tenant agrees to accept from Landlord possession of the Premises promptly upon substantial completion of Landlord's Work. If for any reason Landlord does not deliver possession of the Premises to Tenant with Landlord's Work substantially complete at least 30 days before Tenant's Tentative Commencement Date, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but the Commencement Date shall be delayed by the number of days delivery is delayed and Rent shall be abated until 30 days following the date of substantial completion of Landlord's Work in the Premises. Notwithstanding anything to the contrary contained herein, if Landlord does not deliver possession of the Premises to Tenant on or before the Outside Date for Delivery of Possession, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall have no further obligations hereunder.

8. TENANT'S WORK.

Tenant shall commence construction of Tenant's Work as defined in Exhibit "C" no later than the date of substantial completion of Landlord's Work in the Premises and shall diligently complete Tenant's Work. Landlord shall give Tenant not less than 10 days' advance written notice of such anticipated date of substantial completion of Landlord's Work. Tenant shall, at any time requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder. Tenant shall open the Premises for business within 30 days following the date of substantial completion of Landlord's Work in the Premises.

9. RENT.

9.1 Payment of Minimum Annual Rent. Tenant agrees to pay the Minimum Annual Rent during the Term for its use and occupancy of the Premises. Minimum Annual Rent shall be payable in advance on the first day of each calendar month of the Term without notice, setoff or deduction, in twelve (12) equal monthly installments during each year of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Minimum Annual Rent for the partial month shall be prorated on a daily basis, based on a 30 day month. Tenant shall pay Landlord the first installment of Minimum Annual Rent when Tenant executes this Lease.

9.2 Adjusted Minimum Annual Rent.

a. The Minimum Annual Rent set forth at Section 3.h. shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based only upon increases (if any) in the Index. The Index in publication 3 months before the Commencement Date shall be the "Base Index." The Index in publication 3 months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Minimum Annual Rent payable during the ensuing twelve-month period shall be determined by increasing the initial Minimum Annual Rent by a percentage equal to the percentage increase, if any, in the applicable Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for any preceding Adjustment Date (or the Base Index, in the case of the First Adjustment Date), the Minimum Annual Rent for the ensuing twelve-month period shall remain the amount of Minimum Annual Rent payable during the preceding twelve-month period. When the Minimum Annual Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Minimum Annual Rent and the corresponding adjusted Tenant's Sales Breakpoint and the manner in which each was computed. The Minimum Annual Rent as so adjusted from time to time shall be the "Minimum Annual Rent" for all purposes under this Lease.

b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" hereunder.

9.3 Property Taxes.

a. Beginning with the Commencement Date and for the balance of the Term, Tenant shall pay to Landlord as "additional rent" the amount of taxes and assessments levied and assessed for any year upon the Premises and the underlying Property (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360 day year.

If the Premises and the underlying Property are not separately assessed, but are assessed as part of the land and improvements on a larger parcel (hereinafter the "Larger Parcel"), Tenant's share of Premises Property Taxes shall be a fractional portion of the property taxes on the Larger Parcel, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of all the areas available for exclusive use and occupancy by tenants of the Larger Parcel. Tenant shall pay Premises Property Taxes to Landlord as part of Common Area Costs at the times and in the manner provided for the payment of Common Area Costs at Section 25.3 of this Lease. For purposes hereof, an equitable adjustment shall be made for buildings which are only partially completed on the date such property taxes become a lien.

If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate

proration for any partial year) statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

b. The term "Premises Property Taxes" shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, Property or the Shopping Center; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Premises, Property or the Shopping Center or against Landlord's business of leasing space in the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises, Property or Shopping Center by or through any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises, Property or Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, Property or Shopping Center; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Premises Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

~~9.4 **Percentage Rental.** In addition to the Minimum Annual Rent and other sums required to be paid by Tenant under this Lease, Tenant shall pay as "percentage rental" a sum equal to the Annual Percentage Rental Rate times the amount of Net Sales of Tenant (as "Net Sales" is defined in Section 10.1 hereof) made from or upon the Premises during each calendar year, less the amount of Minimum Annual Rent paid by Tenant during such calendar year. Percentage rental shall be computed each calendar month and on or before the date the following month's installment of Minimum Annual Rent becomes due Tenant shall pay to Landlord the amount by which the sum computed as the Annual Percentage Rental Rate of Tenant's Net Sales during that period exceeds the Minimum Annual Rent payable by Tenant during that period. Within 90 days after the end of each calendar year the Net Sales of Tenant during that calendar year and the amounts payable to Landlord as Minimum Annual Rent and as percentage rental for that calendar year shall be determined. If Tenant has overpaid percentage rental, Tenant shall receive a prompt refund of the overpayment; if Tenant has underpaid percentage rental, Tenant shall immediately pay the deficiency to Landlord.~~

Percentage rental due for any partial month of the Term shall be prorated on a daily basis based on a 30-day month. The obligations hereunder shall survive the expiration of the Lease Term.

9.5 **Additional Rent.** Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12, 22, 25 and Exhibit "C", and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent." All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "Rent."

9.6 **Interest and Late Charges.** If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment.

Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, and processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to 10% of such installment. Such late charge is in addition to any interest due pursuant to the preceding paragraph of this Section 9.6. Landlord and Tenant agree that this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 **Payment of Rent.** All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at Landlord's management office in the Shopping Center, or at such other place as may from time to time be designated by Landlord in writing at least 10 days prior to the next ensuing payment date.

10. NET SALES.

~~10.1 **Definition of "Net Sales."** "Net Sales" of Tenant, as used in this Lease, means the gross selling price of all merchandise or services sold in or from the Premises by Tenant, its subtenants, licensees and/or concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, but excluding the following:~~

- ~~(i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made on such merchandise;~~
- ~~(ii) The selling price of goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;~~
- ~~(iii) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of accepting a trade-in;~~
- ~~(iv) Delivery charges;~~
- ~~(v) Cash refunds made to customers in the ordinary course of business. This exclusion shall not include any amount paid or payable for what are commonly known as trading stamps;~~
- ~~(vi) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales, where such charges are not included in the merchandise sales price;~~
- ~~(vii) Receipts from public telephones, stamp machines or vending machines installed solely for the use of Tenant's employees;~~
- ~~(viii) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected from customers separately from the selling price of merchandise or services; and~~
- ~~(ix) Sales of fixtures, equipment or property which are not stock in trade.~~

~~All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may occur at another location and even though actual filling of the sale or service order and actual~~

delivery of the merchandise may be. ~~It~~ from a place other than the Premises. ~~A sale on installment or credit shall be~~
treated as a sale for the full cash price at the time of sale.

10.2 Statement of Net Sales. Tenant shall furnish Landlord with an accurate statement of Tenant's Net Sales within 30 days after the close of each calendar month, and an annual statement of Net Sales (which shall include a monthly breakdown of Net Sales) within 60 days after the close of each calendar year. Such statements shall be signed and certified as accurate by Tenant. The annual statement of Net Sales shall be audited and certified as correct by Tenant's Certified Public Accountant. In addition, Tenant shall furnish Landlord with a copy of its state and local sales and use tax returns within 30 days after any such return is filed or required to be filed with the appropriate governmental agency.

Tenant shall keep and shall require any subtenants, licensees and/or concessionaires to keep, at the Premises or at such other place approved by Landlord in writing, full and accurate books of account, records and other pertinent data (including cash register receipts) of the gross sales, Net Sales, credits, refunds and other pertinent business transactions made from or upon or otherwise relating to the Premises. Such books, receipts and records shall be kept for not less than 2 years after the close of each calendar year to which they relate and shall be available for inspection and audit by Landlord and its representatives at all times during regular business hours. Landlord's receipt of any statement of Net Sales or Tenant's payment of percentage rental for any period shall not bind Landlord as to the correctness of the statement or amount of the payment. Within 2 years after the receipt of any such statement, Landlord or its designated Certified Public Accountant shall be entitled to audit Tenant's gross sales and Net Sales following 48 hours' advance written notice to Tenant. Such audit shall be conducted during normal business hours at either the Premises or Tenant's principal place of business. If such audit determines that there has been a deficiency in the payment of percentage rental, then such deficiency shall become immediately due and payable with interest at the maximum lawful interest rate from the date said payment should have been made. In addition, if an annual statement of Tenant is found to have understated Net Sales by more than 2% and if Landlord is entitled to any additional percentage rental as a result of such understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due Landlord. If such audit discloses an additional liability for percentage rental of \$1,000 or more for the period covered by the audit, Landlord may, in addition to any other remedies it may have for Tenant's breach of this Lease, terminate this Lease by written notice to Tenant given within 60 days after Landlord's receipt of the audit report. Any information obtained from such statements, audits or inspections shall be treated by Landlord as confidential and shall not be disclosed except to carry out the purposes of this Lease, but Landlord may divulge the contents of any such statements in connection with any financing arrangements involving, or assignment of Landlord's interest in, the Premises, Shopping Center, or this Lease, or in connection with any administrative or judicial proceedings in which Landlord is involved and in which such information is in issue.

Any failure by Tenant to maintain and keep full and accurate books of account, records and other pertinent data as required hereunder shall be deemed a default and breach of this Lease under Article 26 hereof.

11. POSSESSION AND USE.

11.1 Permitted Uses and Prohibited Conduct. Possession of the Premises shall be delivered to Tenant free and clear of all tenants and occupants and the rights of either, and free of liens and encumbrances other than those specified in Article 15 hereof. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit any person to use the Premises for conducting a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws, ordinances, regulations and requirements of the United States or the State, County and City where the Shopping Center is located, or any other lawful authority. Tenant shall, during the Term, keep the Premises in a clean and wholesome condition, free of any objectionable noises, odors or nuisances, and shall comply with all health and police regulations. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities and any enclosed mall of the Shopping Center).

11.2 Insurance Coverage Use Restrictions. Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increases in Landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical equipment in the Premises which overloads the electrical lines of the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.3 Deliveries. Tenant shall use its best efforts to complete all deliveries, loading, unloading and services to the Premises before 10:00 a.m. each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

12. UTILITIES SERVICES.

12.1 Utilities Installation. Landlord agrees that to the extent provided for in Exhibit "C" hereof, it will initially make available to Tenant (i) facilities for the removal of sewage and the delivery to and distribution within the Premises of water, electricity, telephone service and natural gas (which shall be used by Tenant for cooking and demonstration of gas operated sales items only) (these facilities are collectively referred to in this Article 12 as "utilities"), and (ii) a heating, ventilation and air conditioning

system (the "HVAC system"). Unless Landlord agrees otherwise, Tenant shall use those utilities and any HVAC system provided for under Exhibit "C" to serve the Premises. If required under Exhibit a separate meter shall measure the consumption of utilities and/or the HVAC system.

If not required to be furnished by Landlord under Exhibit "C", Tenant shall be responsible for obtaining any utilities and/or HVAC system required for Tenant's business operations in the Premises.

12.2 Utilities and HVAC System Charges. Tenant shall pay for all utilities used by Tenant on the Premises from and after substantial completion of Landlord's Work in the Premises. If Tenant's utilities and/or HVAC system are separately metered, Tenant shall pay directly to the appropriate utility company the cost of all such utilities used on the Premises. If any of Tenant's utilities and/or HVAC system are furnished by Landlord without separate metering, then during the Term Tenant shall pay as additional rent, monthly in advance, a utilities charge to reimburse Landlord for any such utilities furnished by Landlord to the Premises. This utilities charge shall, at Landlord's election, be established (a) by an estimate of usage made from time to time by Landlord's engineer or the appropriate utility company, and initially based on a typical store layout comparable to Tenant's proposed use of the Premises, or (b) a percentage of such total utility costs equal to a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of Shopping Center actually being furnished with utility service by Landlord at the time of billing. If Tenant's Premises is not separately metered, such utilities and/or HVAC charges may be billed with Tenant's share of Common Area Costs under Section 25.3. The utilities charge to Tenant hereunder for utilities furnished by Landlord shall be based on utility rates which do not exceed those charged by the local public utility company for services it would otherwise furnish directly to Tenant. If the Premises are not initially separately metered, Landlord shall have the right, at its expense, to install separate meters for the Premises at any time during the Term.

12.3 Failure to Pay. If Tenant fails to pay any amount due to Landlord hereunder within 10 days after receipt by Tenant of a bill therefor, Landlord may (in addition to all other rights and remedies provided herein for breach of this Lease and if permitted by law) cut off and discontinue, upon 5 days' advance notice to Tenant and opportunity to cure, any such utilities furnished to the Premises by Landlord until all such amounts are paid in full.

12.4 No Landlord Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) operation of the HVAC system, if any. No such failure or interruption shall entitle Tenant to terminate this Lease or stop making any Rent or other payments due hereunder.

13. INDEMNITY BY TENANT.

Tenant shall indemnify and hold Landlord harmless from any and all costs, claims or liability of any kind arising out of: (a) Tenant's use and occupancy of the Premises; (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorney's fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct.

14. INSURANCE – WAIVER OF SUBROGATION.

14.1 Tenant's Insurance Obligations. Tenant shall, from and after the earlier of (a) substantial completion of Landlord's Work in the Premises, or (b) commencement of any of Tenant's Work in the Premises, and for the remainder of the Lease Term maintain, at its expense, the following types of insurance coverage, in the amounts specified and in the forms hereinafter provided for:

(i) **LIABILITY INSURANCE.** Commercial general liability insurance (sometimes known as comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Such policy shall be an occurrence form and shall include Owner's and Contractor's Protective Liability with respect to construction of improvements by Tenant on the Premises. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be not less than \$1,000,000 per occurrence. The liability insurance obtained by Tenant under this Section 14.1(i) shall (1) be primary and non-contributing; (2) contain cross-liability endorsements; and (3) insure Landlord against Tenant's performance under Article 13(a), (b) and (e) if the matters giving rise to the indemnity under Article 13 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(ii) **PLATE GLASS.** Insurance covering the full replacement cost of all plate glass on the Premises. Tenant shall have the option to self-insure this risk.

(iii) **TENANT IMPROVEMENTS.** Insurance covering all of the items specified as "Tenant's Work" in Exhibit "C", Tenant's leasehold improvements, alterations, additions or improvements permitted under Article 16, and trade fixtures, merchandise and personal property from time to time in, on or upon the Premises. Such insurance shall cover not less than 100% of the full replacement cost of the foregoing from time to time during the Term, and shall provide protection against any peril included within the classification of fire, extended coverage, sprinkler leakage, vandalism, theft, malicious mischief and special extended perils (all risk). Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the provisions of Article 23 hereof.

(iv) **GENERAL INSURANCE PROVISIONS.**

(a) Any insurance required to be maintained by Tenant hereunder shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(b) A certificate of the insurer or the insurer's legal representative evidencing the existence and amount of each insurance policy required of Tenant hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter at least 30 days prior to the expiration of any such policy. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancellable except after 30 days' written notice to Landlord. If Tenant fails to deliver any such

evidence of insurance to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance coverage, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement therefor.

(c) All insurance shall be maintained with companies holding a "General Policy Rating" of A-XII or better, as set forth in the most current issue of "Best's Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 14.1 may not be available in the future. Tenant acknowledges that the insurance described in this Section 14.1 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall be responsible for obtaining any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

14.2 Landlord's Insurance Obligations. Landlord shall, in connection with its ownership and operation of the Shopping Center, at all times from and after commencement of Landlord's Work in the Premises, maintain in effect policies of insurance providing protection against the following liabilities and/or risks: (a) commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage, and (b) fire and extended coverage insurance (including coverage for Common Area sprinkler damage, vandalism and malicious mischief, and, if required by any lender holding a security interest in the Shopping Center in an amount not less than their full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the Term. The types and coverages of insurance maintained by Landlord hereunder shall be subject to such further requirements as may be imposed by Landlord's lender. Landlord shall also have the right to maintain such additional types and coverages of insurance (including business interruption insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

14.3 Waiver of Subrogation. Landlord and Tenant (for themselves and their insurers) each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, against any of the parties to the REA referred to in Article 15 hereof (the "Parties") and against other tenants of the Shopping Center (provided such Parties and other tenants have waived such rights against Landlord and Tenant), on account of any loss by or damage to the waiving party or its property or the property of others under its control (including as to Tenant the Premises and its contents, and as to Landlord the other portions of the Shopping Center), arising from any risk generally covered by fire and extended coverage insurance. The foregoing waivers of subrogation shall be required hereunder only if (a) then available in the State where the Shopping Center is located, and (b) such waiver does not invalidate the applicable policy.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to the liens or restrictions of (a) any matters or documents of record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, operation and reciprocal easement agreement (the "REA"); and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate the terms of any REA or any other Matters of Record, and (ii) this Lease is subordinate to the REA, if any, and any amendments or modifications thereto. If the REA, if any, is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to the REA upon recordation of the REA. Tenant agrees to execute and return to Landlord within 10 days after written demand therefor by Landlord, an agreement in recordable form satisfactory to Landlord subordinating this Lease to the REA. Any REA shall not prevent Tenant from using the Premises for the purposes set forth in Tenant's Use Clause.

16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 Permitted Improvements. Subject to the terms of this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done and providing Landlord with all plans for such proposed improvement work. Tenant may not make any improvement which reduces the value of the Premises or is of a structural nature. No single improvement costing more than \$500.00 may be made without first obtaining the written approval of Landlord. In addition, no improvement shall be made to any storefront, mechanical system, or exterior wall or to the roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of an existing mezzanine, unless and until the written consent and approval of Landlord is first obtained.

No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord.

Tenant shall reimburse Landlord for all costs incurred by Landlord (including architect's and/or engineer's fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 Construction Requirements. All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors or subcontractors being used. Upon completion of such improvements, Tenant shall file a Notice of Completion for record in the office of the County Recorder where the Shopping Center is located, as required or permitted

by law. Tenant shall provide Landlord "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center.

16.3 Insurance Requirements. If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14.1(iii). It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

17. MECHANICS' LIENS.

17.1 Tenant's Covenants. Tenant shall pay all costs for work done by or for Tenant in the Premises (other than Landlord's Work), and Tenant shall keep the Premises, Building and Shopping Center free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises under Article 16 or Exhibit "C"), Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord.

17.2 Tenant's Contest of Lien. If Tenant desires to contest any claim of lien arising from work done by or for Tenant in the Premises, Tenant shall first furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of any such lien for any amount is entered, Tenant shall immediately pay and satisfy such judgment.

17.3 Landlord's Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and Tenant has not given Landlord adequate security to protect the Premises, the property therein, and the Building, Shopping Center and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the maximum lawful rate from the date of Landlord's payment.

17.4 Notice of Lien. If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

18. ADVERTISING MEDIA.

Tenant shall not affix or maintain upon the glass panes or supports of the show windows (or within 24" of any window), doors or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item. Tenant shall not affix any sign to the roof of the Premises.

Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign(s) in accordance with the provisions of the sign criteria attached hereto as Exhibit "E".

19. FIXTURES AND PERSONAL PROPERTY.

19.1 Removal and Replacement. All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 Fixtures. All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical systems, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit "C" (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any Larger Parcel as defined in Section 9.3. Tenant shall pay Landlord the taxes attributable to Tenant's personal property within 15 days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. No taxes, assessments, fees or charges referred to and billed to Tenant under this paragraph shall be considered to be taxes under the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP.

20.1 One Year Prohibition Against Transfer. Landlord and Tenant acknowledge that the Shopping Center is an interdependent enterprise and that each party's realization of the benefits of this Lease depends upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further acknowledge that the character and quality of Tenant's operation, and of the Shopping Center, will be enhanced by Tenant's use of its best efforts, for a reasonable period of time, to establish a successful business and business image. Landlord and Tenant further agree that one year is a reasonable period of time to attempt to achieve this goal. Accordingly, Tenant agrees that for a period of one year from the date Tenant initially opens to the public for business in the Premises (the "Occupancy Period"), Tenant shall not, and shall not have the power to, transfer or assign this Lease, sublet the Premises, enter into license or concession agreements, or change ownership (such transactions are hereinafter individually and collectively referred to as a "Transfer"), without first procuring the written consent of Landlord, which may be given or withheld in Landlord's sole discretion. After the expiration of the Occupancy Period, Landlord's consent to any Transfer shall not be unreasonably withheld, subject to the terms, covenants and conditions contained below.

20.2 Restrictions on Transfer. If after expiration of the Occupancy Period Tenant desires to effect a Transfer to anyone (a "Transferee") other than a successor, subsidiary, affiliated or controlling corporation of Tenant (an "Affiliate"), Tenant shall give written notice ("Transfer Notice") to Landlord at least 60 days before the effective date of any such proposed Transfer. The Transfer Notice shall state (a) whether Tenant proposes to assign the Lease, sublet the Premises, enter into a license or concession agreement or change ownership, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) all other material terms of the proposed Transfer, and (e) in detail the type of business operation the proposed Transferee intends to conduct on the Premises. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. In addition, the Transfer Notice shall be accompanied by the proposed Transferee's income statements and balance sheets covering the preceding 36-month period, and each shall be certified as accurate by the Transferee. Landlord may, at any time within 30 days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer (which consent shall not be unreasonably withheld under the business judgment standards set forth in Section 20.3 below) by mailing written notice to Tenant of its decision ("Decision Notice"). If Landlord consents to the proposed Transfer Tenant may thereafter promptly effect a Transfer in accordance with the terms of Tenant's Transfer Notice.

If Landlord consents to the proposed Transfer and Tenant does not consummate the proposed Transfer within 30 days after receipt of Decision Notice, the provisions of the first paragraph of this Section 20.2 shall again apply.

20.3 Grounds for Withholding Consent. Landlord may withhold consent to a proposed Transfer if, in Landlord's reasonable business judgment, any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Premises, as compared to the merchandising operation conducted by Tenant prior to the date of Transfer Notice; (ii) the proposed Transferee lacks a good business reputation or sufficient relevant business experience; (iii) the financial worth of the proposed Transferee as of the date of Transfer Notice is less than the combined financial worth of Tenant and Tenant's guarantor (if any) as of either the date of this Lease or the date of Transfer Notice; (iv) the proposed Transferee's proposed use of the Premises conflicts with Tenant's Use Clause or is otherwise incompatible with the tenant mix of the Shopping Center; (v) the annual percentage rent Landlord reasonably anticipates receiving from the proposed Transferee is significantly less than the annual percentage rent Landlord could reasonably anticipate receiving from Tenant; or (vi) the proposed Transfer would breach any covenant of Landlord respecting radius restrictions, use or exclusivity rights in any other lease, or any financing or other agreement relating to the Shopping Center. Any attempted or purported Transfer without Landlord's written consent shall be void and of no force or effect.

20.4 No Release from Liability. No Transfer, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease, from its covenants and obligations hereunder during the Term. Tenant shall, promptly upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with the processing and documentation of any requested Transfer.

20.5 Transferee's Obligations. Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the Transferee. Each such Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One fully executed copy of such written instrument shall be delivered to Landlord. Failure to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 20 shall prevent any Transfer from becoming effective.

20.6 Division of Profit Between Landlord and Tenant. Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of Transfer Notice, depreciated on a straight-line basis over the Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided equally between Landlord and Tenant. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as additional rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon 48 hours' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

20.7 Further Restrictions. Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. For purposes of this Article 20, if Tenant is a partnership, any withdrawal(s) or change(s) of partners cumulatively owning a 50% or more interest in the partnership, or if Tenant is a corporation, any transfer(s) cumulating 50% or more of its stock, shall constitute a voluntary Transfer and shall be subject to the provisions hereof. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

21. TENANT'S CONDUCT OF BUSINESS.

21.1 Tenant's Operating Covenant. Tenant agrees that from and after its initial opening for business it shall, subject to the provisions of Section 23.5 hereof, operate and conduct its business in the Premises during all Shopping Center Business Hours (as hereinafter defined) and in accordance with the provisions of this Lease. Tenant shall at all times keep and maintain in the Premises an adequate stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

21.2 Hours and Days of Operation. Tenant recognizes that it is in the interests of both Tenant and Landlord to regulate the minimum hours of business for all tenants of the Shopping Center and Tenant agrees that commencing with its initial opening for business in the Premises and for the remainder of the Term it shall be continuously open for business during all hours on all days that the Shopping Center is open for business to the public, as determined by Landlord in its sole discretion (the "Shopping Center Business Hours"). Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during Shopping Center Business Hours. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays or national holidays.

21.3 Radius Provision. If, during the first 5 years after Tenant initially opens for business in the Premises, Tenant directly or indirectly operates or owns within Tenant's Radius any type of business (other than a business already operated or owned by Tenant on the date of this Lease) similar to its business in the Premises (a "Similar Business"), Landlord may, at its option and for so long as Tenant is operating such Similar Business(es), include the net sales (as "Net Sales" is defined in Section 10.1) of each such Similar Business with the Net Sales made from the Premises for the purpose of computing the percentage rent due from Tenant under this Lease. Tenant shall provide Landlord with a statement of Tenant's Net Sales in accordance with the provisions of Sections 10.1 and 10.2 hereof for each Similar Business operated by Tenant within Tenant's Radius. If after expiration of this 5 year period Tenant continues to operate an existing Similar Business or opens another Similar Business within Tenant's Radius, then the Minimum Annual Rent payable under Article 9 hereof shall be adjusted promptly following expiration of such 5 year period in the case of an existing Similar Business(es), and from time to time upon the opening of another Similar Business, in the following manner: From the statements of Net Sales submitted by Tenant under Article 10 and this Section 21.3, Landlord shall compute a sum which represents the highest annual percentage rental paid or payable by Tenant under Sections 9.4 and 21.3 hereof during any consecutive 12 month period of the immediately preceding 60 month period, and this sum, if any, shall be added to the amount from time to time specified in Sections 3.h., 9.1, 9.2 and this Section 21.3 as the then Minimum Annual Rent. This resulting sum shall be the new Minimum Annual Rent payable beginning with the expiration of the first 5 years of the Term or the date of opening for business of such other Similar Business(es) within Tenant's Radius, whichever is applicable, and shall be subject to further adjustment thereafter in accordance with Section 9.2 hereof. Whenever a Similar Business opens for business within Tenant's Radius, Tenant shall give Landlord written notice of the location and opening date of such Similar Business. Landlord shall give Tenant written notice of the new Minimum Annual Rent payable by Tenant hereunder whenever adjusted as herein provided.

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 Tenant's Obligations. Tenant shall, at its expense and at all times from and after substantial completion of the Premises, repair, replace and maintain in good and tenantable condition, the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation, the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor coverings, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises, and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Landlord shall, at Tenant's expense, contract with a qualified service company for the monthly maintenance of the HVAC system serving the Premises. Landlord may bill Tenant for the cost of such HVAC maintenance contract as part of Common Area Costs under Article 25 hereof.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises, damage due to insured casualty losses covered by Article 23 or for any items of repair which are Landlord's obligation under Section 22.2.

22.2 Landlord's Obligations. Subject to Tenant's obligations under Section 22.1 and Landlord's further obligations, if any, under Section 25.2, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good and tenantable condition the roof, exterior walls, structural parts of the Premises and Building (including the structural floor) and HVAC system serving the Premises. Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, (1) Tenant shall be responsible for the cost of repairs to the HVAC system serving the Premises (which Landlord may bill to Tenant as a part of Common Area Costs under Article 25 hereof), and (2) Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant, or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required to) make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf, Tenant shall pay to Landlord any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs, alterations, replacements or improvements to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete those repairs within a reasonable period of time following receipt of Tenant's notice.

22.3 Tenant's Failure to Maintain Premises. If Tenant fails to repair or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right (in addition to all other rights and remedies provided herein for breach of this Lease), upon giving Tenant reasonable written notice of its election to do so (and opportunity to cure), to make

such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event the cost of such work shall be paid to Landlord by Tenant prior to the following receipt of a bill therefor.

22.4 Landlord's Right of Entry. Landlord or its authorized representatives may enter the Premises at all times during Shopping Center Business Hours to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or the Insurance Services Office or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 Insured Casualty. If the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then within 90 days after the date of such damage Landlord shall commence repair, reconstruction and restoration of the Premises and diligently complete such repairs, in which event this Lease shall continue in full force and effect. Notwithstanding the foregoing, if there is partial or total destruction of the Premises during the last 3 years of the Term, Landlord and Tenant shall each have the option to terminate this Lease by written notice to the other given within 30 days after such destruction. For purposes of this option "partial destruction" shall mean destruction to the extent of 33 1/3% or more of the full replacement cost of the Premises as of the date of destruction.

23.2 Uninsured Casualty. If the Premises are damaged to any extent by act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance (including flood or earthquake damage if not covered under insurance maintained by Landlord), Landlord may within 90 days following the date of such damage, either (a) commence repair, reconstruction or restoration of the Premises and diligently complete it, in which event this Lease shall continue in full force and effect, or (b) elect not to repair, reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of destruction. In either such event Landlord shall give Tenant written notice of its election hereunder within said 90 day period.

23.3 Reconstruction Responsibilities. Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit "C" and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant, at its expense, shall reconstruct all items set forth as Tenant's Work, and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment, and resume normal business operations in the Premises.

23.4 Release from Liability. Upon any termination of this Lease under any of the provisions of this Article 23 each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14.1 covering the items set forth as "Tenant's Work" in Exhibit "C" and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.5 Abatement of Rent. In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for in Section 23.3. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management, and the obligation of Tenant to pay percentage rental and additional rent hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereto, or the reconstruction or replacement thereof.

23.6 Waiver of Statutory Rights of Termination. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises, Building or Shopping Center which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

24. EMINENT DOMAIN.

24.1 Takings Resulting in Termination. If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If 25% or more of the Floor Area of the Premises is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election within 30 days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than 25% of the Floor Area of the Shopping Center or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within 30 days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 Takings Not Resulting in Termination. If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken, and (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as existed

prior to such taking; and (b) the Minimum Annual Rental provided for in Section 2.1 and Article 9 shall be reduced on an equitable basis, taking into account the relative value of the portion of the Premises taken as compared to the portion remaining. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

24.3 Award. If this Lease is terminated under Section 24.1, or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all real property interests in the Premises. The Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 Transfer Under Threat of Taking. For the purposes of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

25. COMMON AREAS.

25.1 Use of Common Areas. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord agrees that the Common Areas shall be initially constructed on the areas generally shown on Exhibit "A", and, subject to the preceding sentence, shall be maintained and operated at all times following completion thereof for the benefit and/or use of the customers and patrons of Tenant and of other tenants, owners and occupants of the Shopping Center. The original construction and installation of the Common Areas shall be at Landlord's expense.

25.2 Landlord's Maintenance Responsibilities; Common Area Costs. Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to Common Area and Shopping Center facilities. Notwithstanding the foregoing, all expenses incurred by Landlord in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include without limitation, all sums expended in connection with the Common Areas and Shopping Center for: general maintenance and repairs; resurfacing; painting; restriping; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; lighting, HVAC and other utility expenses; maintenance, repair, cleaning and replacement of public toilets, music program equipment and loudspeakers, sidewalks, stairways, curbs, Shopping Center signs, sprinkler systems, planting and landscaping, floors, walls, ceilings, roofs, skylights, windows, directional signs, markers and bumpers, fire protection systems and equipment (including fire sprinklers), security systems, lighting systems and fixtures (including replacement of tubes and bulbs), storm drainage systems, plumbing, electrical, HVAC and other utility systems which do not exclusively serve the interior of tenants' premises, and all mechanical equipment (including automatic door openers, escalators and elevators); personnel to implement the foregoing services, including, if Landlord deems necessary, the cost of security guards; all on-site costs and personnel expenses of Landlord incurred to manage the Shopping Center (which may be contracted for with third parties); all real (as generally defined in Section 9.3b of this Lease) and personal (as generally defined in Section 19.3 of this Lease) property taxes and assessments on the improvements and land comprising the Common Areas and Shopping Center or any personally in use on the Common Areas or Shopping Center; any sums paid to third parties for the purpose of seeking reduction of property taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas or Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and premiums for adequate comprehensive general liability and property damage insurance covering Landlord's ownership and operation of the Common Areas and Shopping Center, fire and extended coverage insurance on the Common Areas and the Shopping Center (which may include earthquake and flood damage endorsements) and vandalism and plate glass insurance covering the Common Areas and Shopping Center. Common Area Costs shall also include a charge for appropriate reserves for the costs of repainting, re-roofing and resurfacing Common Areas. In addition, Common Area Costs shall include a sum to be payable to Landlord for supervision of the Common Areas and for accounting, bookkeeping and collection of Common Area Costs, in an amount equal to 10% of the total of all of the foregoing Common Area Costs incurred in each calendar year. Landlord may have any or all services and management performed in connection with the Common Areas and Shopping Center provided by an independent contractor(s).

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit "A", then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 Method of Payment. Portions of the Shopping Center may be owned or leased by the occupants of those buildings designated by Landlord as a "Major Store" on Exhibit "A" (hereinafter referred to as the "Major Store Occupants"). The contributions of the Major Store Occupants towards the Common Area Costs shall be credited toward payment of the entirety of the Common Area Costs and the balance of the Common Area Costs shall be prorated among the other tenants of the Shopping Center in the following manner:

(i) From and after the date Rent has commenced, and thereafter during the Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

(ii) Within 60 days following the end of each calendar year (or as soon thereafter as possible), Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under subparagraph (i) above. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under subparagraph (i) above, Tenant shall pay Landlord the deficiency within 10 days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant may offset the excess against payments thereafter coming due under subparagraph (i) above or receive a refund following the expiration of the Term. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs as of the commencement of Rent and expiration of the Term. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term.

Tenant's failure to pay any sums due hereunder shall constitute a default under this Lease equivalent to a failure to pay Minimum Annual Rent when due.

25.4 Control of Common Areas. Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

25.5 Rules and Regulations. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit "B".

25.6 Employee Parking. Landlord shall at all times have the right to designate a particular parking area to be used by employees of Tenant and other occupants of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord from time to time with an accurate current list of its and all its employees' automobile license plate numbers within 15 days after taking possession of the Premises and thereafter within 5 days after any change in the accuracy of the list. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant \$25.00 per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within 10 days after demand by Landlord.

26. DEFAULTS BY TENANT.

26.1 Events of Default. Each of the following shall constitute a material default and breach under this Lease:

- (a) If Tenant is at any time in default of its obligation to pay any Rent or other charges, and such default continues for more than 10 days after written notice of such default;
- (b) If Tenant is in default in the prompt and full performance of any other of its obligations under this Lease and such default continues more than 30 days after written notice specifying the particulars of such default;
- (c) If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;
- (d) (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder; or
- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

26.2 Remedies Upon Breach of Lease. On the occurrence of any breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

- (a) Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or
- (b) Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Shopping Center is located.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as

alforesaid; Landlord shall have in addition to its rights under Section 26.4 hereof, the right, but not the obligation, to remove from the Premises any personal property located therein and to place it in storage in a public warehouse at the expense and risk of Tenant.

Notwithstanding any other term or provision hereof to the contrary, this Lease shall terminate on the occurrence of any act which affirms Landlord's intention to terminate this Lease as provided in this Section 26.2, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees, incurred by Landlord in connection with the filing, commencement, pursuing or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Minimum Annual Rent and other Rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 Landlord's Damages. If Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease, Landlord may recover from Tenant as damages, all of the following:

- (i) The worth at the time of award of any unpaid Rent and other charges which has been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves Landlord could have reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid Rent and other charges which Tenant would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, (c) expenses of reletting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus
- (v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest on unpaid amounts at the rate of 10% per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank located nearest to the Shopping Center in effect at the time of award, plus 1%.

For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36 month period, except that if it becomes necessary to compute such rental before such 36 months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 Fixtures and Personal Property. In the event of Tenant's default, all of Tenant's merchandise, Fixtures and other Personal Property shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 No Waiver. The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

27. DEFAULTS BY LANDLORD.

If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period), then such failure shall constitute a default hereunder and Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's default; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, or of partners or principals of such partners comprising Landlord, if any, or of Landlord's officers, shareholders or directors, if any) wherever situated, shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Tenant hereby waives any right to satisfy a judgment against Landlord except from the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center.

If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided below, then Tenant shall have the right to cure that default at Landlord's expense. In such case Landlord shall pay the reasonable cost of such cure promptly following receipt of a bill from Tenant itemizing the cost of such cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any cost of such cure against any payments of Rent or any other charges due and payable to Landlord under this Lease, except as otherwise specifically provided in this Lease.

Tenant agrees to send by certified or registered mail to any mortgagee or deed of trust beneficiary of the Shopping Center whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, Tenant shall provide any such mortgagee or beneficiary with notice of such failure and such mortgagee or beneficiary shall have an additional 30 days following receipt of such notice to cure such default; provided that if such default cannot reasonably be cured within that additional 30 day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

28. ATTORNEYS' FEES.

If at any time after the date hereof either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the losing party in such action or proceeding shall reimburse the winning party for its reasonable expenses of attorneys' fees and all costs and disbursements incurred, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the winning party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the winning party.

29. SUBORDINATION - ATTORNMEN.

29.1 Subordination. Within 10 days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien or security interest of the first mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease), the interest of any lease in which Landlord is the lessee, or any REA that may burden the Premises, Building, Shopping Center, Property or any future improvements made to the Property.

29.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than 10 days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit "D" certifying (i) that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (ii) the dates to which the Rent and other charges are paid in advance, if any; (iii) the Commencement Date and expiration date of the Lease Term, (iv) whether Tenant has assigned or transferred this Lease or any interest of Tenant therein; and (v) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rent, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Building and the Premises are a part. Tenant's failure to deliver such statement within the time required shall be conclusive and binding upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent, and (c) no more than one month's Rent has been paid in advance.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any REA and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

31. MERCHANTS' ASSOCIATION.

31.1 Merchants' Association. If either Landlord or a majority of tenants in the Shopping Center determine at any time that it is in the best interests of the Shopping Center, Tenant will become a member of, participate fully in, and remain in good standing in a non-profit Merchants' Association (the "Association") formed and organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the by-laws, rules and regulations of such Association. Landlord and each member tenant shall have one vote in the operation of the Association. The articles of incorporation and by-laws of the Association shall be approved by a majority vote of the Association members and shall be subject to amendment as provided in the by-laws. The objectives of the Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and centerwide advertising. Tenant agrees to pay annual dues to the Association in an amount and at the time determined by a vote of the members of the Association from time to time. Default in payment of such dues shall be deemed a default in payment of Rent hereunder.

31.2 Grand Opening Promotional Fund. Tenant shall separately pay when billed the sum of \$.25 per square foot of Floor Area in its Premises to provide Landlord with funds to promote the "grand opening" of the Shopping Center, and/or Tenant's business.

32. CAPTIONS; JOINT AND SEVERAL LIABILITY.

32.1 Captions. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 **Joint and Several Liability.** If two or more persons or entities execute this Lease as Landlord or Tenant then such persons or entities shall be jointly and severally liable for compliance with and performance of the terms, covenants and provisions of this Lease.

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Section 3.g. hereof. Either party may change such address by written notice to the other as herein provided.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing and shall not be unreasonably withheld, unless otherwise expressly permitted in this Lease. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent.

If Landlord or Tenant unreasonably fails to give any such consent, the other party shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT.

36.1 **Payment of Security Deposit.** Tenant has deposited with Landlord the sum specified in Section 2.k. hereof as the "Security Deposit", receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

36.2 **Application of Security Deposit.** If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much as is necessary to compensate Landlord for loss of Minimum Annual Rent or additional rent, or other damages sustained by Landlord due to such default by Tenant. Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the Security Deposit (or the balance thereof remaining) shall be returned in full to Tenant not later than 14 days following the end of the Term and delivery of possession of the Premises to Landlord.

36.3 **Bankruptcy.** In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

36.4 **Transfer of Landlord's Interest.** Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises and Landlord shall thereupon be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

37. MISCELLANEOUS.

37.1 **Relationship of the Parties.** Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

37.2 **Severability.** If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 **Corporate Authority; Partnership Authority.** If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership, certificate of limited partnership or other evidence of partnership satisfactory to Landlord.

37.4 **Entire Agreement.** It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease.

There are no other representations, covenants or warranties between the parties and any reliance on representations of a party is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drafted by Landlord, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

37.5 Governing Law. The laws of the state where the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

37.6 Waiver or Consent Limitations. A waiver of any breach or default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant's contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance hereunder.

37.8 Waiver of Redemption Rights. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

37.10 Right to Enter. Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 Definition of Landlord. As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Shopping Center. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

38. BROKERS.

38.1 **Broker's Commission.** Upon execution and delivery of this Lease by Landlord and Tenant, Landlord shall pay to Landlord's Broker the commission set forth at Section 3.b hereof, if any, or the commission provided for in the written agreement (the "Agreement") between Landlord and Landlord's Broker covering brokerage services rendered in this transaction. Landlord shall also pay Landlord's Broker a further commission as provided in the Agreement if Tenant exercises any option to extend the Term of this Lease or to renew the Lease or to expand the Premises. If a Tenant's Broker is named at Section 3.b, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if Landlord's Broker and Tenant's Broker have so agreed between them. Landlord shall have no obligation to pay a commission or fee to anyone other than Landlord's Broker in connection with this Lease.

38.2 **Protection of Brokers.** If Landlord sells its interest in the Premises or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Premises or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article 38 or the Agreement. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this Article 38. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Section is included in this Lease for the benefit of Landlord's Broker.

38.3 **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 3.b of this Lease are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease.

39. COMPLIANCE.

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

LANDLORD AND TENANT have signed this Lease on the dates set forth below.

Date: _____

Landlord: Arena Group 2000

a CA Limited Partnership

By: [Signature]

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Date: 6/25/03

Tenant: Len A. Paul

a n Individual

By: [Signature]

Print Name: LEN A. PAUL

Title: OWNER / PRESIDENT

By: _____

Print Name: _____

Title: _____

SEE YOUR ATTORNEY — THIS LEASE IS TO BE GIVEN TO YOUR ATTORNEY FOR REVIEW AND APPROVAL BEFORE YOU SIGN IT. BECAUSE EACH LEASE TRANSACTION IS UNIQUE, AND THE BUSINESS AND LEGAL CONCERNS OF EACH PART ARE UNIQUE, CB COMMERCIAL CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR RECOMMENDATION CONCERNING THE LEGAL EFFECT, LEGAL SUFFICIENCY, OR TAX CONSEQUENCES OF THIS LEASE. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND FINANCIAL ADVISORS. IN ANY REAL ESTATE TRANSACTION IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

ADDENDUM TO SHOPPING CENTER LEASE

This Addendum to Shopping Center Lease (the "Addendum"), dated for reference purposes only as of the 17th day of June, 2003, is entered into by and between Arena Group 2000 (hereinafter referred to as "Landlord"), and Len A. Paul (hereinafter collectively referred to as "Tenant").

RECITALS:

- A. Landlord and Tenant have entered into that certain Shopping Center Lease (hereinafter referred to as the "Lease") and to which this Addendum is attached.
- B. Landlord and Tenant now desire to supplement and amend the Lease and to agree as to certain other matters as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties agree as follows:

- 1. Except as noted to the contrary herein, the terms used herein shall be defined as provided in the Lease, and the Lease is incorporated herein by reference.
- 2. The Recitals set forth above are hereby acknowledged to be true and correct by the undersigned and are incorporated herein by reference.
- 3. Monthly rent totals \$2,000/month, including all Common Area Charges. Rent for the first month of the lease is waived. Rent to be increased annually by 3%.
- 4. Security Deposit of \$2,000 is due upon signing of lease.
- 5. Tenant is taking the space in "As Is" condition including all existing plumbing, electrical and mechanical improvements.
- 6. Tenant is responsible for any and all tenant improvements including all soundproofing. Landlord to review and approve all tenant improvement plans prior to construction. In addition, Tenant is responsible for any and all appropriate City or other governmental permits or approvals required for the tenant improvements and operation of their business. Tenant to give advance notice of and must minimize any inconvenience to other tenants during the construction period.
- 7. Tenant is responsible for contracting directly with SDG&E for gas and electricity to the suite.
- 8. Tenant acknowledges that Landlord has redevelopment plans for the shopping center.
- 9. Sections 9.2 (Adjusted Minimum Annual Rent) and 9.3 (Property Taxes) shall be deemed deleted.

10. Tenant acknowledges that Sports Arena Square Shopping Center is subject to a Percentage Lease with the City of San Diego and agrees to be bound by all applicable terms and conditions of the Lease. Tenant shall not commit or permit to be committed on the premises any act or omission which shall violate any term or condition of the Percentage Lease between Arena Group 2000 (successor in interest to Kathryn Crake Huntington) and the City of San Diego. In the event of a termination of the lease between Arena Group 2000 and the City of San Diego, then the lease between Arena group 2000 and Tenant shall terminate coincidentally therewith without any liability of the Arena group 2000 to Tenant. Tenant acknowledges receipt of a copy of the Ground Lease.

11. ARTICLE 13 INDEMNITY BY TENANT specified in the Lease shall be deemed deleted and the following shall be deemed inserted in place thereof:

As between Tenant and Landlord, Tenant shall be solely responsible for and Tenant shall indemnify, defend and hold Landlord, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and the respective directors, officers shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, attorneys fees (including fees and disbursements on in-house and outside counsel) of any kind whatsoever resulting from (a) Tenant's use and occupancy of the premises; (b) the conduct of tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorneys fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's willful misconduct or sole negligence.

Tenant shall indemnify, defend and hold Landlord, and its current and future, direct and indirect parent companies, subsidiaries, affiliates and the respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings losses, liabilities, penalties, fines, damages, costs or expenses including attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by Tenant of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with its occupancy and/or use of the premises and tenant's violation of any third party license to use intellectual property in connection with the premises, including, without limitation any deliverable.

If any claim or action is brought against Landlord, Tenant shall defend, and, unless in the opinion of counsel for Landlord a conflict of interest between Landlord and Tenant may exist with respect to such claim or action, Tenant shall assume the defense of such claim or action with counsel reasonably acceptable to Landlord. If Tenant does not assume the defense of Landlord, or if a conflict precludes Tenant from assuming the defense, then Tenant shall reimburse Landlord on a monthly basis for Landlord's defense through separate counsel of Landlord's choice. Even if Tenant assumes the defense of Landlord with acceptable counsel, Landlord, at its sole option and expense, may participate in the defense with counsel of Landlord's own choice without relieving Tenant of any obligation hereunder. Tenant's obligation to indemnify Landlord shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Tenant under any statutory scheme, including without limitation, any Workers Compensation Acts, benefit acts or other employee benefit acts. ,

12. Landlord shall protect, defend, indemnify and hold the Tenant, Tenant's board of directors, officers, general partners, stockholders, employees, agents and franchisor (each a "Tenant Entity") harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of (i) the conduct or management or any work or thing whatsoever done by Landlord or on Landlord's behalf in or about the Shopping Center or from transactions of Landlord concerning the Shopping Center; (ii) Landlord's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Shopping Center or its occupancy; or (iii) any breach or default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to this Lease, except to the extent arising from the negligence or willful misconduct of Tenant or its agents, contractors or employees or from a breach of Tenant's obligations under this Lease. The provisions of this Section shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.
13. ARTICLE 21 TENANT'S CONDUCT OF BUSINESS shall be deemed deleted and the following shall be deemed inserted in place thereof:

Tenant shall comply with the rules and regulations attached hereto with such reasonable modifications as Landlord may from time to time make. Landlord shall not be responsible for the violation of those rules and regulations by other tenants or occupants of the building. Landlord warrants to use its best efforts to enforce the rules and regulations in a non-discriminatory fashion. Landlord agrees that the rules and regulations shall not be changed by Landlord in such a way as to interfere with the purposes permitted under this Lease. Tenant shall be permitted to operate its business on the Premises at such times and during such hours as Tenant deems appropriate subject to applicable governmental laws, ordinances and regulation.

14. SECTION 37.5 GOVERNING LAW of the Lease shall be deemed deleted and the following shall be deemed inserted in place thereof:

The laws of the state of California shall govern the validity, performance and enforcement of this lease. Tenant shall comply with all laws, ordinances, rules or regulations of any governmental authority regulating Tenant's use of the premises: provided, however, that Tenant may, at its sole cost and expense, contest the validity or application of any law, statute ordinance or governmental rule or regulation.

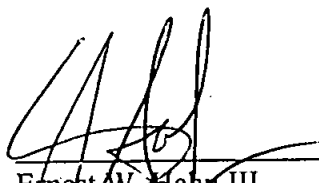
Tenant shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances and regulations of the City of San Diego, County of San Diego, State of California, and federal governments at Tenant's sole cost and expense. In addition, Tenant shall comply with any and all notices issued by the City Manager of San Diego or his authorized representative under the authority of any such law, statute, ordinance or regulation.

15. AMERICANS WITH DISABILITY ACT OF 1990 ("ADA") The Landlord shall be responsible for dealing with government agencies in complying with the Americans with Disabilities Act of 1990 ("ADA") and the rules and regulations implementing same with respect to all physical characteristics of all common areas and of all public areas of the leased premises. After initial occupancy Tenant shall, at Tenant's cost, comply with the Americans with Disabilities Act of 1990 ("ADA") and the rules and regulations implementing same with respect to operations within the leased premises. Landlord and Tenant shall comply with the respective obligations as aforesaid at such time as Landlord or Tenant, as the case may be, has received a non-appealable order from an authorized governmental agency requiring such compliance. Landlord shall indemnify and hold Tenant harmless with respect to claims made on account of Landlord's failure to comply with ADA and Tenant shall indemnify and hold Landlord harmless with respect to claims made on account of Tenant's failure to comply with ADA.

Lessee agrees to keep the terms and conditions of this lease confidential. All other terms and conditions of the lease shall remain in full force and effect.

LANDLORD:

TENANT:


Ernest W. Hahn III
Acrea Group/2000


Len A. Paul

6/26/03
Date

6/25/03
Date

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (City), as Lessor under that certain Lease Agreement (Master Lease) entered into with

Huntington, Kathryn Crake

(Lessee) and filed in the Office of the City Clerk as Document **0-18264**, hereby consents to that certain Sublease Agreement between the above Lessee (Sublessor) and

Margaret R. Engel d.b.a. Crack In The Wall

(Sublessee) dated **February 2, 1997**. Said Sublease shall be subordinate to the Master Lease in all respects. The City is hereby merely approving the Sublease and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The City is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following:

Assignment and Subleasing: Sublessee should not assign this sublease or sublet the premises or any part thereof without the prior written consent of Sublessor and the City of San Diego. An assignment by operation of law shall automatically terminate this lease.

Hold Harmless: Sublessee shall assume the defense of, indemnity and save harmless Sublessor and the City of San Diego from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the leased premises or from any act or omission of Sublessee, its agents and invitee.

Insurance: Sublessee shall be insured by an insurance carrier acceptable to the Sublessor and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million Combine Single Limit Liability in an occurrence form. A copy of the policy of insurance shall be filed with City and shall have "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to the City by the insurance company.

Legal Proceeding: Should it become the necessary for Sublessor or City to commence

legal proceedings to collect rent, to recover possession or enforce any other provision of this sublease, Sublessee agrees to pay all legal cost in connection therewith, including a reasonable sum as attorney's fees.

Early Termination The City has the right to terminate the Master Lease by providing a one-year advance notice to Sublessor. In the event that City exercises such early termination, this Sublease shall be also terminated pursuant to the terms and provisions of the Master Lease.

THE CITY OF SAN DIEGO

Dated 3-4-97

By Mary G. Smith
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

CASEY G. GWINN, City Attorney

Dated 7/11/97

By [Signature]
Deputy

Sublessee

Dated 3/31/97

By M. Engler

SHOPPING CENTER LEASE

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This Lease between Kathryn Crake Huntington

a n individual _____ ("Landlord"), and Margaret R. Engler
_____, a n Individual _____ ("Tenant"), is dated February 2, 19 97.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 9.5) to be paid by Tenant and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the plan attached hereto as Exhibit "A", and further described at Section 3.j. The Premises are located within the Shopping Center described in Section 3.i. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.d.).

2. LEASE REVIEW OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease and to have this Lease reviewed, approved, and modified as needed by its attorneys before the Lease is signed.

3. DEFINITIONS.

As used in this Lease, the following terms have the following meanings:

a. **Annual Percentage Rental Rate (Section 9.4):** 0 % of Tenant's Net Sales.

b. **Broker(s)**

Landlord's Broker: URC Management

Tenant's Broker: None

Commission Payable to Landlord's Broker (Section 38.1): \$ As per schedule.

Landlord's Broker hereby discloses to Landlord and Tenant that Landlord's Broker is acting in this transaction as the agent of (check applicable box below):

- ☒ Landlord exclusively; or
☐ both Landlord and Tenant.

Landlord and Tenant each consent to such representation by Landlord's Broker.

c. **Commencement Date:** The earliest of the following dates:

(i) ~~The date Tenant initially opens for business in the Premises;~~

2/24/97
(ii) ~~30 days after substantial completion of Landlord's Work in the Premises (as defined in Exhibit "C" to the Lease). The date of such substantial completion is the date the Premises are substantially complete to the extent of Landlord's Work, except for such work that Landlord cannot complete until Tenant performs necessary portions of Tenant's Work (as defined in Exhibit "C"). Substantial completion of Landlord's Work shall be evidenced by notice to Tenant from Landlord's architect or designated representative that substantial completion has occurred; or~~

(iii) April 1, 1997

Tenant's Tentative Commencement Date (Article 7) is _____

Tenant shall commence Tenant's Work promptly upon substantial completion of Landlord's Work and shall diligently complete Tenant's Work so that Tenant can promptly open for business in the Premises.

d. **Common Areas:** All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, roofs, walls, plazas, malls (including any enclosed malls where climate control is provided), throughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit "A". Landlord shall have the right to regulate or restrict the use of the Common Areas.

e. **Floor Area:** As to both the Premises and the Shopping Center, the respective measurements of floor area as are from time to time subject to lease by Tenant and all tenants of the Shopping Center, respectively, as determined and applied by Landlord on a consistent basis throughout the Shopping Center.

f. **Index (Section 9.2):** The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside
Average, Subgroup "All Items" (1982 - 84 = 100).

g. Landlord's Mailing Address: 42 Vivian Street
San Diego, CA 92115
Tenant's Mailing Address: 3350 Sports Arena Blvd., Suite C
San Diego, CA 92110

h. Minimum Annual Rent (Initial) (Section 9.1): \$ 21,360 per year, payable in twelve (12) equal monthly installments each year.

i. Outside Date for Delivery of Possession (Article 7): None

j. Premises: That portion of the Shopping Center containing approximately 2,600 square feet of Floor Area, shown by diagonal lines on Exhibit "A", located on the grade level of the Shopping Center and designated space F. The Premises has dimensions of approximately 40 feet in frontage and approximately 65 feet in depth.

k. Security Deposit (Article 36): \$ 1,701.00

l. Shopping Center: The building of which the Premises is a part (the "Building") and any other buildings and improvements on the real property (the "Property") located at 3350 Sports Arena Blvd. and further described on Exhibit "A". The Shopping Center is known as Sports Arena Square.

m. Tenant's First Adjustment Date (Section 9.2): The first day of the calendar month following the Commencement Day plus Twelve (12) months from the Commencement Date.

n. Tenant's Proportionate Share (Initial): 3.4 %.

Such share is a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of the buildings in the Shopping Center available for exclusive use and occupancy by tenants (excluding the Floor Area of those areas, if any, designated by Landlord on Exhibit "A" as "Major Stores"), as determined by Landlord from time to time on a consistent basis. As of the date of this Lease the Shopping Center (excluding any Major Stores) contains a total Floor Area of 77,163 square feet.

o. Tenant's Radius (Section 21.9): _____ miles from the Premises.

p. Tenant's Sales Breakpoint: That dollar sum equal to the then Minimum Annual Rent payable by Tenant divided by the Annual Percentage Rental Rate. As of the Commencement Date Tenant's Initial Sales Breakpoint is \$ _____.

q. Tenant's Trade Name (Article 11): Crack In The Wall

r. Tenant's Use Clause (Article 11): The Premises shall be used and occupied only for the purpose of Design, fabrication and retailing of custom picture frames

and for no other use or purpose.

s. Term: The Term of this Lease shall begin as of the date hereof and shall continue thereafter for a period of Two years and 0 months (plus any partial month) following the Commencement Date. The Commencement Date and expiration date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit "F". The Notice shall be served on Tenant promptly following determination of the Commencement Date under Section 3.c.

4. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

a. Exhibit "A" - Plan Showing the Premises and Shopping Center (See Sections 3., 3.1 and Article 5)

b. Exhibit "B" - Shopping Center Rules and Regulations (See Section 25.5)

c. Exhibit "C" - Landlord's Work and Tenant's Work

d. Exhibit "D" - Sample Form of Tenant Estoppel Certificate (See Section 29.9)

e. Exhibit "E" - Shopping Center Sign Criteria

f. Exhibit "F" - Landlord's Notice of Lease Term Dates (See Section 3.s)

g. Exhibit "G" - Guaranty of Lease

h. Addenda:

See attached Addendum

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit "A" shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit "A" and may eliminate or add any improvements to any portion of the Shopping Center, but Landlord agrees (i) not to materially change the size or location of the Premises without Tenant's consent, and (ii) that any such changes will not materially adversely affect ingress to and egress from the Premises, visibility of the Premises or parking availability in the Shopping Center.

6. OTHER TENANCIES.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord and Landlord's Broker do not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term.

7. DELIVERY OF POSSESSION.

Landlord agrees to deliver to Tenant and Tenant agrees to accept from Landlord possession of the Premises promptly upon substantial completion of Landlord's Work. If for any reason Landlord does not deliver possession of the Premises to Tenant with Landlord's Work substantially complete at least 30 days before Tenant's Tentative Commencement Date, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but the Commencement Date shall be delayed by the number of days delivery is delayed and Rent shall be abated until 30 days following the date of substantial completion of Landlord's Work in the Premises. Notwithstanding anything to the contrary contained herein, if Landlord does not deliver possession of the Premises to Tenant on or before the Outside Date for Delivery of Possession, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall have no further obligations hereunder.

8. TENANT'S WORK.

Tenant shall commence construction of Tenant's Work as defined in Exhibit "C" no later than the date of substantial completion of Landlord's Work in the Premises and shall diligently complete Tenant's Work. Landlord shall give Tenant not less than 10 days' advance written notice of such anticipated date of substantial completion of Landlord's Work. Tenant shall, at any time requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder. Tenant shall open the Premises for business within 30 days following the date of substantial completion of Landlord's Work in the Premises.

9. RENT.

9.1 Payment of Minimum Annual Rent. Tenant agrees to pay the Minimum Annual Rent during the Term for its use and occupancy of the Premises. Minimum Annual Rent shall be payable in advance on the first day of each calendar month of the Term without notice, setoff or deduction, in twelve (12) equal monthly installments during each year of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Minimum Annual Rent for the partial month shall be prorated on a daily basis, based on a 30 day month. Tenant shall pay Landlord the first installment of Minimum Annual Rent when Tenant executes this Lease.

9.2 Adjusted Minimum Annual Rent.

a. The Minimum Annual Rent set forth at Section 3.h. shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based only upon increases (if any) in the Index. The Index in publication 3 months before the Commencement Date shall be the "Base Index." The Index in publication 3 months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Minimum Annual Rent payable during the ensuing twelve-month period shall be determined by increasing the initial Minimum Annual Rent by a percentage equal to the percentage increase, if any, in the applicable Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for any preceding Adjustment Date (or the Base Index, in the case of the First Adjustment Date), the Minimum Annual Rent for the ensuing twelve-month period shall remain the amount of Minimum Annual Rent payable during the preceding twelve-month period. When the Minimum Annual Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Minimum Annual Rent and the corresponding adjusted Tenant's Sales Breakpoint and the manner in which each was computed. The Minimum Annual Rent as so adjusted from time to time shall be the "Minimum Annual Rent" for all purposes under this Lease.

b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" hereunder.

9.3 Property Taxes.

a. Beginning with the Commencement Date and for the balance of the Term, Tenant shall pay to Landlord as "additional rent" the amount of taxes and assessments levied and assessed for any year upon the Premises and the underlying Property (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360 day year.

If the Premises and the underlying Property are not separately assessed, but are assessed as part of the land and improvements on a larger parcel (hereinafter the "Larger Parcel"), Tenant's share of Premises Property Taxes shall be a fractional portion of the property taxes on the Larger Parcel, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of all the areas available for exclusive use and occupancy by tenants of the Larger Parcel. Tenant shall pay Premises Property Taxes to Landlord as part of Common Area Costs at the times and in the manner provided for the payment of Common Area Costs at Section 25.3 of this Lease. For purposes hereof, an equitable adjustment shall be made for buildings which are only partially completed on the date such property taxes become a lien.

If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate

proration for any partial year) and statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

b. The term "Premises Property Taxes" shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, Property or the Shopping Center; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Premises, Property or the Shopping Center or against Landlord's business of leasing space in the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises, Property or Shopping Center by or through any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises, Property or Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, Property or Shopping Center; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Premises Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

KCH
~~9.4 Percentage Rental. In addition to the Minimum Annual Rent and other sums required to be paid by Tenant under this Lease, Tenant shall pay as "percentage rental" a sum equal to the Annual Percentage Rental Rate times the amount of Net Sales of Tenant (as "Net Sales" is defined in Section 10.1 hereof) made from or upon the Premises during each calendar year, less the amount of Minimum Annual Rent paid by Tenant during such calendar year. Percentage rental shall be computed each calendar month and on or before the date the following month's installment of Minimum Annual Rent becomes due Tenant shall pay to Landlord the amount by which the sum computed as the Annual Percentage Rental Rate of Tenant's Net Sales during that period exceeds the Minimum Annual Rent payable by Tenant during that period. Within 90 days after the end of each calendar year the Net Sales of Tenant during that calendar year and the amounts payable to Landlord as Minimum Annual Rent and as percentage rental for that calendar year shall be determined. If Tenant has overpaid percentage rental, Tenant shall receive a prompt refund of the overpayment; if Tenant has underpaid percentage rental, Tenant shall immediately pay the deficiency to Landlord.~~

~~Percentage rental due for any partial month of the Term shall be prorated on a daily basis based on a 30-day month. The obligations hereunder shall survive the expiration of the Lease Term.~~

9.5 **Additional Rent.** Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12, 22, 25 and Exhibit "C", and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent." All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "Rent."

9.6 **Interest and Late Charges.** If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment.

Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, and processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to 10% of such installment. Such late charge is in addition to any interest due pursuant to the preceding paragraph of this Section 9.6. Landlord and Tenant agree that this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 **Payment of Rent.** All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at Landlord's management office in the Shopping Center, or at such other place as may from time to time be designated by Landlord in writing at least 10 days prior to the next ensuing payment date.

10. NET SALES.

~~10.1 Definition of "Net Sales." "Net Sales" of Tenant, as used in this Lease, means the gross selling price of all merchandise or services sold in or from the Premises by Tenant, its subtenants, licensees and/or concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, but excluding the following:~~

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- ~~(i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made on such merchandise;~~
 - ~~(ii) The selling price of goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;~~
 - ~~(iii) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of accepting a trade-in;~~
 - ~~(iv) Delivery charges;~~
 - ~~(v) Cash refunds made to customers in the ordinary course of business. This exclusion shall not include any amount paid or payable for what are commonly known as trading stamps;~~
 - ~~(vi) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales, where such charges are not included in the merchandise sales price;~~
 - ~~(vii) Receipts from public telephones, stamp machines or vending machines installed solely for the use of Tenant's employees;~~
 - ~~(viii) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected from customers separately from the selling price of merchandise or services; and~~
 - ~~(ix) Sales of fixtures, equipment or property which are not stock in trade.~~

~~All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may occur at another location and even though actual filling of the sale or service order and actual~~

delivery of the merchandise may be made from a place other than the Premises. ~~Each sale on installment or credit shall be treated as a sale for the full cash price at the time of sale.~~

10.2 Statement of Net Sales. Tenant shall furnish Landlord with an accurate statement of Tenant's Net Sales within 30 days after the close of each calendar month, and an annual statement of Net Sales (which shall include a monthly breakdown of Net Sales) within 60 days after the close of each calendar year. Such statements shall be signed and certified as accurate by Tenant. The annual statement of Net Sales shall be audited and certified as correct by Tenant's Certified Public Accountant. In addition, Tenant shall furnish Landlord with a copy of its state and local sales and use tax returns within 30 days after any such return is filed or required to be filed with the appropriate governmental agency.

Tenant shall keep and shall require any subtenants, licensees and/or concessionaires to keep, at the Premises or at such other place approved by Landlord in writing, full and accurate books of account, records and other pertinent data (including cash register receipts) of the gross sales, Net Sales, credits, refunds and other pertinent business transactions made from or upon or otherwise relating to the Premises. Such books, receipts and records shall be kept for not less than 2 years after the close of each calendar year to which they relate and shall be available for inspection and audit by Landlord and its representatives at all times during regular business hours. Landlord's receipt of any statement of Net Sales or Tenant's payment of percentage rental for any period shall not bind Landlord as to the correctness of the statement or amount of the payment. Within 2 years after the receipt of any such statement, Landlord or its designated Certified Public Accountant shall be entitled to audit Tenant's gross sales and Net Sales following 48 hours' advance written notice to Tenant. Such audit shall be conducted during normal business hours at either the Premises or Tenant's principal place of business. If such audit determines that there has been a deficiency in the payment of percentage rental, then such deficiency shall become immediately due and payable with interest at the maximum lawful interest rate from the date said payment should have been made. In addition, if an annual statement of Tenant is found to have understated Net Sales by more than 2% and if Landlord is entitled to any additional percentage rental as a result of such understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due Landlord. If such audit discloses an additional liability for percentage rental of \$1,000 or more for the period covered by the audit, Landlord may, in addition to any other remedies it may have for Tenant's breach of this Lease, terminate this Lease by written notice to Tenant given within 60 days after Landlord's receipt of the audit report. Any information obtained from such statements, audits or inspections shall be treated by Landlord as confidential and shall not be disclosed except to carry out the purposes of this Lease, but Landlord may divulge the contents of any such statements in connection with any financing arrangements involving, or assignment of Landlord's interest in, the Premises, Shopping Center, or this Lease, or in connection with any administrative or judicial proceedings in which Landlord is involved and in which such information is in issue.

Any failure by Tenant to maintain and keep full and accurate books of account, records and other pertinent data as required hereunder shall be deemed a default and breach of this Lease under Article 26 hereof.

11. POSSESSION AND USE.

11.1 Permitted Uses and Prohibited Conduct. Possession of the Premises shall be delivered to Tenant free and clear of all tenants and occupants and the rights of either, and free of liens and encumbrances other than those specified in Article 15 hereof. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit any person to use the Premises for conducting a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws, ordinances, regulations and requirements of the United States or the State, County and City where the Shopping Center is located, or any other lawful authority. Tenant shall, during the Term, keep the Premises in a clean and wholesome condition, free of any objectionable noises, odors or nuisances, and shall comply with all health and police regulations. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities and any enclosed mall of the Shopping Center).

11.2 Insurance Coverage Use Restrictions. Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increases in Landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical equipment in the Premises which overloads the electrical lines of the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.3 Deliveries. Tenant shall use its best efforts to complete all deliveries, loading, unloading and services to the Premises before 10:00 a.m. each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

12. UTILITIES SERVICES.

12.1 Utilities Installation. Landlord agrees that to the extent provided for in Exhibit "C" hereof, it will initially make available to Tenant (i) facilities for the removal of sewage and the delivery to and distribution within the Premises of water, electricity, telephone service and natural gas (which shall be used by Tenant for cooking and demonstration of gas operated sales items only) [these facilities are collectively referred to in this Article 12 as "utilities"], and (ii) a heating, ventilation and air conditioning

system (the "HVAC system"). Unless Landlord agrees otherwise, Tenant shall use those utilities and any HVAC system provided for under Exhibit "C" to serve the Premises. If required under Exhibit "C" a separate meter shall measure the consumption of utilities and/or the HVAC system.

If not required to be furnished by Landlord under Exhibit "C", Tenant shall be responsible for obtaining any utilities and/or HVAC system required for Tenant's business operations in the Premises.

12.2 Utilities and HVAC System Charges. Tenant shall pay for all utilities used by Tenant on the Premises from and after substantial completion of Landlord's Work in the Premises. If Tenant's utilities and/or HVAC system are separately metered, Tenant shall pay directly to the appropriate utility company the cost of all such utilities used on the Premises. If any of Tenant's utilities and/or HVAC system are furnished by Landlord without separate metering, then during the Term Tenant shall pay as additional rent, monthly in advance, a utilities charge to reimburse Landlord for any such utilities furnished by Landlord to the Premises. This utilities charge shall, at Landlord's election, be established (a) by an estimate of usage made from time to time by Landlord's engineer or the appropriate utility company, and initially based on a typical store layout comparable to Tenant's proposed use of the Premises, or (b) a percentage of such total utility costs equal to a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of Shopping Center actually being furnished with utility service by Landlord at the time of billing. If Tenant's Premises is not separately metered, such utilities and/or HVAC charges may be billed with Tenant's share of Common Area Costs under Section 25.3. The utilities charge to Tenant hereunder for utilities furnished by Landlord shall be based on utility rates which do not exceed those charged by the local public utility company for services it would otherwise furnish directly to Tenant. If the Premises are not initially separately metered, Landlord shall have the right, at its expense, to install separate meters for the Premises at any time during the Term.

12.3 Failure to Pay. If Tenant fails to pay any amount due to Landlord hereunder within 10 days after receipt by Tenant of a bill therefor, Landlord may (in addition to all other rights and remedies provided herein for breach of this Lease and if permitted by law) cut off and discontinue, upon 5 days' advance notice to Tenant and opportunity to cure, any such utilities furnished to the Premises by Landlord until all such amounts are paid in full.

12.4 No Landlord Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) operation of the HVAC system, if any. No such failure or interruption shall entitle Tenant to terminate this Lease or stop making any Rent or other payments due hereunder.

13. INDEMNITY BY TENANT.

Tenant shall indemnify and hold Landlord harmless from any and all costs, claims or liability of any kind arising out of: (a) Tenant's use and occupancy of the Premises; (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorney's fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct.

14. INSURANCE – WAIVER OF SUBROGATION.

14.1 Tenant's Insurance Obligations. Tenant shall, from and after the earlier of (a) substantial completion of Landlord's Work in the Premises, or (b) commencement of any of Tenant's Work in the Premises, and for the remainder of the Lease Term maintain, at its expense, the following types of insurance coverage, in the amounts specified and in the forms hereinafter provided for:

(i) **LIABILITY INSURANCE.** Commercial general liability insurance (sometimes known as comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Such policy shall be an occurrence form and shall include Owner's and Contractor's Protective Liability with respect to construction of improvements by Tenant on the Premises. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be not less than \$1,000,000 per occurrence. The liability insurance obtained by Tenant under this Section 14.1(i) shall (1) be primary and non-contributing; (2) contain cross-liability endorsements; and (3) insure Landlord against Tenant's performance under Article 13(a), (b) and (e) if the matters giving rise to the indemnity under Article 13 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(ii) **PLATE GLASS.** Insurance covering the full replacement cost of all plate glass on the Premises. Tenant shall have the option to self-insure this risk.

(iii) **TENANT IMPROVEMENTS.** Insurance covering all of the items specified as "Tenant's Work" in Exhibit "C", Tenant's leasehold improvements, alterations, additions or improvements permitted under Article 16, and trade fixtures, merchandise and personal property from time to time in, on or upon the Premises. Such insurance shall cover not less than 100% of the full replacement cost of the foregoing from time to time during the Term, and shall provide protection against any peril included within the classification of fire, extended coverage, sprinkler leakage, vandalism, theft, malicious mischief and special extended perils (all risk). Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the provisions of Article 23 hereof.

(iv) **GENERAL INSURANCE PROVISIONS.**

(a) Any insurance required to be maintained by Tenant hereunder shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(b) A certificate of the insurer or the insurer's legal representative evidencing the existence and amount of each insurance policy required of Tenant hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter at least 30 days prior to the expiration of any such policy. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancellable except after 30 days' written notice to Landlord. If Tenant fails to deliver any such

evidence of insurance to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance coverage, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement therefor.

(c) All insurance shall be maintained with companies holding a "General Policy Rating" of A-XII or better, as set forth in the most current issue of "Best's Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 14.1 may not be available in the future. Tenant acknowledges that the insurance described in this Section 14.1 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall be responsible for obtaining any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

14.2 Landlord's Insurance Obligations. Landlord shall, in connection with its ownership and operation of the Shopping Center, at all times from and after commencement of Landlord's Work in the Premises, maintain in effect policies of insurance providing protection against the following liabilities and/or risks: (a) commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage, and (b) fire and extended coverage insurance (including coverage for Common Area sprinkler damage, vandalism and malicious mischief, and, if required by any lender holding a security interest in the Shopping Center or if deemed necessary by Landlord, flood and earthquake insurance) on the Building and Shopping Center in an amount not less than their full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the Term. The types and coverages of insurance maintained by Landlord hereunder shall be subject to such further requirements as may be imposed by Landlord's lender. Landlord shall also have the right to maintain such additional types and coverages of insurance (including business interruption insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

14.3 Waiver of Subrogation. Landlord and Tenant (for themselves and their insurers) each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, against any of the parties to the REA referred to in Article 15 hereof (the "Parties") and against other tenants of the Shopping Center (provided such Parties and other tenants have waived such rights against Landlord and Tenant), on account of any loss by or damage to the waiving party or its property or the property of others under its control (including as to Tenant the Premises and its contents, and as to Landlord the other portions of the Shopping Center), arising from any risk generally covered by fire and extended coverage insurance. The foregoing waivers of subrogation shall be required hereunder only if (a) then available in the State where the Shopping Center is located, and (b) such waiver does not invalidate the applicable policy.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to the liens or restrictions of (a) any matters or documents of record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, operation and reciprocal easement agreement (the "REA"); and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate the terms of any REA or any other Matters of Record, and (ii) this Lease is subordinate to the REA, if any, and any amendments or modifications thereto. If the REA, if any, is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to the REA upon recordation of the REA. Tenant agrees to execute and return to Landlord within 10 days after written demand therefor by Landlord, an agreement in recordable form satisfactory to Landlord subordinating this Lease to the REA. Any REA shall not prevent Tenant from using the Premises for the purposes set forth in Tenant's Use Clause.

16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 Permitted Improvements. Subject to the terms of this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "Improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done and providing Landlord with all plans for such proposed improvement work. Tenant may not make any improvement which reduces the value of the Premises or is of a structural nature. No single improvement costing more than \$500.00 may be made without first obtaining the written approval of Landlord. In addition, no improvement shall be made to any storefront, mechanical system, or exterior wall or to the roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of an existing mezzanine, unless and until the written consent and approval of Landlord is first obtained.

No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord.

Tenant shall reimburse Landlord for all costs incurred by Landlord (including architect's and/or engineer's fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 Construction Requirements. All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors or subcontractors being used. Upon completion of such improvements, Tenant shall file a Notice of Completion for record in the office of the County Recorder where the Shopping Center is located, as required or permitted

by law. Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center.

16.3 Insurance Requirements. If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14.1(iii). It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

17. MECHANICS' LIENS.

17.1 Tenant's Covenants. Tenant shall pay all costs for work done by or for Tenant in the Premises (other than Landlord's Work), and Tenant shall keep the Premises, Building and Shopping Center free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises under Article 16 or Exhibit "C"), Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord.

17.2 Tenant's Contest of Lien. If Tenant desires to contest any claim of lien arising from work done by or for Tenant in the Premises, Tenant shall first furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of any such lien for any amount is entered, Tenant shall immediately pay and satisfy such judgment.

17.3 Landlord's Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and Tenant has not given Landlord adequate security to protect the Premises, the property therein, and the Building, Shopping Center and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the maximum lawful rate from the date of Landlord's payment.

17.4 Notice of Lien. If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

18. ADVERTISING MEDIA.

Tenant shall not affix or maintain upon the glass panes or supports of the show windows (or within 24" of any window), doors or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item. Tenant shall not affix any sign to the roof of the Premises.

Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign(s) in accordance with the provisions of the sign criteria attached hereto as Exhibit "E".

19. FIXTURES AND PERSONAL PROPERTY.

19.1 Removal and Replacement. All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 Fixtures. All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical systems, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit "C" (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any Larger Parcel as defined in Section 9.3. Tenant shall pay Landlord the taxes attributable to Tenant's personal property within 15 days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. No taxes, assessments, fees or charges referred to and billed to Tenant under paragraph shall be considered to be taxes under the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP.

~~20.1 One Year Prohibition Against Transfer.~~ Landlord and Tenant acknowledge that the Shopping Center is an interdependent enterprise and that each party's realization of the benefits of this Lease depends upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further acknowledge that the character and quality of Tenant's operation, and of the Shopping Center, will be enhanced by Tenant's use of its best efforts, for a reasonable period of time, to establish a successful business and business image. Landlord and Tenant further agree that one year is a reasonable period of time to attempt to achieve this goal. Accordingly, Tenant agrees that for a period of one year from the date Tenant initially opens to the public for business in the Premises (the "Occupancy Period"), Tenant shall not, and shall not have the power to, transfer or assign this Lease, sublet the Premises, enter into license or concession agreements, or change ownership (such transactions are hereinafter individually and collectively referred to as a "Transfer"), without first procuring the written consent of Landlord, which may be given or withheld in Landlord's sole discretion. After the expiration of the Occupancy Period, Landlord's consent to any Transfer shall not be unreasonably withheld, subject to the terms, covenants and conditions contained below.

~~20.2 Restrictions on Transfer.~~ If after expiration of the Occupancy Period Tenant desires to effect a Transfer to anyone (a "Transferee") other than a successor, subsidiary, affiliated or controlling corporation of Tenant (an "Affiliate"), Tenant shall give written notice ("Transfer Notice") to Landlord at least 60 days before the effective date of any such proposed Transfer. The Transfer Notice shall state (a) whether Tenant proposes to assign the Lease, sublet the Premises, enter into a license or concession agreement or change ownership, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) all other material terms of the proposed Transfer, and (e) in detail the type of business operation the proposed Transferee intends to conduct on the Premises. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. In addition, the Transfer Notice shall be accompanied by the proposed Transferee's income statements and balance sheets covering the preceding 36-month period, and each shall be certified as accurate by the Transferee. Landlord may, at any time within 30 days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer (which consent shall not be unreasonably withheld under the business judgment standards set forth in Section 20.3 below) by mailing written notice to Tenant of its decision ("Decision Notice"). If Landlord consents to the proposed Transfer Tenant may thereafter promptly effect a Transfer in accordance with the terms of Tenant's Transfer Notice.

If Landlord consents to the proposed Transfer and Tenant does not consummate the proposed Transfer within 30 days after receipt of Decision Notice, the provisions of the first paragraph of this Section 20.2 shall again apply.

~~20.3 Grounds for Withholding Consent.~~ Landlord may withhold consent to a proposed Transfer if, in Landlord's reasonable business judgment, any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Premises, as compared to the merchandising operation conducted by Tenant prior to the date of Transfer Notice; (ii) the proposed Transferee lacks a good business reputation or sufficient relevant business experience; (iii) the financial worth of the proposed Transferee as of the date of Transfer Notice is less than the combined financial worth of Tenant and Tenant's guarantor (if any) as of either the date of this Lease or the date of Transfer Notice; (iv) the proposed Transferee's proposed use of the Premises conflicts with Tenant's Use Clause or is otherwise incompatible with the tenant mix of the Shopping Center; (v) the annual percentage rent Landlord reasonably anticipates receiving from the proposed Transferee is significantly less than the annual percentage rent Landlord could reasonably anticipate receiving from Tenant; or (vi) the proposed Transfer would breach any covenant of Landlord respecting radius restrictions, use or exclusivity rights in any other lease, or any financing or other agreement relating to the Shopping Center. Any attempted or purported Transfer without Landlord's written consent shall be void and of no force or effect.

~~20.4 No Release from Liability.~~ No Transfer, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease, from its covenants and obligations hereunder during the Term. Tenant shall, promptly upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with the processing and documentation of any requested Transfer.

~~20.5 Transferee's Obligations.~~ Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the Transferee. Each such Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One fully executed copy of such written instrument shall be delivered to Landlord. Failure to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 20 shall prevent any Transfer from becoming effective.

~~20.6 Division of Profit Between Landlord and Tenant.~~ Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of Transfer Notice, depreciated on a straight-line basis over the Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided equally between Landlord and Tenant. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as additional rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon 48 hours' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

~~20.7 Further Restrictions.~~ Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. For purposes of this Article 20, if Tenant is a partnership, any withdrawal(s) or change(s) of partners cumulatively owning a 50% or more interest in the partnership, or if Tenant is a corporation, any transfer(s) cumulating 50% or more of its stock, shall constitute a voluntary Transfer and shall be subject to the provisions hereof. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

21. TENANT'S CONDUCT OF BUSINESS.

21.1 Tenant's Operating Covenants. Tenant agrees that from and after its initial opening for business it shall, subject to the provisions of Section 23.5 hereof, operate and conduct its business in the Premises during all Shopping Center Business Hours (as hereinafter defined) and in accordance with the provisions of this Lease. Tenant shall at all times keep and maintain in the Premises an adequate stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

21.2 Hours and Days of Operation. Tenant recognizes that it is in the interests of both Tenant and Landlord to regulate the minimum hours of business for all tenants of the Shopping Center and Tenant agrees that commencing with its initial opening for business in the Premises and for the remainder of the Term it shall be continuously open for business during all hours on all days that the Shopping Center is open for business to the public, as determined by Landlord in its sole discretion (the "Shopping Center Business Hours"). Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during Shopping Center Business Hours. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays or national holidays.

21.3 Radius Provision. ~~If, during the first 5 years after Tenant initially opens for business in the Premises, Tenant directly or indirectly operates or owns within Tenant's Radius any type of business (other than a business already operated or owned by Tenant on the date of this Lease) similar to its business in the Premises (a "Similar Business"), Landlord may, at its option and for so long as Tenant is operating such Similar Business(es), include the net sales (as "Net Sales" is defined in Section 10.1) of each such Similar Business with the Net Sales made from the Premises for the purpose of computing the percentage rent due from Tenant under this Lease. Tenant shall provide Landlord with a statement of Tenant's Net Sales in accordance with the provisions of Sections 10.1 and 10.2 hereof for each Similar Business operated by Tenant within Tenant's Radius. If after expiration of this 5 year period Tenant continues to operate an existing Similar Business or opens another Similar Business within Tenant's Radius, then the Minimum Annual Rent payable under Article 9 hereof shall be adjusted promptly following expiration of such 5 year period in the case of an existing Similar Business(es), and from time to time upon the opening of another Similar Business, in the following manner: From the statements of Net Sales submitted by Tenant under Article 10 and this Section 21.3, Landlord shall compute a sum which represents the highest annual percentage rental paid or payable by Tenant under Sections 9.4 and 21.3 hereof during any consecutive 12 month period of the immediately preceding 60 month period, and this sum, if any, shall be added to the amount from time to time specified in Sections 3.h., 9.1, 9.2 and this Section 21.3 as the then Minimum Annual Rent. This resulting sum shall be the new Minimum Annual Rent payable beginning with the expiration of the first 5 years of the Term or the date of opening for business of such other Similar Business(es) within Tenant's Radius, whichever is applicable, and shall be subject to further adjustment thereafter in accordance with Section 9.2 hereof. Whenever a Similar Business opens for business within Tenant's Radius, Tenant shall give Landlord written notice of the location and opening date of such Similar Business. Landlord shall give Tenant written notice of the new Minimum Annual Rent payable by Tenant hereunder whenever adjusted as herein provided.~~

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 Tenant's Obligations. Tenant shall, at its expense and at all times from and after substantial completion of the Premises, repair, replace and maintain in good and tenantable condition, the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation, the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor coverings, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises, and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Landlord shall, at Tenant's expense, contract with a qualified service company for the monthly maintenance of the HVAC system serving the Premises. Landlord may bill Tenant for the cost of such HVAC maintenance contract as part of Common Area Costs under Article 25 hereof.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises, damage due to insured casualty losses covered by Article 23 or for any items of repair which are Landlord's obligation under Section 22.2.

22.2 Landlord's Obligations. Subject to Tenant's obligations under Section 22.1 and Landlord's further obligations, if any, under Section 25.2, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good and tenantable condition the roof, exterior walls, structural parts of the Premises and Building (including the structural floor) and HVAC system serving the Premises. Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, (1) Tenant shall be responsible for the cost of repairs to the HVAC system serving the Premises (which Landlord may bill to Tenant as a part of Common Area Costs under Article 25 hereof), and (2) Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant, or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required to) make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf, Tenant shall pay to Landlord any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs, alterations, replacements or improvements to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete those repairs within a reasonable period of time following receipt of Tenant's notice.

22.3 Tenant's Failure to Maintain Premises. If Tenant fails to repair or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right (in addition to all other rights and remedies provided herein for breach of this Lease), upon giving Tenant reasonable written notice of its election to do so (and opportunity to cure), to make

such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event the cost of such work shall be paid to Landlord by Tenant promptly following receipt of a bill therefor.

22.4 Landlord's Right of Entry. Landlord or its authorized representatives may enter the Premises at all times during Shopping Center Business Hours to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or the Insurance Services Office or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 Insured Casualty. If the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then within 90 days after the date of such damage Landlord shall commence repair, reconstruction and restoration of the Premises and diligently complete such repairs, in which event this Lease shall continue in full force and effect. Notwithstanding the foregoing, if there is partial or total destruction of the Premises during the last 3 years of the Term, Landlord and Tenant shall each have the option to terminate this Lease by written notice to the other given within 30 days after such destruction. For purposes of this option "partial destruction" shall mean destruction to the extent of 33 1/3% or more of the full replacement cost of the Premises as of the date of destruction.

23.2 Uninsured Casualty. If the Premises are damaged to any extent by act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance (including flood or earthquake damage if not covered under insurance maintained by Landlord), Landlord may within 90 days following the date of such damage, either (a) commence repair, reconstruction or restoration of the Premises and diligently complete it, in which event this Lease shall continue in full force and effect, or (b) elect not to repair, reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of destruction. In either such event Landlord shall give Tenant written notice of its election hereunder within said 90 day period.

23.3 Reconstruction Responsibilities. Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit "C" and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant, at its expense, shall reconstruct all items set forth as Tenant's Work, and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment, and resume normal business operations in the Premises.

23.4 Release from Liability. Upon any termination of this Lease under any of the provisions of this Article 23 each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14.1 covering the items set forth as "Tenant's Work" in Exhibit "C" and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.5 Abatement of Rent. In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for in Section 23.3. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management, and the obligation of Tenant to pay percentage rental and additional rent hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereto, or the reconstruction or replacement thereof.

23.6 Waiver of Statutory Rights of Termination. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises, Building or Shopping Center which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

24. EMINENT DOMAIN.

24.1 Takings Resulting in Termination. If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If 25% or more of the Floor Area of the Premises is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election within 30 days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than 25% of the Floor Area of the Shopping Center or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within 30 days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 Takings Not Resulting in Termination. If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken, and (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as existed

prior to such taking; and (b) the Minimum Annual Rental provided for in Section 3.1i. and Article 9 shall be reduced on an equitable basis, taking into account the relative value of the portion of the Premises taken as compared to the portion remaining. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

24.3 Award. If this Lease is terminated under Section 24.1, or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all real property interests in the Premises. The Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 Transfer Under Threat of Taking. For the purposes of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

25. COMMON AREAS.

25.1 Use of Common Areas. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord agrees that the Common Areas shall be initially constructed on the areas generally shown on Exhibit "A", and, subject to the preceding sentence, shall be maintained and operated at all times following completion thereof for the benefit and/or use of the customers and patrons of Tenant and of other tenants, owners and occupants of the Shopping Center. The original construction and installation of the Common Areas shall be at Landlord's expense.

25.2 Landlord's Maintenance Responsibilities; Common Area Costs. Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to Common Area and Shopping Center facilities. Notwithstanding the foregoing, all expenses incurred by Landlord in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include without limitation, all sums expended in connection with the Common Areas and Shopping Center for: general maintenance and repairs; resurfacing; painting; restriping; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; lighting, HVAC and other utility expenses; maintenance, repair, cleaning and replacement of public toilets, music program equipment and loudspeakers, sidewalks, stairways, curbs, Shopping Center signs, sprinkler systems, planting and landscaping, floors, walls, ceilings, roofs, skylights, windows, directional signs, markers and bumpers, fire protection systems and equipment (including fire sprinklers), security systems, lighting systems and fixtures (including replacement of tubes and bulbs), storm drainage systems, plumbing, electrical, HVAC and other utility systems which do not exclusively serve the interior of tenants' premises, and all mechanical equipment (including automatic door openers, escalators and elevators); personnel to implement the foregoing services, including, if Landlord deems necessary, the cost of security guards; all on-site costs and personnel expenses of Landlord incurred to manage the Shopping Center (which may be contracted for with third parties); all real (as generally defined in Section 9.3b of this Lease) and personal (as generally defined in Section 19.3 of this Lease) property taxes and assessments on the improvements and land comprising the Common Areas and Shopping Center or any personally in use on the Common Areas or Shopping Center; any sums paid to third parties for the purpose of seeking reduction of property taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas or Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and premiums for adequate comprehensive general liability and property damage insurance covering Landlord's ownership and operation of the Common Areas and Shopping Center, fire and extended coverage insurance on the Common Areas and the Shopping Center (which may include earthquake and flood damage endorsements) and vandalism and plate glass insurance covering the Common Areas and Shopping Center. Common Area Costs shall also include a charge for appropriate reserves for the costs of repainting, re-roofing and resurfacing Common Areas. In addition, Common Area Costs shall include a sum to be payable to Landlord for supervision of the Common Areas and for accounting, bookkeeping and collection of Common Area Costs, in an amount equal to 10% of the total of all of the foregoing Common Area Costs incurred in each calendar year. Landlord may have any or all services and management performed in connection with the Common Areas and Shopping Center provided by an independent contractor(s).

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit "A", then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 Method of Payment. Portions of the Shopping Center may be owned or leased by the occupants of those buildings designated by Landlord as a "Major Store" on Exhibit "A" (hereinafter referred to as the "Major Store Occupants"). The contributions of the Major Store Occupants towards the Common Area Costs shall be credited toward payment of the entirety of the Common Area Costs and the balance of the Common Area Costs shall be prorated among the other tenants of the Shopping Center in the following manner:

(i) From and after the date Rent has commenced, and thereafter during the Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

(ii) Within 60 days following the end of each calendar year (or as soon thereafter as possible), Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under subparagraph (i) above. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under subparagraph (i) above, Tenant shall pay Landlord the deficiency within 10 days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant may offset the excess against payments thereafter coming due under subparagraph (i) above or receive a refund following the expiration of the Term. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs as of the commencement of Rent and expiration of the Term. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term.

Tenant's failure to pay any sums due hereunder shall constitute a default under this Lease equivalent to a failure to pay *Minimum Annual Rent* when due.

25.4 Control of Common Areas. Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

25.5 Rules and Regulations. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit "B".

25.6 Employee Parking. Landlord shall at all times have the right to designate a particular parking area to be used by employees of Tenant and other occupants of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord from time to time with an accurate current list of its and all its employees' automobile license plate numbers within 15 days after taking possession of the Premises and thereafter within 5 days after any change in the accuracy of the list. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant \$25.00 per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within 10 days after demand by Landlord.

26. DEFAULTS BY TENANT.

26.1 Events of Default. Each of the following shall constitute a material default and breach under this Lease:

- (a) If Tenant is at any time in default of its obligation to pay any Rent or other charges, and such default continues for more than 10 days after written notice of such default;
- (b) If Tenant is in default in the prompt and full performance of any other of its obligations under this Lease and such default continues more than 30 days after written notice specifying the particulars of such default;
- (c) If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;
- (d) (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) If a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) If a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder; or
- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

26.2 Remedies Upon Breach of Lease. On the occurrence of any breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

- (a) Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or
- (b) Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Shopping Center is located.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as

alforesaid, Landlord shall have in addition to its rights under Section 26.4 hereof, the right, but not the obligation, to remove from the Premises any personal property located therein and to place it in storage in a public warehouse at the expense and risk of Tenant.

Notwithstanding any other term or provision hereof to the contrary, this Lease shall terminate on the occurrence of any act which affirms Landlord's intention to terminate this Lease as provided in this Section 26.2, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees, incurred by Landlord in connection with the filing, commencement, pursuing or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Minimum Annual Rent and other Rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 Landlord's Damages. If Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease, Landlord may recover from Tenant as damages, all of the following:

- (i) The worth at the time of award of any unpaid Rent and other charges which has been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves Landlord could have reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid Rent and other charges which Tenant would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, (c) expenses of reletting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus
- (v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest on unpaid amounts at the rate of 10% per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank located nearest to the Shopping Center in effect at the time of award, plus 1%.

For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36 month period, except that if it becomes necessary to compute such rental before such 36 months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 Fixtures and Personal Property. In the event of Tenant's default, all of Tenant's merchandise, Fixtures and other Personal Property shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 No Waiver. The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

27. DEFAULTS BY LANDLORD.

If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period), then such failure shall constitute a default hereunder and Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's default; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, or of partners or principals of such partners comprising Landlord, if any, or of Landlord's officers, shareholders or directors, if any) wherever situated, shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Tenant hereby waives any right to satisfy a judgment against Landlord except from the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center.

If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided below, then (subject to the provisions of Section 22.2. hereof) Tenant shall have the right to cure that default at Landlord's expense. In such case Landlord shall pay the reasonable cost of such cure promptly following receipt of a bill from Tenant itemizing the cost of such cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any cost of such cure against any payments of Rent or any other charges due and payable to Landlord under this Lease, except as otherwise specifically provided in this Lease.

Tenant agrees to send by certified or registered mail to any mortgagee or deed of trust beneficiary of the Shopping Center whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, Tenant shall provide any such mortgagee or beneficiary with notice of such failure and such mortgagee or beneficiary shall have an additional 30 days following receipt of such notice to cure such default; provided that if such default cannot reasonably be cured within that additional 30 day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

28. ATTORNEYS' FEES.

If at any time after the date hereof either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the losing party in such action or proceeding shall reimburse the winning party for its reasonable expenses of attorneys' fees and all costs and disbursements incurred, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the winning party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the winning party.

29. SUBORDINATION - ATTORNMEN.T.

29.1 Subordination. Within 10 days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien or security interest of the first mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease), the interest of any lease in which Landlord is the lessee, or any REA that may burden the Premises, Building, Shopping Center, Property or any future improvements made to the Property.

29.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than 10 days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit "D" certifying (i) that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (ii) the dates to which the Rent and other charges are paid in advance, if any; (iii) the Commencement Date and expiration date of the Lease Term, (iv) whether Tenant has assigned or transferred this Lease or any interest of Tenant therein; and (v) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rent, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Building and the Premises are a part. Tenant's failure to deliver such statement within the time required shall be conclusive and binding upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent, and (c) no more than one month's Rent has been paid in advance.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any REA and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

31. MERCHANTS' ASSOCIATION.

31.1 Merchants' Association. If either Landlord or a majority of tenants in the Shopping Center determine at any time that it is in the best interests of the Shopping Center, Tenant will become a member of, participate fully in, and remain in good standing in a non-profit Merchants' Association (the "Association") formed and organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the by-laws, rules and regulations of such Association. Landlord and each member tenant shall have one vote in the operation of the Association. The articles of incorporation and by-laws of the Association shall be approved by a majority vote of the Association members and shall be subject to amendment as provided in the by-laws. The objectives of the Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and centerwide advertising. Tenant agrees to pay annual dues to the Association in an amount and at the time determined by a vote of the members of the Association from time to time. Default in payment of such dues shall be deemed a default in payment of Rent hereunder.

31.2 Grand Opening Promotional Fund. Tenant shall separately pay when billed the sum of \$.25 per square foot of Floor Area in its Premises to provide Landlord with funds to promote the "grand opening" of the Shopping Center, and/or Tenant's business.

32. CAPTIONS; JOINT AND SEVERAL LIABILITY.

32.1 Captions. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 Joint and Several Liability. If two or more persons or entities execute this Lease as Landlord or Tenant then such persons or entities shall be jointly and severally liable for compliance with and performance of all the terms, covenants and provisions of this Lease.

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Section 3.g. hereof. Either party may change such address by written notice to the other as herein provided.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing and shall not be unreasonably withheld, unless otherwise expressly permitted in this Lease. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent.

If Landlord or Tenant unreasonably fails to give any such consent, the other party shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT.

36.1 Payment of Security Deposit. Tenant has deposited with Landlord the sum specified in Section 2.k. hereof as the "Security Deposit", receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

36.2 Application of Security Deposit. If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much as is necessary to compensate Landlord for loss of Minimum Annual Rent or additional rent, or other damages sustained by Landlord due to such default by Tenant. Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the Security Deposit (or the balance thereof remaining) shall be returned in full to Tenant not later than 14 days following the end of the Term and delivery of possession of the Premises to Landlord.

36.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

36.4 Transfer of Landlord's Interest. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises and Landlord shall thereupon be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

37. MISCELLANEOUS.

37.1 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

37.2 Severability. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 Corporate Authority; Partnership Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership, certificate of limited partnership or other evidence of partnership satisfactory to Landlord.

37.4 Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease.

There are no other representations, covenants or warranties between the parties and any reliance on representations of a party is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drawn by Landlord, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

37.5 Governing Law. The laws of the state where the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

37.6 Waiver or Consent Limitations. A waiver of any breach or default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant's contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance hereunder.

37.8 Waiver of Redemption Rights. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

37.10 Right to Enter. Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 Definition of Landlord. As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Shopping Center. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

38. BROKERS.

38.1 **Broker's Commission.** Upon execution and delivery of this Lease by Landlord and Tenant, Landlord shall pay to Landlord's Broker the commission set forth at Section 3.b hereof, if any, or the commission provided for in the written agreement (the "Agreement") between Landlord and Landlord's Broker covering brokerage services rendered in this transaction. Landlord shall also pay Landlord's Broker a further commission as provided in the Agreement if Tenant exercises any option to extend the Term of this Lease or to renew the Lease or to expand the Premises. If a Tenant's Broker is named at Section 3.b, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if Landlord's Broker and Tenant's Broker have so agreed between them. Landlord shall have no obligation to pay a commission or fee to anyone other than Landlord's Broker in connection with this Lease.

38.2 **Protection of Brokers.** If Landlord sells its interest in the Premises or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Premises or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article 38 or the Agreement. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this Article 38. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Section is included in this Lease for the benefit of Landlord's Broker.

38.3 **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 3.b of this Lease are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease.

39. COMPLIANCE.

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

LANDLORD AND TENANT have signed this Lease on the dates set forth below.

Date: 2-17-97

Date: 2/14/97

Landlord: Kathryn Crake Huntington

Tenant: Margaret R. Engler

a n individual

a n Individual

By: Kathryn Crake Huntington
Print Name: KCTH

By: Margaret R. Engler
Print Name: _____

Title: _____

Title: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

SEE YOUR ATTORNEY — THIS LEASE IS TO BE GIVEN TO YOUR ATTORNEY FOR REVIEW AND APPROVAL BEFORE YOU SIGN IT. BECAUSE EACH LEASE TRANSACTION IS UNIQUE, AND THE BUSINESS AND LEGAL CONCERNS OF EACH PART ARE UNIQUE, CB COMMERCIAL CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR RECOMMENDATION CONCERNING THE LEGAL EFFECT, LEGAL SUFFICIENCY, OR TAX CONSEQUENCES OF THIS LEASE. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND FINANCIAL ADVISORS. IN ANY REAL ESTATE TRANSACTION IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

**ADDENDUM TO LEASE DATED FEBRUARY 2, 1997 BETWEEN KATHRYN CRAKE
HUNTINGTON (LESSOR) AND MARGARET R. ENGLER (LESSEE)**

1. All rent and CAM charges will be abated for the months of April, May and June 1997.
2. Lessee shall have one three year option to renew their lease at then existing rental conditions. Lessee must give notice of intent to exercise this option by November 15, 1998.
3. If Lessee does not exercise their option to renew their lease by November 15, 1998, and Landlord elects not to renew their lease, Landlord must give Lessee written notice of such by December 1, 1998.
4. Lessor to give Lessee a flooring/carpet allowance of \$2,300.
5. Lessee will not be charged for additional parking expenses for parking leased from the Sports Arena.
6. Four parking spaces in front of the suite to be marked for 30 minute parking only. Additionally, parallel parking spaces directly behind the suite to be marked for Lessee's use only, subject to Lessee's signs and monitoring.
7. Lessor grants Lessee permission to replace one of the existing rear doors with a mini roll-up or double-size door, approximately 6 feet wide by 7 feet high at Lessee's sole cost. Subject to all applicable government rules, regulations and permits plus appropriate structural engineering plans.
8. Lessor grants Lessee permission to build small structure at the rear² of the building for compressor and dust control systems at Lessee's sole cost.
9. Lessor shall give keys and immediate access to suite to Lessee upon full execution of lease for the purpose of design and installation of improvements.
10. Lessee to be allowed to post professional sign indicating new location at old suite for a period of six months, subject to Landlord's approval of signage.
11. Lessee to be allowed to install a sign on the existing monument sign at no charge, subject to Landlord's approval of signage. If a new monument sign is erected in the future at the Center, monument signage may be available to tenant on a space availability basis only and at a cost to be determined.

Initials: ME

Initials: RCH

**ADDENDUM TO LEASE DATED FEBRUARY 2, 1997 BETWEEN KATHRYN CRAKE
HUNTINGTON (LESSOR) AND MARGARET R. ENGLER (LESSEE) (continued)**

12. Lessee to be allowed to remove a portion of the dropped ceiling and suspension system from the rear of the suite to increase ceiling height. Upon vacation of the premises, Landlord will require that the portion of the property affected to be restored to its original condition.

13. Lessee retains the right to cancel the lease with 30 days written notice, should space in Sports Arena Square be leased to tattoo parlors, companies that offer pornography for sale or rent, in print, video or live, or businesses that allow nudity.

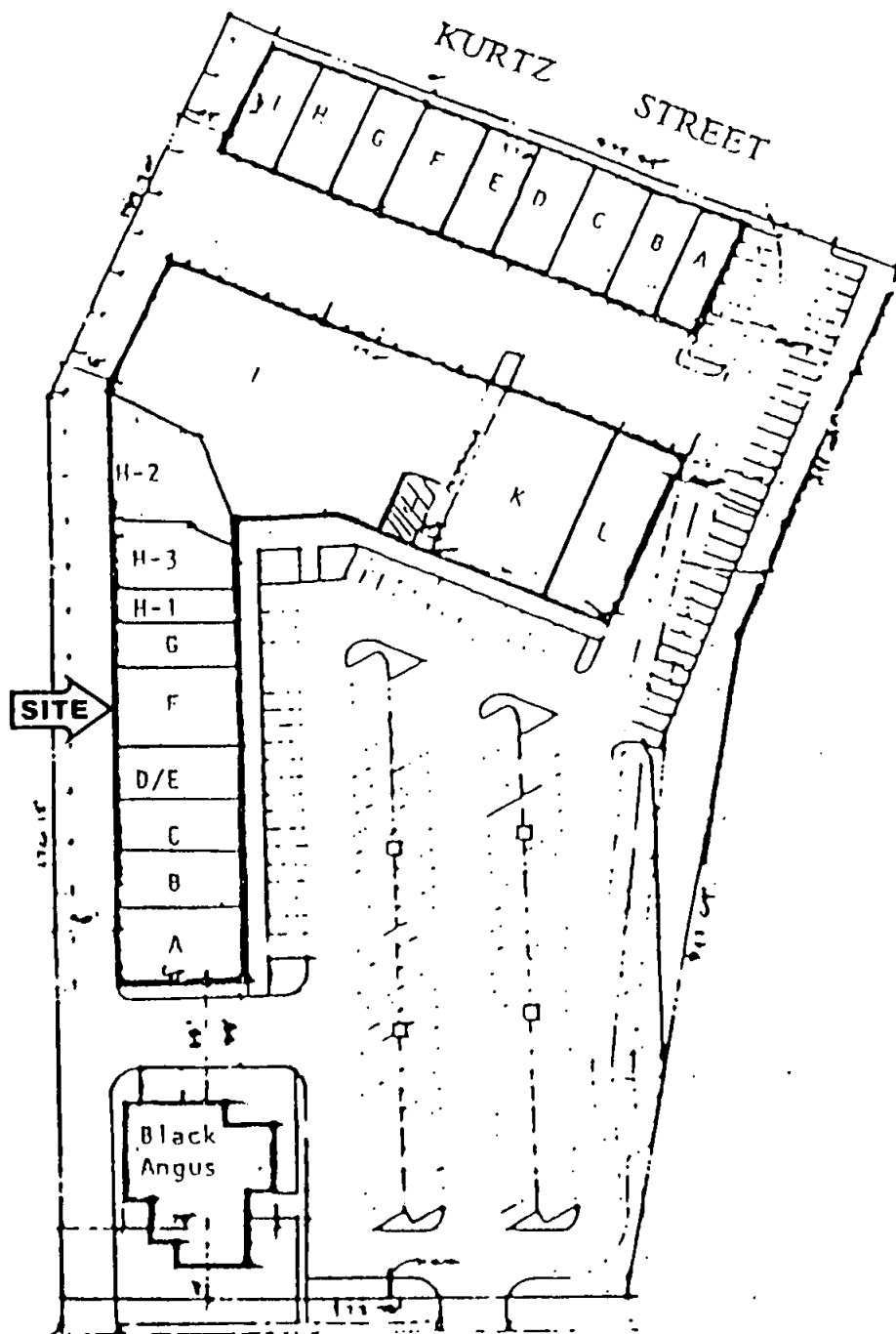
14. Lessee acknowledges that Sports Arena Square Shopping Center is subject to a Ground Lease with the City of San Diego and agrees to be bound by all applicable terms and conditions of the Lease. Lessee acknowledges receipt of a copy of the Ground Lease.

Initials: ME

Initials: KEH

EXHIBIT "A"

SPORTS ARENA SQUARE SITE PLAN



SPORTS ARENA BOULEVARD

Tenant: *Crack In The Wall*

Space: *3350 - F*

Lease Date: *2/2/97*

Applicable Lease Provision: EXHIBIT "B"

RULES AND REGULATIONS
FOR
SPORTS ARENA SQUARE

The following is a list of Rules and Regulations adopted by the Landlord. The purpose of these specific prohibitions is not exclusive, but solely as a means to ensure that all Tenants and its customers may enjoy a clean, well managed shopping center which is conducive to maximum convenience, comfort and safety at Sports Arena Square:

1. Tenant and its authorized representatives and invitees shall use any roadway, walkway, only for ingress to or egress from the stores in the shopping center. Use of the common areas shall be in an orderly manner in accordance with the directional or other signs or guides. Roadways

shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers or inventory in designated areas. Walkways shall be used for pedestrian travel only.

2. Tenant and its authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. For the purpose of this section, the size of the motor vehicles shall not exceed 6,000 lbs. and shall not contain more than 3 axles. During peak periods of business activity, Landlord can impose limitations in all or parts of the parking areas as to the length of time for parking use.

3. No person shall use any utility area, truck loading area, or other area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. No Tenant or employee of any Tenant shall use any area for motor vehicle parking except the area specifically designated for Tenant or employees Tenants

parking, if any. No Tenant shall designate an area for employee parking except the area designed in writing by Landlord, if any.

5. Without the consent of Landlord, no person shall use any of the common areas for:

(a) Vending, peddling, or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet, or other matter;

(b) Exhibiting any sign, placard, banner, notice, or other written material;

(c) Distributing any circular, booklet, handbill, placard, or other material;

(d) Soliciting membership in any organization, group, or association, or soliciting contributions for any purpose;

(e) Parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the common areas or be

detrimental to any of the business establishments in the shopping center;

(f) Using the common areas for any purpose when none of the business establishments in the shopping center is open for business;

(g) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles;

(h) Using a sound-making device of any kind or making or permitting any noise that is annoying, unpleasant, or distasteful;

6. Damage caused by any Tenant or its authorized representatives to any sign, light standard, or other improvement or property within the common area shall be repaired at Tenant's cost.

7. Tenant and its authorized representatives and invitees shall not make or permit any noise in the center that is annoying, unpleasant, or distasteful, that interfere in any way with other tenants or invitees.

8. Tenant shall not permit its representatives and invitees to do anything or permit any activity on the Premises that is illegal, immoral or unlawful such as:

(a) The possession and/or use of illicit drugs;

(b) The possession and/or use of firearms;

(c) The possession and/or consumption of alcohol by minors; and

(d) Lewd or illegal behavior by any patrons causing the presence of police or other law enforcement agencies.

9. Upon termination of its tenancy, Tenant shall deliver to Landlord or its agent the keys of the unit leased that were furnished to Tenant or that Tenant had made. In case Tenant loses any keys furnished to it by Landlord, Tenant shall pay Landlord for them.

10. Tenant shall notify Landlord's agent, ~~Coldwell Banker~~ of the time and manner of all moving of

furniture, freight or equipment of any kind done by or at the request of Tenant. Any and all damage done to the Premises and/or the common area caused by the moving of such furniture, freight or equipment shall be repaired at Tenant's costs.

11. Except as may be reasonably required for security purposes, Tenant shall observe strict care that all water faucets, water apparatus and electrical apparatus have been entirely shut off before Tenant or its authorized representatives and invitees leave the store premises so as to prevent waste or damage.

12. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of these rules and regulations by any other Tenant or other person. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition to its occupancy of the spaced leased.

Initials: ME
KCH

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Percentage Lease (MASTER LEASE), dated February 22, 1996, entered into with Kathryn Crake Huntington, and subsequently assigned to

Arena Group 2000, L.P., a California limited partnership (LESSEE), consents to that certain Shopping Center Lease (SUBLEASE) between LESSEE (SUBLESSOR) and

AAROORAN THIYAGARAJAH
d.b.a. CRACK IN THE WALL

(SUBLESSEE) dated May 26, 1999.

This consent permits sublease of a portion of the premises covered by that certain MASTER LEASE dated February 22, 1996, between the SUBLESSOR and the CITY. The CITY is approving the SUBLEASE and the proposed use on the following terms and conditions.

1. **SUBORDINATION**: The SUBLEASE is subject and subordinate to the covenants and conditions of MASTER LEASE in all respects notwithstanding any provision hereof contrary or in conflict with the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE.
2. **ASSIGNMENT AND SUBLETTING**: SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate this consent.
3. **HOLD HARMLESS**: SUBLESSEE shall defend, indemnify and hold harmless the CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents or invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.
4. **INSURANCE**: SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million Combined Single Limit Liability. SUBLESSEE shall file with CITY a copy of the policy of insurance which shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall submit to CITY a copy of the new policy of insurance.

5. LEGAL PROCEEDING: Should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of the SUBLEASE or this Consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

THE CITY OF SAN DIEGO

Dated 4-2-02

By [Signature]
for the City Manager

SUBLESSEE

Dated 2/26/02

By [Signature]
Name: THIYAGARAJAH
Title: CO-OWNER

SUBLESSOR

Dated 2/28/02

By [Signature]
Name: Arena Group 2000
Title: 1st ptg

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Dated 5/14/02

By [Signature]
Deputy City Attorney

VEB/jmj
01/18/02

\\AWPO\2001\BALOTSKY\CSA-THIYAGARAJAH2.wpd

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This Lease between Kathryn Crake Huntington

a n individual ("Landlord"), and Aarooran Thiyagamajah
a n individual ("Tenant"), is dated 5/26, 19 99.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 9.5) to be paid by Tenant and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the plan attached hereto as Exhibit "A", and further described at Section 3.j. The Premises are located within the Shopping Center described in Section 3.i. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.d.).

2. LEASE REVIEW OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease and to have this Lease reviewed, approved, and modified as needed by its attorneys before the Lease is signed.

3. DEFINITIONS.

As used in this Lease, the following terms have the following meanings:

a. **Annual Percentage Rental Rate (Section 9.4):** 0 % of Tenant's Net Sales.

b. **Broker(s)**

Landlord's Broker: WRC Management

Tenant's Broker: N/A

Commission Payable to Landlord's Broker (Section 38.1): \$ As per schedule.

Landlord's Broker hereby discloses to Landlord and Tenant that Landlord's Broker is acting in this transaction as the agent of (check applicable box below):

- ☒ Landlord exclusively; or
☐ both Landlord and Tenant.

Landlord and Tenant each consent to such representation by Landlord's Broker.

c. **Commencement Date:** The earliest of the following dates:

(i) The date Tenant initially opens for business in the Premises;

(ii) ~~30 days after substantial completion of Landlord's Work in the Premises (as defined in Exhibit "C" to the Lease). The date of such substantial completion is the date the Premises are substantially complete to the extent of Landlord's Work, except for such work that Landlord cannot complete until Tenant performs necessary portions of Tenant's Work (as defined in Exhibit "C"). Substantial completion of Landlord's Work shall be evidenced by notice to Tenant from Landlord's architect or designated representative that substantial completion has occurred, or~~

(iii) July 1, 1999

Tenant's Tentative Commencement Date (Article 7) is _____.

Tenant shall commence Tenant's Work promptly upon substantial completion of Landlord's Work and shall diligently complete Tenant's Work so that Tenant can promptly open for business in the Premises.

d. **Common Areas:** All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, roofs, walls, plazas, malls (including any enclosed malls where climate control is provided), throughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit "A". Landlord shall have the right to regulate or restrict the use of the Common Areas.

e. **Floor Area:** As to both the Premises and the Shopping Center, the respective measurements of floor area as are from time to time subject to lease by Tenant and all tenants of the Shopping Center, respectively, as determined and applied by Landlord on a consistent basis throughout the Shopping Center.

f. **Index (Section 9.2):** The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside
Average, Subgroup "All Items" (1982 - 84 = 100).

- g. Landlord's Mailing Address: 2 WLC Management
3525 Del Mar Heights Road, #234 San Diego CA 92130
- Tenant's Mailing Address: 3350 Sports Arena Blvd, Suite F
San Diego, CA 92110
- h. Minimum Annual Rent (Initial) (Section 9.1): \$ 15,600.- per year, payable in twelve (12) equal monthly installments each year.
- i. Outside Date for Delivery of Possession (Article 7): None
- j. Premises: That portion of the Shopping Center containing approximately 2,600 square feet of Floor Area, shown by diagonal lines on Exhibit "A", located on the grade level of the Shopping Center and designated space F. The Premises has dimensions of approximately 40 feet in frontage and approximately 65 feet in depth.
- k. Security Deposit (Article 36): \$ 1,300.-
- l. Shopping Center: The building of which the Premises is a part (the "Building") and any other buildings and improvements on the real property (the "Property") located at 3350 Sports Arena Blvd, Suite F and further described on Exhibit "A". The Shopping Center is known as Sports Arena Square
- m. Tenant's First Adjustment Date (Section 9.2): The first day of the calendar month following the Commencement Day plus months. Twelve (12) months from the Commencement Date.
- n. Tenant's Proportionate Share (Initial): 3.4 %.
- Such share is a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of the buildings in the Shopping Center available for exclusive use and occupancy by tenants (excluding the Floor Area of those areas, if any, designated by Landlord on Exhibit "A" as "Major Stores"), as determined by Landlord from time to time on a consistent basis. As of the date of this Lease the Shopping Center (excluding any Major Stores) contains a total Floor Area of 77,163 square feet.
- o. Tenant's Radius (Section 21.3): miles from the Premises.
- p. Tenant's Sales Breakpoint: That dollar sum equal to the then Minimum Annual Rent payable by Tenant divided by the Annual Percentage Rental Rate. As of the Commencement Date Tenant's Initial Sales Breakpoint is \$.
- q. Tenant's Trade Name (Article 11): Crack In The Wall
- r. Tenant's Use Clause (Article 11): The Premises shall be used and occupied only for the purpose of Design, fabrication and retailing of custom picture frames and for no other use or purpose.
- s. Term: The Term of this Lease shall begin as of the date hereof and shall continue thereafter for a period of One years and 0 months (plus any partial month) following the Commencement Date. The Commencement Date and expiration date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit "F". The Notice shall be served on Tenant promptly following determination of the Commencement Date under Section 3.c.

4. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" - Plan Showing the Premises and Shopping Center (See Sections 3.j, 3.l and Article 5)
- b. Exhibit "B" - Shopping Center Rules and Regulations (See Section 25.5)
- ~~c. Exhibit "C" - Landlord's Work and Tenant's Work~~
- ~~d. Exhibit "D" - Sample Form of Tenant Estoppel Certificate (See Section 20.3)~~
- e. Exhibit "E" - Shopping Center Sign Criteria
- ~~f. Exhibit "F" - Landlord's Notice of Lease Term Dates (See Section 3.c)~~
- ~~g. Exhibit "G" - Guaranty of Lease~~
- i. Addenda:
See attached Addendum

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit "A" shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit "A" and may eliminate or add any improvements to any portion of the Shopping Center, but Landlord agrees (i) not to materially change the size or location of the Premises without Tenant's consent, and (ii) that any such changes will not materially adversely affect ingress to and egress from the Premises, visibility of the Premises or parking availability in the Shopping Center.

6. OTHER TENANCIES.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord and Landlord's Broker do not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term.

7. DELIVERY OF POSSESSION.

Landlord agrees to deliver to Tenant and Tenant agrees to accept from Landlord possession of the Premises promptly upon substantial completion of Landlord's Work. If for any reason Landlord does not deliver possession of the Premises to Tenant with Landlord's Work substantially complete at least 30 days before Tenant's Tentative Commencement Date, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but the Commencement Date shall be delayed by the number of days delivery is delayed and Rent shall be abated until 30 days following the date of substantial completion of Landlord's Work in the Premises. Notwithstanding anything to the contrary contained herein, if Landlord does not deliver possession of the Premises to Tenant on or before the Outside Date for Delivery of Possession, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall have no further obligations hereunder.

8. TENANT'S WORK.

Tenant shall commence construction of Tenant's Work as defined in Exhibit "C" no later than the date of substantial completion of Landlord's Work in the Premises and shall diligently complete Tenant's Work. Landlord shall give Tenant not less than 10 days' advance written notice of such anticipated date of substantial completion of Landlord's Work. Tenant shall, at any time requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder. Tenant shall open the Premises for business within 30 days following the date of substantial completion of Landlord's Work in the Premises.

9. RENT.

9.1 Payment of Minimum Annual Rent. Tenant agrees to pay the Minimum Annual Rent during the Term for its use and occupancy of the Premises. Minimum Annual Rent shall be payable in advance on the first day of each calendar month of the Term without notice, setoff or deduction, in twelve (12) equal monthly installments during each year of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Minimum Annual Rent for the partial month shall be prorated on a daily basis, based on a 30 day month. Tenant shall pay Landlord the first installment of Minimum Annual Rent when Tenant executes this Lease.

9.2 Adjusted Minimum Annual Rent.

a. The Minimum Annual Rent set forth at Section 3.h. shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based only upon increases (if any) in the Index. The Index in publication 3 months before the Commencement Date shall be the "Base Index." The Index in publication 3 months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Minimum Annual Rent payable during the ensuing twelve-month period shall be determined by increasing the initial Minimum Annual Rent by a percentage equal to the percentage increase, if any, in the applicable Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for any preceding Adjustment Date (or the Base Index, in the case of the First Adjustment Date), the Minimum Annual Rent for the ensuing twelve-month period shall remain the amount of Minimum Annual Rent payable during the preceding twelve-month period. When the Minimum Annual Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Minimum Annual Rent and the corresponding adjusted Tenant's Sales Breakpoint and the manner in which each was computed. The Minimum Annual Rent as so adjusted from time to time shall be the "Minimum Annual Rent" for all purposes under this Lease.

b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" hereunder.

9.3 Property Taxes.

a. Beginning with the Commencement Date and for the balance of the Term, Tenant shall pay to Landlord as "additional rent" the amount of taxes and assessments levied and assessed for any year upon the Premises and the underlying Property (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360 day year.

If the Premises and the underlying Property are not separately assessed, but are assessed as part of the land and improvements on a larger parcel (hereinafter the "Larger Parcel"), Tenant's share of Premises Property Taxes shall be a fractional portion of the property taxes on the Larger Parcel, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of all the areas available for exclusive use and occupancy by tenants of the Larger Parcel. Tenant shall pay Premises Property Taxes to Landlord as part of Common Area Costs at the times and in the manner provided for the payment of Common Area Costs at Section 25.3 of this Lease. For purposes hereof, an equitable adjustment shall be made for buildings which are only partially completed on the date such property taxes become a lien.

If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate

proration for any partial year) and statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

b. The term "Premises Property Taxes" shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, Property or the Shopping Center; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Premises, Property or the Shopping Center or against Landlord's business of leasing space in the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises, Property or Shopping Center by or through any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises, Property or Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, Property or Shopping Center; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Premises Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

~~9.4 Percentage Rental. In addition to the Minimum Annual Rent and other sums required to be paid by Tenant under this Lease, Tenant shall pay as "percentage rental" a sum equal to the Annual Percentage Rental Rate times the amount of Net Sales of Tenant (as "Net Sales" is defined in Section 10.1 hereof) made from or upon the Premises during each calendar year, less the amount of Minimum Annual Rent paid by Tenant during such calendar year. Percentage rental shall be computed each calendar month and on or before the date the following month's installment of Minimum Annual Rent becomes due Tenant shall pay to Landlord the amount by which the sum computed as the Annual Percentage Rental Rate of Tenant's Net Sales during that period exceeds the Minimum Annual Rent payable by Tenant during that period. Within 90 days after the end of each calendar year the Net Sales of Tenant during that calendar year and the amounts payable to Landlord as Minimum Annual Rent and as percentage rental for that calendar year shall be determined. If Tenant has overpaid percentage rental, Tenant shall receive a prompt refund of the overpayment; if Tenant has underpaid percentage rental, Tenant shall immediately pay the deficiency to Landlord.~~

Percentage rental due for any partial month of the Term shall be prorated on a daily basis based on a 30-day month. The obligations hereunder shall survive the expiration of the Lease Term.

9.5 **Additional Rent.** Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12, 22, 25 and Exhibit "C", and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent." All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "Rent."

9.6 **Interest and Late Charges.** If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment.

Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, and processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to 10% of such installment. Such late charge is in addition to any interest due pursuant to the preceding paragraph of this Section 9.6. Landlord and Tenant agree that this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 **Payment of Rent.** All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at Landlord's management office in the Shopping Center, or at such other place as may from time to time be designated by Landlord in writing at least 10 days prior to the next ensuing payment date.

10. NET SALES.

~~10.1 Definition of "Net Sales." "Net Sales" of Tenant, as used in this Lease, means the gross selling price of all merchandise or services sold in or from the Premises by Tenant, its subtenants, licensees and/or concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, but excluding the following:~~

- ~~(i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made on such merchandise;~~
- ~~(ii) The selling price of goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;~~
- ~~(iii) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of accepting a trade-in;~~
- ~~(iv) Delivery charges;~~
- ~~(v) Cash refunds made to customers in the ordinary course of business. This exclusion shall not include any amount paid or payable for what are commonly known as trading stamps;~~
- ~~(vi) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales, where such charges are not included in the merchandise sales price;~~
- ~~(vii) Receipts from public telephones, stamp machines or vending machines installed solely for the use of Tenant's employees;~~
- ~~(viii) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected from customers separately from the selling price of merchandise or services; and~~
- ~~(ix) Sales of fixtures, equipment or property which are not stock in trade.~~

All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may occur at another location and even though actual filling of the sale or service order and actual

delivery of the merchandise may be made from a place other than the Premises. Each sale on installment or credit shall be treated as a sale for the full cash price at the time of sale.

10.2 Statement of Net Sales. Tenant shall furnish Landlord with an accurate statement of Tenant's Net Sales within 30 days after the close of each calendar month, and an annual statement of Net Sales (which shall include a monthly breakdown of Net Sales) within 60 days after the close of each calendar year. Such statements shall be signed and certified as accurate by Tenant. The annual statement of Net Sales shall be audited and certified as correct by Tenant's Certified Public Accountant. In addition, Tenant shall furnish Landlord with a copy of its state and local sales and use tax returns within 30 days after any such return is filed or required to be filed with the appropriate governmental agency.

Tenant shall keep and shall require any subtenants, licensees and/or concessionaires to keep, at the Premises or at such other place approved by Landlord in writing, full and accurate books of account, records and other pertinent data (including cash register receipts) of the gross sales, Net Sales, credits, refunds and other pertinent business transactions made from or upon or otherwise relating to the Premises. Such books, receipts and records shall be kept for not less than 2 years after the close of each calendar year to which they relate and shall be available for inspection and audit by Landlord and its representatives at all times during regular business hours. Landlord's receipt of any statement of Net Sales or Tenant's payment of percentage rental for any period shall not bind Landlord as to the correctness of the statement or amount of the payment. Within 2 years after the receipt of any such statement, Landlord or its designated Certified Public Accountant shall be entitled to audit Tenant's gross sales and Net Sales following 48 hours' advance written notice to Tenant. Such audit shall be conducted during normal business hours at either the Premises or Tenant's principal place of business. If such audit determines that there has been a deficiency in the payment of percentage rental, then such deficiency shall become immediately due and payable with interest at the maximum lawful interest rate from the date said payment should have been made. In addition, if an annual statement of Tenant is found to have understated Net Sales by more than 2% and if Landlord is entitled to any additional percentage rental as a result of such understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due Landlord. If such audit discloses an additional liability for percentage rental of \$1,000 or more for the period covered by the audit, Landlord may, in addition to any other remedies it may have for Tenant's breach of this Lease, terminate this Lease by written notice to Tenant given within 60 days after Landlord's receipt of the audit report. Any information obtained from such statements, audits or inspections shall be treated by Landlord as confidential and shall not be disclosed except to carry out the purposes of this Lease, but Landlord may divulge the contents of any such statements in connection with any financing arrangements involving, or assignment of Landlord's interest in, the Premises, Shopping Center, or this Lease, or in connection with any administrative or judicial proceedings in which Landlord is involved and in which such information is in issue.

Any failure by Tenant to maintain and keep full and accurate books of account, records and other pertinent data as required hereunder shall be deemed a default and breach of this Lease under Article 26 hereof.

11. POSSESSION AND USE.

11.1 Permitted Uses and Prohibited Conduct. Possession of the Premises shall be delivered to Tenant free and clear of all tenants and occupants and the rights of either, and free of liens and encumbrances other than those specified in Article 15 hereof. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit any person to use the Premises for conducting a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws, ordinances, regulations and requirements of the United States or the State, County and City where the Shopping Center is located, or any other lawful authority. Tenant shall, during the Term, keep the Premises in a clean and wholesome condition, free of any objectionable noises, odors or nuisances, and shall comply with all health and police regulations. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities and any enclosed mall of the Shopping Center).

11.2 Insurance Coverage Use Restrictions. Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increases in Landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical equipment in the Premises which overloads the electrical lines of the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.3 Deliveries. Tenant shall use its best efforts to complete all deliveries, loading, unloading and services to the Premises before 10:00 a.m. each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

12. UTILITIES SERVICES.

12.1 Utilities Installation. Landlord agrees that to the extent provided for in Exhibit "C" hereof, it will initially make available to Tenant (i) facilities for the removal of sewage and the delivery to and distribution within the Premises of water, electricity, telephone service and natural gas (which shall be used by Tenant for cooking and demonstration of gas operated sales items only) (these facilities are collectively referred to in this Article 12 as "utilities"), and (ii) a heating, ventilation and air conditioning

system (the "HVAC system"). Unless Landlord agrees otherwise, Tenant shall use those utilities and any HVAC system provided for under Exhibit "C" to serve the Premises. If required under Exhibit "C", a separate meter shall measure the consumption of utilities and/or the HVAC system.

If not required to be furnished by Landlord under Exhibit "C", Tenant shall be responsible for obtaining any utilities and/or HVAC system required for Tenant's business operations in the Premises.

12.2 Utilities and HVAC System Charges. Tenant shall pay for all utilities used by Tenant on the Premises from and after substantial completion of Landlord's Work in the Premises. If Tenant's utilities and/or HVAC system are separately metered, Tenant shall pay directly to the appropriate utility company the cost of all such utilities used on the Premises. If any of Tenant's utilities and/or HVAC system are furnished by Landlord without separate metering, then during the Term Tenant shall pay as additional rent, monthly in advance, a utilities charge to reimburse Landlord for any such utilities furnished by Landlord to the Premises. This utilities charge shall, at Landlord's election, be established (a) by an estimate of usage made from time to time by Landlord's engineer or the appropriate utility company, and initially based on a typical store layout comparable to Tenant's proposed use of the Premises, or (b) a percentage of such total utility costs equal to a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of Shopping Center actually being furnished with utility service by Landlord at the time of billing. If Tenant's Premises is not separately metered, such utilities and/or HVAC charges may be billed with Tenant's share of Common Area Costs under Section 25.3. The utilities charge to Tenant hereunder for utilities furnished by Landlord shall be based on utility rates which do not exceed those charged by the local public utility company for services it would otherwise furnish directly to Tenant. If the Premises are not initially separately metered, Landlord shall have the right, at its expense, to install separate meters for the Premises at any time during the Term.

12.3 Failure to Pay. If Tenant fails to pay any amount due to Landlord hereunder within 10 days after receipt by Tenant of a bill therefor, Landlord may (in addition to all other rights and remedies provided herein for breach of this Lease and if permitted by law) cut off and discontinue, upon 5 days' advance notice to Tenant and opportunity to cure, any such utilities furnished to the Premises by Landlord until all such amounts are paid in full.

12.4 No Landlord Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) operation of the HVAC system, if any. No such failure or interruption shall entitle Tenant to terminate this Lease or stop making any Rent or other payments due hereunder.

13. INDEMNITY BY TENANT.

Tenant shall indemnify and hold Landlord harmless from any and all costs, claims or liability of any kind arising out of: (a) Tenant's use and occupancy of the Premises, (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorney's fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct.

14. INSURANCE – WAIVER OF SUBROGATION.

14.1 Tenant's Insurance Obligations. Tenant shall, from and after the earlier of (a) substantial completion of Landlord's Work in the Premises, or (b) commencement of any of Tenant's Work in the Premises, and for the remainder of the Lease Term maintain, at its expense, the following types of insurance coverage, in the amounts specified and in the forms hereinafter provided for:

(i) **LIABILITY INSURANCE.** Commercial general liability insurance (sometimes known as comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Such policy shall be an occurrence form and shall include Owner's and Contractor's Protective Liability with respect to construction of improvements by Tenant on the Premises. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be not less than \$1,000,000 per occurrence. The liability insurance obtained by Tenant under this Section 14.1(i) shall (1) be primary and non-contributing; (2) contain cross-liability endorsements; and (3) insure Landlord against Tenant's performance under Article 13(a), (b) and (e) if the matters giving rise to the indemnity under Article 13 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(ii) **PLATE GLASS.** Insurance covering the full replacement cost of all plate glass on the Premises. Tenant shall have the option to self-insure this risk.

(iii) **TENANT IMPROVEMENTS.** Insurance covering all of the items specified as "Tenant's Work" in Exhibit "C", Tenant's leasehold improvements, alterations, additions or improvements permitted under Article 16, and trade fixtures, merchandise and personal property from time to time in, on or upon the Premises. Such insurance shall cover not less than 100% of the full replacement cost of the foregoing from time to time during the Term, and shall provide protection against any peril included within the classification of fire, extended coverage, sprinkler leakage, vandalism, theft, malicious mischief and special extended perils (all risk). Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the provisions of Article 23 hereof.

(iv) GENERAL INSURANCE PROVISIONS.

(a) Any insurance required to be maintained by Tenant hereunder shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(b) A certificate of the insurer or the insurer's legal representative evidencing the existence and amount of each insurance policy required of Tenant hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter at least 30 days prior to the expiration of any such policy. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancellable except after 30 days' written notice to Landlord. If Tenant fails to deliver any such

evidence of insurance to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Term without Landlord's consent, Landlord may obtain such insurance coverage, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement therefor.

(c) All insurance shall be maintained with companies holding a "General Policy Rating" of A-XII or better, as set forth in the most current issue of "Best's Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 14.1 may not be available in the future. Tenant acknowledges that the insurance described in this Section 14.1 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall be responsible for obtaining any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

14.2 Landlord's Insurance Obligations. Landlord shall, in connection with its ownership and operation of the Shopping Center, at all times from and after commencement of Landlord's Work in the Premises, maintain in effect policies of insurance providing protection against the following liabilities and/or risks: (a) commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage, and (b) fire and extended coverage insurance (including coverage for Common Area sprinkler damage, vandalism and malicious mischief, and, if required by any lender holding a security interest in the Shopping Center or if deemed necessary by Landlord, flood and earthquake insurance) on the Building and Shopping Center in an amount not less than their full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the Term. The types and coverages of insurance maintained by Landlord hereunder shall be subject to such further requirements as may be imposed by Landlord's lender. Landlord shall also have the right to maintain such additional types and coverages of insurance (including business interruption insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

14.3 Waiver of Subrogation. Landlord and Tenant (for themselves and their insurers) each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, against any of the parties to the REA referred to in Article 15 hereof (the "Parties") and against other tenants of the Shopping Center (provided such Parties and other tenants have waived such rights against Landlord and Tenant), on account of any loss by or damage to the waiving party or its property or the property of others under its control (including as to Tenant the Premises and its contents, and as to Landlord the other portions of the Shopping Center), arising from any risk generally covered by fire and extended coverage insurance. The foregoing waivers of subrogation shall be required hereunder only if (a) then available in the State where the Shopping Center is located, and (b) such waiver does not invalidate the applicable policy.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to the liens or restrictions of (a) any matters or documents of record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, operation and reciprocal easement agreement (the "REA"); and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate the terms of any REA or any other Matters of Record, and (ii) this Lease is subordinate to the REA, if any, and any amendments or modifications thereto. If the REA, if any, is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to the REA upon recordation of the REA. Tenant agrees to execute and return to Landlord within 10 days after written demand therefor by Landlord, an agreement in recordable form satisfactory to Landlord subordinating this Lease to the REA. Any REA shall not prevent Tenant from using the Premises for the purposes set forth in Tenant's Use Clause.

16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 Permitted Improvements. Subject to the terms of this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "Improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done and providing Landlord with all plans for such proposed improvement work. Tenant may not make any improvement which reduces the value of the Premises or is of a structural nature. No single improvement costing more than \$500.00 may be made without first obtaining the written approval of Landlord. In addition, no improvement shall be made to any storefront, mechanical system, or exterior wall or to the roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of an existing mezzanine, unless and until the written consent and approval of Landlord is first obtained.

No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord.

Tenant shall reimburse Landlord for all costs incurred by Landlord (including architect's and/or engineer's fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 Construction Requirements. All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors or subcontractors being used. Upon completion of such improvements, Tenant shall file a Notice of Completion for record in the office of the County Recorder where the Shopping Center is located, as required or permitted

by law. Tenant shall provide Landlord, "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center.

16.3 Insurance Requirements. If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14.1(III). It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

17. MECHANICS' LIENS.

17.1 Tenant's Covenants. Tenant shall pay all costs for work done by or for Tenant in the Premises (other than Landlord's Work), and Tenant shall keep the Premises, Building and Shopping Center free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises under Article 16 or Exhibit "C"), Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord.

17.2 Tenant's Contest of Lien. If Tenant desires to contest any claim of lien arising from work done by or for Tenant in the Premises, Tenant shall first furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of any such lien for any amount is entered, Tenant shall immediately pay and satisfy such judgment.

17.3 Landlord's Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and Tenant has not given Landlord adequate security to protect the Premises, the property therein, and the Building, Shopping Center and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the maximum lawful rate from the date of Landlord's payment.

17.4 Notice of Lien. If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

18. ADVERTISING MEDIA.

Tenant shall not affix or maintain upon the glass panes or supports of the show windows (or within 24" of any window), doors or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item. Tenant shall not affix any sign to the roof of the Premises.

Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign(s) in accordance with the provisions of the sign criteria attached hereto as Exhibit "E".

19. FIXTURES AND PERSONAL PROPERTY.

19.1 Removal and Replacement. All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 Fixtures. All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical systems, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit "C" (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any Larger Parcel as defined in Section 9.3. Tenant shall pay Landlord the taxes attributable to Tenant's personal property within 15 days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. No taxes, assessments, fees or charges referred to and billed to Tenant under paragraph shall be considered to be taxes under the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP.

20.1 One Year Prohibition Against Transfer. Landlord and Tenant acknowledge that the Shopping Center is an interdependent enterprise and that each party's realization of the benefits of this Lease depends upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further acknowledge that the character and quality of Tenant's operation, and of the Shopping Center, will be enhanced by Tenant's use of its best efforts, for a reasonable period of time, to establish a successful business and business image. Landlord and Tenant further agree that one year is a reasonable period of time to attempt to achieve this goal. Accordingly, Tenant agrees that for a period of one year from the date Tenant initially opens to the public for business in the Premises (the "Occupancy Period"), Tenant shall not, and shall not have the power to, transfer or assign this Lease, sublet the Premises, enter into license or concession agreements, or change ownership (such transactions are hereinafter individually and collectively referred to as a "Transfer"), without first procuring the written consent of Landlord, which may be given or withheld in Landlord's sole discretion. After the expiration of the Occupancy Period, Landlord's consent to any Transfer shall not be unreasonably withheld, subject to the terms, covenants and conditions contained below.

20.2 Restrictions on Transfer. If after expiration of the Occupancy Period Tenant desires to effect a Transfer to anyone (a "Transferee") other than a successor, subsidiary, affiliated or controlling corporation of Tenant (an "Affiliate"), Tenant shall give written notice ("Transfer Notice") to Landlord at least 60 days before the effective date of any such proposed Transfer. The Transfer Notice shall state (a) whether Tenant proposes to assign the Lease, sublet the Premises, enter into a license or concession agreement or change ownership, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) all other material terms of the proposed Transfer, and (e) in detail the type of business operation the proposed Transferee intends to conduct on the Premises. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. In addition, the Transfer Notice shall be accompanied by the proposed Transferee's income statements and balance sheets covering the preceding 36-month period, and each shall be certified as accurate by the Transferee. Landlord may, at any time within 30 days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer (which consent shall not be unreasonably withheld under the business judgment standards set forth in Section 20.3 below) by mailing written notice to Tenant of its decision ("Decision Notice"). If Landlord consents to the proposed Transfer Tenant may thereafter promptly effect a Transfer in accordance with the terms of Tenant's Transfer Notice.

If Landlord consents to the proposed Transfer and Tenant does not consummate the proposed Transfer within 30 days after receipt of Decision Notice, the provisions of the first paragraph of this Section 20.2 shall again apply.

20.3 Grounds for Withholding Consent. Landlord may withhold consent to a proposed Transfer if, in Landlord's reasonable business judgment, any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Premises, as compared to the merchandising operation conducted by Tenant prior to the date of Transfer Notice; (ii) the proposed Transferee lacks a good business reputation or sufficient relevant business experience; (iii) the financial worth of the proposed Transferee as of the date of Transfer Notice is less than the combined financial worth of Tenant and Tenant's guarantor (if any) as of either the date of this Lease or the date of Transfer Notice; (iv) the proposed Transferee's proposed use of the Premises conflicts with Tenant's Use Clause or is otherwise incompatible with the tenant mix of the Shopping Center; (v) the annual percentage rent Landlord reasonably anticipates receiving from the proposed Transferee is significantly less than the annual percentage rent Landlord could reasonably anticipate receiving from Tenant; or (vi) the proposed Transfer would breach any covenant of Landlord respecting radius restrictions, use or exclusivity rights in any other lease, or any financing or other agreement relating to the Shopping Center. Any attempted or purported Transfer without Landlord's written consent shall be void and of no force or effect.

20.4 No Release from Liability. No Transfer, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease, from its covenants and obligations hereunder during the Term. Tenant shall, promptly upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with the processing and documentation of any requested Transfer.

20.5 Transferee's Obligations. Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the Transferee. Each such Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One fully executed copy of such written instrument shall be delivered to Landlord. Failure to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 20 shall prevent any Transfer from becoming effective.

20.6 Division of Profit Between Landlord and Tenant. Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of Transfer Notice, depreciated on a straight-line basis over the Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided equally between Landlord and Tenant. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as additional rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon 48 hours' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

20.7 Further Restrictions. Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. For purposes of this Article 20, if Tenant is a partnership, any withdrawal(s) or change(s) of partners cumulatively owning a 50% or more interest in the partnership, or if Tenant is a corporation, any transfer(s) cumulating 50% or more of its stock, shall constitute a voluntary Transfer and shall be subject to the provisions hereof. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

21.1 Tenant's Operating Covenants. Tenant agrees that from and after its initial opening for business it shall, subject to the provisions of Section 23.5 hereof, operate and conduct its business in the Premises during all Shopping Center Business Hours (as hereinafter defined) and in accordance with the provisions of this Lease. Tenant shall at all times keep and maintain in the Premises an adequate stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

21.2 Hours and Days of Operation. Tenant recognizes that it is in the interests of both Tenant and Landlord to regulate the minimum hours of business for all tenants of the Shopping Center and Tenant agrees that commencing with its initial opening for business in the Premises and for the remainder of the Term it shall be continuously open for business during all hours on all days that the Shopping Center is open for business to the public, as determined by Landlord in its sole discretion (the "Shopping Center Business Hours"). Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during Shopping Center Business Hours. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays or national holidays.

21.3 Radius Provision. If, during the first 5 years after Tenant initially opens for business in the Premises, Tenant directly or indirectly operates or owns within Tenant's Radius any type of business (other than a business already operated or owned by Tenant on the date of this Lease) similar to its business in the Premises (a "Similar Business"), Landlord may, at its option and for so long as Tenant is operating such Similar Business(es), include the net sales (as "Net Sales" is defined in Section 10.1) of each such Similar Business with the Net Sales made from the Premises for the purpose of computing the percentage rent due from Tenant under this Lease. Tenant shall provide Landlord with a statement of Tenant's Net Sales in accordance with the provisions of Sections 10.1 and 10.2 hereof for each Similar Business operated by Tenant within Tenant's Radius. If after expiration of this 5 year period Tenant continues to operate an existing Similar Business or opens another Similar Business within Tenant's Radius, then the Minimum Annual Rent payable under Article 9 hereof shall be adjusted promptly following expiration of such 5 year period in the case of an existing Similar Business(es), and from time to time upon the opening of another Similar Business, in the following manner: From the statements of Net Sales submitted by Tenant under Article 10 and this Section 21.3, Landlord shall compute a sum which represents the highest annual percentage rental paid or payable by Tenant under Sections 9.4 and 21.3 hereof during any consecutive 12 month period of the immediately preceding 60 month period, and this sum, if any, shall be added to the amount from time to time specified in Sections 3.h., 9.1, 9.2 and this Section 21.3 as the then Minimum Annual Rent. This resulting sum shall be the new Minimum Annual Rent payable beginning with the expiration of the first 5 years of the Term or the date of opening for business of such other Similar Business(es) within Tenant's Radius, whichever is applicable, and shall be subject to further adjustment thereafter in accordance with Section 9.2 hereof. Whenever a Similar Business opens for business within Tenant's Radius, Tenant shall give Landlord written notice of the location and opening date of such Similar Business. Landlord shall give Tenant written notice of the new Minimum Annual Rent payable by Tenant hereunder whenever adjusted as herein provided.

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 Tenant's Obligations. Tenant shall, at its expense and at all times from and after substantial completion of the Premises, repair, replace and maintain in good and tenantable condition, the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation, the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor coverings, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises, and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Landlord shall, at Tenant's expense, contract with a qualified service company for the monthly maintenance of the HVAC system serving the Premises. Landlord may bill Tenant for the cost of such HVAC maintenance contract as part of Common Area Costs under Article 25 hereof.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises, damage due to insured casualty losses covered by Article 23 or for any items of repair which are Landlord's obligation under Section 22.2.

22.2 Landlord's Obligations. Subject to Tenant's obligations under Section 22.1 and Landlord's further obligations, if any, under Section 25.2, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good and tenantable condition the roof, exterior walls, structural parts of the Premises and Building (including the structural floor) and HVAC system serving the Premises. Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, (1) Tenant shall be responsible for the cost of repairs to the HVAC system serving the Premises (which Landlord may bill to Tenant as a part of Common Area Costs under Article 25 hereof), and (2) Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant, or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required to) make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf, Tenant shall pay to Landlord any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs, alterations, replacements or improvements to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete those repairs within a reasonable period of time following receipt of Tenant's notice.

22.3 Tenant's Failure to Maintain Premises. If Tenant fails to repair or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right (in addition to all other rights and remedies provided herein for breach of this Lease), upon giving Tenant reasonable written notice of its election to do so (and opportunity to cure), to make

such repairs or performance, maintenance on behalf of and for the account of Tenant. In such event the cost of such work shall be paid to Landlord by Tenant promptly following receipt of a bill therefor.

22.4 Landlord's Right of Entry. Landlord or its authorized representatives may enter the Premises at all times during Shopping Center Business Hours to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or the Insurance Services Office or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 Insured Casualty. If the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then within 90 days after the date of such damage Landlord shall commence repair, reconstruction and restoration of the Premises and diligently complete such repairs, in which event this Lease shall continue in full force and effect. Notwithstanding the foregoing, if there is partial or total destruction of the Premises during the last 3 years of the Term, Landlord and Tenant shall each have the option to terminate this Lease by written notice to the other given within 30 days after such destruction. For purposes of this option "partial destruction" shall mean destruction to the extent of 33 1/3% or more of the full replacement cost of the Premises as of the date of destruction.

23.2 Uninsured Casualty. If the Premises are damaged to any extent by act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance (including flood or earthquake damage if not covered under insurance maintained by Landlord), Landlord may within 90 days following the date of such damage, either (a) commence repair, reconstruction or restoration of the Premises and diligently complete it, in which event this Lease shall continue in full force and effect, or (b) elect not to repair, reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of destruction. In either such event Landlord shall give Tenant written notice of its election hereunder within said 90 day period.

23.3 Reconstruction Responsibilities. Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit "C" and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant, at its expense, shall reconstruct all items set forth as Tenant's Work, and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment, and resume normal business operations in the Premises.

23.4 Release from Liability. Upon any termination of this Lease under any of the provisions of this Article 23 each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14.1 covering the items set forth as "Tenant's Work" in Exhibit "C" and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.5 Abatement of Rent. In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for in Section 23.3. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management, and the obligation of Tenant to pay percentage rental and additional rent hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereto, or the reconstruction or replacement thereof.

23.6 Waiver of Statutory Rights of Termination. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises, Building or Shopping Center which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

24. EMINENT DOMAIN.

24.1 Takings Resulting in Termination. If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If 25% or more of the Floor Area of the Premises is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election within 30 days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than 25% of the Floor Area of the Shopping Center or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within 30 days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 Takings Not Resulting in Termination. If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken, and (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as existed

prior to such taking; and (c) the fair market value of the portion of the Premises taken as compared to the portion remaining. Tenant hereby waives any statutory right of termination which may arise by reason of a partial taking of the Premises under the power of eminent domain.

24.3 Award. If this Lease is terminated under Section 24.1, or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all real property interests in the Premises. The Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 Transfer Under Threat of Taking. For the purposes of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

25. COMMON AREAS.

25.1 Use of Common Areas. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord agrees that the Common Areas shall be initially constructed on the areas generally shown on Exhibit "A", and, subject to the preceding sentence, shall be maintained and operated at all times following completion thereof for the benefit and/or use of the customers and patrons of Tenant and of other tenants, owners and occupants of the Shopping Center. The original construction and installation of the Common Areas shall be at Landlord's expense.

25.2 Landlord's Maintenance Responsibilities; Common Area Costs. Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to Common Area and Shopping Center facilities. Notwithstanding the foregoing, all expenses incurred by Landlord in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include without limitation, all sums expended in connection with the Common Areas and Shopping Center for: general maintenance and repairs; resurfacing; painting; restriping; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; lighting, HVAC and other utility expenses; maintenance, repair, cleaning and replacement of public toilets, music program equipment and loudspeakers, sidewalks, stairways, curbs, Shopping Center signs, sprinkler systems, planting and landscaping, floors, walls, ceilings, roofs, skylights, windows, directional signs, markers and bumpers, fire protection systems and equipment (including fire sprinklers), security systems, lighting systems and fixtures (including replacement of tubes and bulbs), storm drainage systems, plumbing, electrical, HVAC and other utility systems which do not exclusively serve the interior of tenants' premises, and all mechanical equipment (including automatic door openers, escalators and elevators); personnel to implement the foregoing services, including, if Landlord deems necessary, the cost of security guards; all on-site costs and personnel expenses of Landlord incurred to manage the Shopping Center (which may be contracted for with third parties); all real (as generally defined in Section 9.3b of this Lease) and personal (as generally defined in Section 19.3 of this Lease) property taxes and assessments on the improvements and land comprising the Common Areas and Shopping Center or any personally in use on the Common Areas or Shopping Center; any sums paid to third parties for the purpose of seeking reduction of property taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas or Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and premiums for adequate comprehensive general liability and property damage insurance covering Landlord's ownership and operation of the Common Areas and Shopping Center, fire and extended coverage insurance on the Common Areas and the Shopping Center (which may include earthquake and flood damage endorsements) and vandalism and plate glass insurance covering the Common Areas and Shopping Center. Common Area Costs shall also include a charge for appropriate reserves for the costs of repainting, re-roofing and resurfacing Common Areas. In addition, Common Area Costs shall include a sum to be payable to Landlord for supervision of the Common Areas and for accounting, bookkeeping and collection of Common Area Costs, in an amount equal to 10% of the total of all of the foregoing Common Area Costs incurred in each calendar year. Landlord may have any or all services and management performed in connection with the Common Areas and Shopping Center provided by an independent contractor(s).

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit "A", then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 Method of Payment. Portions of the Shopping Center may be owned or leased by the occupants of those buildings designated by Landlord as a "Major Store" on Exhibit "A" (hereinafter referred to as the "Major Store Occupants"). The contributions of the Major Store Occupants towards the Common Area Costs shall be credited toward payment of the entirety of the Common Area Costs and the balance of the Common Area Costs shall be prorated among the other tenants of the Shopping Center in the following manner:

(i) From and after the date Rent has commenced, and thereafter during the Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

(ii) Within 60 days following the end of each calendar year (or as soon thereafter as possible), Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under subparagraph (i) above. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under subparagraph (i) above, Tenant shall pay Landlord the deficiency within 10 days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant may offset the excess against payments thereafter coming due under subparagraph (i) above or receive a refund following the expiration of the Term. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs as of the commencement of Rent and expiration of the Term. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term.

tenant's failure to pay any sums due hereunder shall constitute a default under this Lease equivalent to a failure to pay Minimum Annual Rent when due.

25.4 Control of Common Areas. Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

25.5 Rules and Regulations. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit "B".

25.6 Employee Parking. Landlord shall at all times have the right to designate a particular parking area to be used by employees of Tenant and other occupants of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord from time to time with an accurate current list of its and all its employees' automobile license plate numbers within 15 days after taking possession of the Premises and thereafter within 5 days after any change in the accuracy of the list. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant \$25.00 per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within 10 days after demand by Landlord.

26. DEFAULTS BY TENANT.

26.1 Events of Default. Each of the following shall constitute a material default and breach under this Lease:

- (a) If Tenant is at any time in default of its obligation to pay any Rent or other charges, and such default continues for more than 10 days after written notice of such default;
- (b) If Tenant is in default in the prompt and full performance of any other of its obligations under this Lease and such default continues more than 30 days after written notice specifying the particulars of such default;
- (c) If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;
- (d) (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder; or
- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

26.2 Remedies Upon Breach of Lease. On the occurrence of any breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

- (a) Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or
- (b) Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Shopping Center is located.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as

aforesaid, Landlord shall have in addition to its rights under Section 26.4 hereof, the right, but not the obligation, to remove from the Premises any personal property located therein and to place it in storage at a public warehouse at the expense and risk of Tenant.

Notwithstanding any other term or provision hereof to the contrary, this Lease shall terminate on the occurrence of any act which affirms Landlord's intention to terminate this Lease as provided in this Section 26.2, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees, incurred by Landlord in connection with the filing, commencement, pursuing or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Minimum Annual Rent and other Rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 Landlord's Damages. If Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease, Landlord may recover from Tenant as damages, all of the following:

(i) The worth at the time of award of any unpaid Rent and other charges which has been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves Landlord could have reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent and other charges which Tenant would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, (c) expenses of reletting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus

(v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest on unpaid amounts at the rate of 10% per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank located nearest to the Shopping Center in effect at the time of award, plus 1%.

For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36 month period, except that if it becomes necessary to compute such rental before such 36 months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 Fixtures and Personal Property. In the event of Tenant's default, all of Tenant's merchandise, Fixtures and other Personal Property shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 No Waiver. The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

27. DEFAULTS BY LANDLORD.

If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period), then such failure shall constitute a default hereunder and Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's default; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, or of partners or principals of such partners comprising Landlord, if any, or of Landlord's officers, shareholders or directors, if any) wherever situated, shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Tenant hereby waives any right to satisfy a judgment against Landlord except from the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center.

the default as provided below, then (subject to the provisions of Section 22.2. hereof) Tenant shall have the right to cure that default at Landlord's expense. In such event, Landlord shall pay the reasonable cost of such cure promptly following receipt of a bill from Tenant itemizing the cost of such cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any cost of such cure against any payments of Rent or any other charges due and payable to Landlord under this Lease, except as otherwise specifically provided in this Lease.

Tenant agrees to send by certified or registered mail to any mortgagee or deed of trust beneficiary of the Shopping Center whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, Tenant shall provide any such mortgagee or beneficiary with notice of such failure and such mortgagee or beneficiary shall have an additional 30 days following receipt of such notice to cure such default; provided that if such default cannot reasonably be cured within that additional 30 day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

28. ATTORNEYS' FEES.

If at any time after the date hereof either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the losing party in such action or proceeding shall reimburse the winning party for its reasonable expenses of attorneys' fees and all costs and disbursements incurred, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the winning party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the winning party.

29. SUBORDINATION – ATTORNMENT.

29.1 Subordination. Within 10 days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien or security interest of the first mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease), the interest of any lease in which Landlord is the lessee, or any REA that may burden the Premises, Building, Shopping Center, Property or any future improvements made to the Property.

29.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than 10 days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit "D" certifying (i) that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (ii) the dates to which the Rent and other charges are paid in advance, if any; (iii) the Commencement Date and expiration date of the Lease Term, (iv) whether Tenant has assigned or transferred this Lease or any interest of Tenant therein; and (v) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rent, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Building and the Premises are a part. Tenant's failure to deliver such statement within the time required shall be conclusive and binding upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent, and (c) no more than one month's Rent has been paid in advance.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any REA and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

31. MERCHANTS' ASSOCIATION.

31.1 Merchants' Association. If either Landlord or a majority of tenants in the Shopping Center determine at any time that it is in the best interests of the Shopping Center, Tenant will become a member of, participate fully in, and remain in good standing in a non-profit Merchants' Association (the "Association") formed and organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the by-laws, rules and regulations of such Association. Landlord and each member tenant shall have one vote in the operation of the Association. The articles of incorporation and by-laws of the Association shall be approved by a majority vote of the Association members and shall be subject to amendment as provided in the by-laws. The objectives of the Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and centerwide advertising. Tenant agrees to pay annual dues to the Association in an amount and at the time determined by a vote of the members of the Association from time to time. Default in payment of such dues shall be deemed a default in payment of Rent hereunder.

31.2 Grand Opening Promotional Fund. Tenant shall separately pay when billed the sum of \$.25 per square foot of Floor Area in its Premises to provide Landlord with funds to promote the "grand opening" of the Shopping Center, and/or Tenant's business.

32. CAPTIONS; JOINT AND SEVERAL LIABILITY.

32.1 Captions. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 **Joint and Several Liability.** If two or more persons or entities execute this Lease as Landlord or Tenant then such persons or entities shall be jointly and severally liable for compliance with and performance of the terms, covenants and provisions of this Lease.

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Section 3.g. hereof. Either party may change such address by written notice to the other as herein provided.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing and shall not be unreasonably withheld, unless otherwise expressly permitted in this Lease. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent.

If Landlord or Tenant unreasonably fails to give any such consent, the other party shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT.

36.1 Payment of Security Deposit. Tenant has deposited with Landlord the sum specified in Section 2.k. hereof as the "Security Deposit", receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

36.2 Application of Security Deposit. If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much as is necessary to compensate Landlord for loss of Minimum Annual Rent or additional rent, or other damages sustained by Landlord due to such default by Tenant. Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the Security Deposit (or the balance thereof remaining) shall be returned in full to Tenant not later than 14 days following the end of the Term and delivery of possession of the Premises to Landlord.

36.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

36.4 Transfer of Landlord's Interest. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises and Landlord shall thereupon be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

37. MISCELLANEOUS.

37.1 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

37.2 Severability. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 Corporate Authority; Partnership Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership, certificate of limited partnership or other evidence of partnership satisfactory to Landlord.

37.4 Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease.

is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drawn by Landlord, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

37.5 Governing Law. The laws of the state where the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

37.6 Waiver or Consent Limitations. A waiver of any breach or default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant's contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance hereunder.

37.8 Waiver of Redemption Rights. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

37.10 Right to Enter. Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 Definition of Landlord. As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Shopping Center. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

38.1 **Broker's Commission.** Upon execution and delivery of this Lease by Landlord and Tenant, Landlord shall pay to Landlord's Broker the commission set forth at Section 3.b hereof, if any, or the commission provided for in the written agreement (the "Agreement") between Landlord and Landlord's Broker covering brokerage services rendered in this transaction. Landlord shall also pay Landlord's Broker a further commission as provided in the Agreement if Tenant exercises any option to extend the Term of this Lease or to renew the Lease or to expand the Premises. If a Tenant's Broker is named at Section 3.b, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if Landlord's Broker and Tenant's Broker have so agreed between them. Landlord shall have no obligation to pay a commission or fee to anyone other than Landlord's Broker in connection with this Lease.

38.2 **Protection of Brokers.** If Landlord sells its interest in the Premises or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Premises or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article 38 or the Agreement. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this Article 38. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Section is included in this Lease for the benefit of Landlord's Broker.

38.3 **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 3.b of this Lease are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease.

39. **COMPLIANCE.**

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

LANDLORD AND TENANT have signed this Lease on the dates set forth below.

Date: 6/11/99
Landlord: Kathryn Crake Huntington
an individual
By: Kathryn Crake Huntington
Print Name: _____
Title: _____
By: _____
Print Name: _____
Title: _____

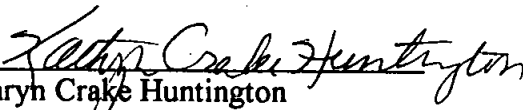
Date: 6/10/99
Tenant: Aakroor Thiyagarajah
an individual
By: [Signature]
Print Name: _____
Title: _____
By: _____
Print Name: _____
Title: _____

SEE YOUR ATTORNEY — THIS LEASE IS TO BE GIVEN TO YOUR ATTORNEY FOR REVIEW AND APPROVAL BEFORE YOU SIGN IT. BECAUSE EACH LEASE TRANSACTION IS UNIQUE, AND THE BUSINESS AND LEGAL CONCERNS OF EACH PART ARE UNIQUE, CB COMMERCIAL CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR RECOMMENDATION CONCERNING THE LEGAL EFFECT, LEGAL SUFFICIENCY, OR TAX CONSEQUENCES OF THIS LEASE. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND FINANCIAL ADVISORS. IN ANY REAL ESTATE TRANSACTION IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

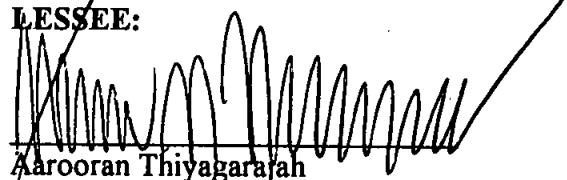
**ADDENDUM #1 TO LEASE DATED MAY 26, 1999 BETWEEN KATHRYN CRAKE
HUNTINGTON (LESSOR) AND AAROORAN THIYAGARAJAH (LESSEE)**

1. Lessee acknowledges that Sports Arena Square Shopping Center is subject to a Ground Lease with the City of San Diego and agrees to be bound by all applicable terms and conditions of the Lease. Lessee acknowledges receipt of a copy of the Ground Lease.

LESSOR:


Kathryn Crake Huntington

LESSEE:

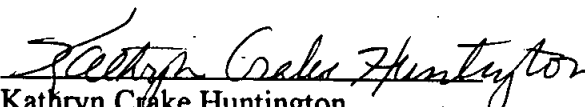

Aarooran Thiyagarajah

**ADDENDUM #2 TO LEASE DATED MAY 26, 1999 BETWEEN KATHRYN CRAKE
HUNTINGTON (LESSOR) AND AAROORAN THIYAGARAJAH (LESSEE)**

1. Lease is hereby amended to include 3350 Sports Arena Boulevard, Suite C/D.
2. Tenancy of this suite to be on a month-to-month basis with 30 days written notice to be required by both parties to cancel the agreement.
3. The monthly rent will be equal to \$300 beginning on July 1, 1999.
4. Lessee to use the space for storage for their existing art business.
5. Lessee to be responsible for all maintenance inside the suite, including the HVC system. Lessee will also be responsible for the electricity usage in the suite, contracting directly with SDG&E for this utility.
6. Lessee will be responsible to maintain adequate insurance coverage for this suite with appropriate proof provided to the Lessor's agent.

All other terms and conditions of the lease remain in full force and effect.

LESSOR:


Kathryn Crake Huntington

LESSEE:


Aarooran Thiyagarajah

**AMENDMENT #1 TO LEASE DATED MAY 26, 1999 BETWEEN ARENA GROUP 2000
(Successor in interest to KATHRYN CRAKE HUNTINGTON) (LESSOR) AND
AAROORAN THIYAGARAJAH (LESSEE)**

1. Lease for Suite F is hereby extended for the term July 1, 2000 to January 31, 2001.
2. The monthly rent will be a flat rate of \$1,547 per month.

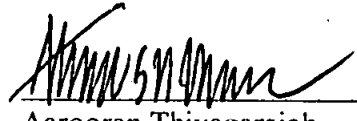
All other terms and conditions of the lease remain in full force and effect. Lessee agrees to keep the terms of this extension confidential.

LESSOR:



Arena Group 2000

LESSEE:



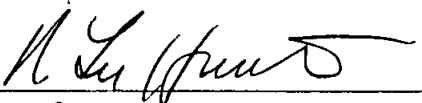
Aarooran Thiyagarajah

**AMENDMENT #2 TO LEASE DATED MAY 26, 1999 BETWEEN ARENA GROUP 2000
(Successor in interest to KATHRYN CRAKE HUNTINGTON) (LESSOR) AND
AAROORAN THIYAGARAJAH (LESSEE)**

1. Lease for Suite F is hereby extended for the term February 1, 2001 to June 30, 2001. After June 30, 2001, occupancy to be on a month-to-month basis with 30 days written notice required by either party to cancel the contract. Notice can be given on any day of the month.

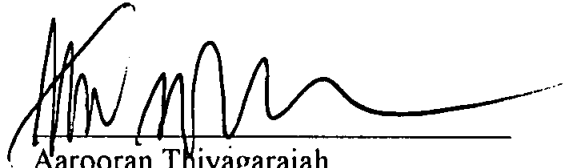
All other terms and conditions of the lease remain in full force and effect. Lessee agrees to keep the terms of this extension confidential.

LESSOR:



Arena Group 2000

LESSEE:



Aarooran Thiyagarajah

**AMENDMENT #3 TO LEASE DATED MAY 26, 1999 BETWEEN ARENA GROUP 2000
(Successor in Interest to Kathryn Crake Huntington) (LESSOR) AND AAROORAN
THIYAGARAJAH (LESSEE)**

1. Lease for Suite F is hereby extended for the term July 1, 2001 to March 31, 2002. After March 31, 2002, occupancy to be on a month-to-month basis with 30 days written notice required by either party to cancel the contract. Notice can be given on any day of the month.
2. Rent to be \$1,700/month effective July 1, 2001.

All other terms and conditions of the lease remain in full force and effect. Lessee agrees to keep the terms of this extension confidential.

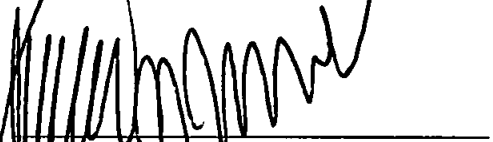
LESSOR:



Arena Group 2000

July 9 2001
Date

LESSEE:



Aarooran Thiyagarajah

6/28/01
Date

01 OCT 23 AM 9:30

(858) 755-7734
FAX: (858) 755-7741

REAL ESTATE ASSETS DEPT.

October 19, 2001

Mr. Vladimir Balotsky
Property Agent
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Re: 3350 Sports Arena Blvd., Suite F

Dear Vladimir,

Per your request, enclosed please find the lease for Aarooran Thiyagarajah dba Crack In The Wall. Mr. Thiyagarajah purchased the business from the original owner.

If you have any questions, please do not hesitate to call me.

Sincerely,



Elizabeth A. Nolan
Property Manager

SPORTS ARENA SQUARE

Tenant Sign Criteria

Prepared By



GRAPHIC SOLUTIONS
GRAPHIC DESIGN • SIGN PLANNING • FABRICATION
1750 Kestner Boulevard, San Diego, California 92101 2524 1019 739 1315

252 5047

EXHIBIT "E"

PURPOSE

The purpose of these sign criteria is to establish optimum tenant identification with overall harmony of design for Tierrasanta Town Center.

CONFORMANCE

Conformance to these criteria will be strictly enforced. Non-conforming or unapproved signs shall be brought into conformance or removed at the expense of the tenant within 30 days written notice.

PAYMENT

The tenant responsibility for costs of identification signs is defined under Acceptable Sign Type description. In addition, the tenant shall pay for installation and maintenance where required as well as all necessary permits and approvals.

APPROVALS

All drawings, designs, colors, typestyles and logos shall be submitted to the owner for specific approval prior to fabrication. Only approved copy/logos shall be incorporated into each sign.

STANDARD TYPESTYLE

Helvetica Medium

abcdefghijklmnopqrstuvwxyz

ABCDEFGHIJKLMNOPQRSTUVWXYZ

1234567890 (&.,:;!?'""-*\$¢%/£)

NON-ACCEPTABLE SIGN TYPES

The following sign types are unacceptable as tenant identification signs:

- A. Hand-painted lettering, signs, employing luminous paint, painted cardboard signs, stickers or decals hung around or behind glass.
- B. Animated, flashing or audible signs.
- C. Political posters, displays, campaign signs, etc.
- D. Pole signs, or other free-standing ground signs, other than those already indicated.

BASIC SIGN CONSTRUCTION

- A. Non-corrosive construction materials including bolts, framing and clips shall be used on all exterior wall signs.
- B. All signs and their installation must comply with local building and electrical codes.

EXCEPTIONS

No exceptions to the above criteria shall be permitted without the express written authorization of the owner.

SINGLE TENANT ILLUMINATED WALL SIGN
(Illustration Next Page)

Sign Type A

Each tenant with exclusive entrance is entitled to (1) wall identification consisting of business name.

LOCATION: Tenant sign centered over shop entrance.

SIGN DESCRIPTION: Tenant sign cabinet shall be fabricated aluminum or galvanized metal, suitably primed, and painted with polyurethane enamel. Sign cabinet shall be built exactly to match existing sign cabinet in shape and thickness.

Tenant sign shall have fluorescent lights sufficient to achieve even illumination of sign face.

CABINETS SIZE: Height shall be 2'-4-7/8"; length shall be no more than 70% of store frontage, or existing cabinet may be used.

LETTERS:

Standard: #2283 Red; 1/8" acrylic.

Custom: 3/4" Black trimcap, subject to owners prior written approval. Sample may be required.

TYPESTYLES

Standard: Helvetica Medium

Custom: Tenant logo or custom typestyle may be permitted subject to owners prior written authorization.

COLORS:

Sign cabinet: As installed by Landlord.
Sign background: #2416 3/16" Ivory acrylic.
Letters: #2283 1/8" Red acrylic.

MAXIMUM COPY AREA: (See illustrations for margin requirements)

Tenant is responsible for cost of cabinet, letters, installation and permitting.

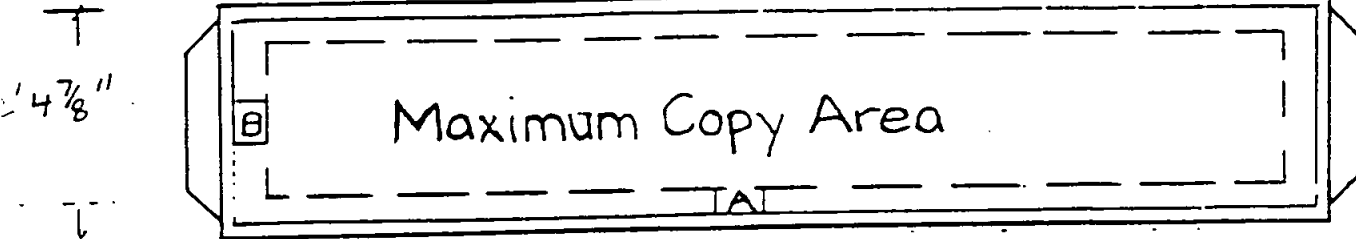
MAXIMUM TOP OF SIGN FRONTAGE

Minimum

Margin Requirements:

A: 3" VISIBLE MARGIN

B: 4" VISIBLE MARGIN



Sign Type A

$\frac{1}{2}" = 1'0"$

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Percentage Lease (MASTER LEASE), dated February 22, 1996, entered into with Kathryn Crake Huntington, and subsequently assigned to

Arena Group 2000, L.P., a California limited partnership (LESSEE), consents to that certain Shopping Center Lease (SUBLEASE) between LESSEE (SUBLESSOR) and

VICTOR HEREDIA

(SUBLESSEE) dated December 29, 2000.

This consent permits sublease of a portion of the premises covered by that certain MASTER LEASE dated February 22, 1996, between the SUBLESSOR and the CITY. The CITY is approving the SUBLEASE and the proposed use on the following terms and conditions.

1. **SUBORDINATION**: The SUBLEASE is subject and subordinate to the covenants and conditions of MASTER LEASE in all respects notwithstanding any provision hereof contrary or in conflict with the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE.

2. **ASSIGNMENT AND SUBLETTING**: SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate this consent.

3. **HOLD HARMLESS**: SUBLESSEE shall defend, indemnify and hold harmless the CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents or invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

4. **INSURANCE**: SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$2 million Combined Single Limit Liability. SUBLESSEE shall file with CITY a copy of the policy of insurance which shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall submit to CITY a copy of the new policy of insurance.

5. LEGAL PROCEEDING: Should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of the SUBLEASE or this Consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

THE CITY OF SAN DIEGO

Dated 4-2-02

By 
for the City Manager

SUBLESSEE

Dated 2-16-02

By 
Name: VICTOR HEREDIA
Title: OWNER

SUBLESSOR

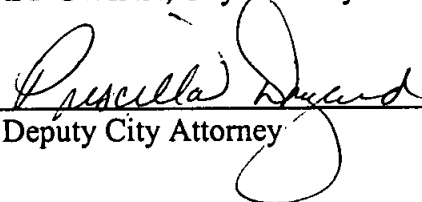
Dated 2-28-02

By 
Name: Arena Group LLC
Title: LLP

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Dated 5/14/02

By 
Deputy City Attorney

VEB/jmj
01/18/02

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This Lease between Arena Group 2000
a Limited Partnership ("Landlord"), and Victor Heredia
an Individual ("Tenant"), is dated 12/28, 2000

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 9.5) to be paid by Tenant and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the plan attached hereto as Exhibit "A", and further described at Section 3.j. The Premises are located within the Shopping Center described in Section 3.i. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.d.).

2. LEASE REVIEW OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease and to have this Lease reviewed, approved, and modified as needed by its attorneys before the Lease is signed.

3. DEFINITIONS.

As used in this Lease, the following terms have the following meanings:

a. **Annual Percentage Rental Rate (Section 9.4):** 0 % of Tenant's Net Sales.

b. **Broker(s)**

Landlord's Broker: N/A

Tenant's Broker: N/A

Commission Payable to Landlord's Broker (Section 38.1): \$ As per schedule.

Landlord's Broker hereby discloses to Landlord and Tenant that Landlord's Broker is acting in this transaction as the agent of (check applicable box below):

- ☐ Landlord exclusively; or
☐ both Landlord and Tenant.

Landlord and Tenant each consent to such representation by Landlord's Broker.

c. **Commencement Date:** The earliest of the following dates:

(i) ~~The date Tenant initially opens for business in the Premises;~~

(ii) ~~30 days after substantial completion of Landlord's Work in the Premises (as defined in Exhibit "C" to the Lease). The date of such substantial completion is the date the Premises are substantially complete to the extent of Landlord's Work, except for such work that Landlord cannot complete until Tenant performs necessary portions of Tenant's Work (as defined in Exhibit "C"). Substantial completion of Landlord's Work shall be evidenced by notice to Tenant from Landlord's architect or designated representative that substantial completion has occurred; or~~

(iii) January 1, 2001

Tenant's Tentative Commencement Date (Article 7) is _____

Tenant shall commence Tenant's Work promptly upon substantial completion of Landlord's Work and shall diligently complete Tenant's Work so that Tenant can promptly open for business in the Premises.

d. **Common Areas:** All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, roofs, walls, plazas, malls (including any enclosed malls where climate control is provided), throughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit "A". Landlord shall have the right to regulate or restrict the use of the Common Areas.

e. **Floor Area:** As to both the Premises and the Shopping Center, the respective measurements of floor area as are from time to time subject to lease by Tenant and all tenants of the Shopping Center, respectively, as determined and applied by Landlord on a consistent basis throughout the Shopping Center.

f. **Index (Section 9.2):** The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside
Average, Subgroup "All Items" (1982 - 84 = 100).

g. Landlord's Mailing Address: C. WRC Management
3525 Del Mar Heights Road #294 San Diego, CA 92130

Tenant's Mailing Address: 3350 Sports Arena Blvd., Suite J
San Diego, CA 92110

h. Minimum Annual Rent (Initial) (Section 9.1): \$ 4,800. — per year, payable in twelve (12) equal monthly installments each year.

i. Outside Date for Delivery of Possession (Article 7): None

j. Premises: That portion of the Shopping Center containing approximately 740 square feet of Floor Area, shown by diagonal lines on Exhibit "A", located on the grade level of the Shopping Center and designated space J. The Premises has dimensions of approximately varies feet in frontage and approximately varies feet in depth.

k. Security Deposit (Article 36): \$ 400. —

l. Shopping Center: The building of which the Premises is a part (the "Building") and any other buildings and improvements on the real property (the "Property") located at 3350 Sports Arena Blvd and further described on Exhibit "A". The Shopping Center is known as Sports Arena Square

m. Tenant's First Adjustment Date (Section 9.2): The first day of the calendar month following the Commencement Day plus — months. Twelve (12) months from the Commencement Date.

n. Tenant's Proportionate Share (Initial): N/A%.

Such share is a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of the buildings in the Shopping Center available for exclusive use and occupancy by tenants (excluding the Floor Area of those areas, if any, designated by Landlord on Exhibit "A" as "Major Stores"), as determined by Landlord from time to time on a consistent basis. As of the date of this Lease the Shopping Center (excluding any Major Stores) contains a total Floor Area of 77,163 square feet.

o. Tenant's Radius (Section 21.3): — miles from the Premises.

p. Tenant's Sales Breakpoint: That dollar sum equal to the then Minimum Annual Rent payable by Tenant divided by the Annual Percentage Rental Rate. As of the Commencement Date Tenant's Initial Sales Breakpoint is \$ —

q. Tenant's Trade Name (Article 11): —

r. Tenant's Use Clause (Article 11): The Premises shall be used and occupied only for the purpose of Storage + possible retail use

and for no other use or purpose.

s. Term: The Term of this Lease shall begin as of the date hereof and shall continue thereafter for a period of 0 years and 12 to 18 months (plus any partial month) following the Commencement Date. The Commencement Date and expiration date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit "F". The Notice shall be served on Tenant promptly following determination of the Commencement Date under Section 3.c.

4. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

a. Exhibit "A" - Plan Showing the Premises and Shopping Center (See Sections 3.j, 3.l and Article 5)

b. Exhibit "B" - Shopping Center Rules and Regulations (See Section 25.5)

~~c. Exhibit "C" - Landlord's Work and Tenant's Work~~

~~d. Exhibit "D" - Sample Form of Tenant Estoppel Certificate (See Section 29.3)~~

e. Exhibit "E" - Shopping Center Sign Criteria

f. Exhibit "F" - Landlord's Notice of Lease Term Dates (See Section 3.c)

~~g. Exhibit "G" - Guaranty of Lease~~

i. Addenda:

See attached Addendum

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit "A" shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit "A" and may eliminate or add any improvements to any portion of the Shopping Center, but Landlord agrees (i) not to materially change the size or location of the Premises without Tenant's consent, and (ii) that any such changes will not materially adversely affect ingress to and egress from the Premises, visibility of the Premises or parking availability in the Shopping Center.

6. OTHER TENANCIES.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord and Landlord's Broker do not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term.

7. DELIVERY OF POSSESSION.

Landlord agrees to deliver to Tenant and Tenant agrees to accept from Landlord possession of the Premises promptly upon substantial completion of Landlord's Work. If for any reason Landlord does not deliver possession of the Premises to Tenant with Landlord's Work substantially complete at least 30 days before Tenant's Tentative Commencement Date, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but the Commencement Date shall be delayed by the number of days delivery is delayed and Rent shall be abated until 30 days following the date of substantial completion of Landlord's Work in the Premises. Notwithstanding anything to the contrary contained herein, if Landlord does not deliver possession of the Premises to Tenant on or before the Outside Date for Delivery of Possession, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall have no further obligations hereunder.

8. TENANT'S WORK.

Tenant shall commence construction of Tenant's Work as defined in Exhibit "C" ^{N/A} no later than the date of substantial completion of Landlord's Work in the Premises and shall diligently complete Tenant's Work. Landlord shall give Tenant not less than 10 days' advance written notice of such anticipated date of substantial completion of Landlord's Work. Tenant shall, at any time requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder. Tenant shall open the Premises for business within 30 days following the date of substantial completion of Landlord's Work in the Premises.

9. RENT.

9.1 Payment of Minimum Annual Rent. Tenant agrees to pay the Minimum Annual Rent during the Term for its use and occupancy of the Premises. Minimum Annual Rent shall be payable in advance on the first day of each calendar month of the Term without notice, setoff or deduction, in twelve (12) equal monthly installments during each year of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Minimum Annual Rent for the partial month shall be prorated on a daily basis, based on a 30 day month. Tenant shall pay Landlord the first installment of Minimum Annual Rent when Tenant executes this Lease.

9.2 Adjusted Minimum Annual Rent.

a. The Minimum Annual Rent set forth at Section 3.h. shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based only upon increases (if any) in the Index. The Index in publication 3 months before the Commencement Date shall be the "Base Index." The Index in publication 3 months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Minimum Annual Rent payable during the ensuing twelve-month period shall be determined by increasing the initial Minimum Annual Rent by a percentage equal to the percentage increase, if any, in the applicable Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for any preceding Adjustment Date (or the Base Index, in the case of the First Adjustment Date), the Minimum Annual Rent for the ensuing twelve-month period shall remain the amount of Minimum Annual Rent payable during the preceding twelve-month period. When the Minimum Annual Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Minimum Annual Rent and the corresponding adjusted Tenant's Sales Breakpoint and the manner in which each was computed. The Minimum Annual Rent as so adjusted from time to time shall be the "Minimum Annual Rent" for all purposes under this Lease.

b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" hereunder.

9.3 Property Taxes.

a. Beginning with the Commencement Date and for the balance of the Term, Tenant shall pay to Landlord as "additional rent" the amount of taxes and assessments levied and assessed for any year upon the Premises and the underlying Property (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360 day year.

If the Premises and the underlying Property are not separately assessed, but are assessed as part of the land and improvements on a larger parcel (hereinafter the "Larger Parcel"), Tenant's share of Premises Property Taxes shall be a fractional portion of the property taxes on the Larger Parcel, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of all the areas available for exclusive use and occupancy by tenants of the Larger Parcel. Tenant shall pay Premises Property Taxes to Landlord as part of Common Area Costs at the times and in the manner provided for the payment of Common Area Costs at Section 25.3 of this Lease. For purposes hereof, an equitable adjustment shall be made for buildings which are only partially completed on the date such property taxes become a lien.

If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate

proration for any partial year) : statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

b. The term "Premises Property Taxes" shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, Property or the Shopping Center; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Premises, Property or the Shopping Center or against Landlord's business of leasing space in the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises, Property or Shopping Center by or through any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises, Property or Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, Property or Shopping Center; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Premises Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

~~9.4 Percentage Rental. In addition to the Minimum Annual Rent and other sums required to be paid by Tenant under this Lease, Tenant shall pay as "percentage rental" a sum equal to the Annual Percentage Rental Rate times the amount of Net Sales of Tenant (as "Net Sales" is defined in Section 10.1 hereof) made from or upon the Premises during each calendar year, less the amount of Minimum Annual Rent paid by Tenant during such calendar year. Percentage rental shall be computed each calendar month and on or before the date the following month's installment of Minimum Annual Rent becomes due Tenant shall pay to Landlord the amount by which the sum computed as the Annual Percentage Rental Rate of Tenant's Net Sales during that period exceeds the Minimum Annual Rent payable by Tenant during that period. Within 90 days after the end of each calendar year the Net Sales of Tenant during that calendar year and the amounts payable to Landlord as Minimum Annual Rent and as percentage rental for that calendar year shall be determined. If Tenant has overpaid percentage rental, Tenant shall receive a prompt refund of the overpayment; if Tenant has underpaid percentage rental, Tenant shall immediately pay the deficiency to Landlord.~~

Percentage rental due for any partial month of the Term shall be prorated on a daily basis based on a 30-day month. The obligations hereunder shall survive the expiration of the Lease Term.

9.5 **Additional Rent.** Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12, 22, 25 and Exhibit "C", and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent." All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "Rent."

9.6 **Interest and Late Charges.** If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment.

Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, and processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to 10% of such installment. Such late charge is in addition to any interest due pursuant to the preceding paragraph of this Section 9.6. Landlord and Tenant agree that this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 **Payment of Rent.** All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at Landlord's management office in the Shopping Center, or at such other place as may from time to time be designated by Landlord in writing at least 10 days prior to the next ensuing payment date.

10. NET SALES.

~~10.1 Definition of "Net Sales." "Net Sales" of Tenant, as used in this Lease, means the gross selling price of all merchandise or services sold in or from the Premises by Tenant, its subtenants, licensees and/or concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, but excluding the following:~~

- ~~(i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made on such merchandise;~~
- ~~(ii) The selling price of goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;~~
- ~~(iii) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of accepting a trade-in;~~
- ~~(iv) Delivery charges;~~
- ~~(v) Cash refunds made to customers in the ordinary course of business. This exclusion shall not include any amount paid or payable for what are commonly known as trading stamps;~~
- ~~(vi) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales, where such charges are not included in the merchandise sales price;~~
- ~~(vii) Receipts from public telephones, stamp machines or vending machines installed solely for the use of Tenant's employees;~~
- ~~(viii) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected from customers separately from the selling price of merchandise or services; and~~
- ~~(ix) Sales of fixtures, equipment or property which are not stock in trade.~~

All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may occur at another location and even though actual filling of the sale or service order and actual

delivery of the merchandise may be made at a place other than the Premises. Each installment or credit shall be treated as a sale for the full cash price at the time of sale.

10.2 Statement of Net Sales. Tenant shall furnish Landlord with an accurate statement of Tenant's Net Sales within 30 days after the close of each calendar month, and an annual statement of Net Sales (which shall include a monthly breakdown of Net Sales) within 60 days after the close of each calendar year. Such statements shall be signed and certified as accurate by Tenant. The annual statement of Net Sales shall be audited and certified as correct by Tenant's Certified Public Accountant. In addition, Tenant shall furnish Landlord with a copy of its state and local sales and use tax returns within 30 days after any such return is filed or required to be filed with the appropriate governmental agency.

Tenant shall keep and shall require any subtenants, licensees and/or concessionaires to keep, at the Premises or at such other place approved by Landlord in writing, full and accurate books of account, records and other pertinent data (including cash register receipts) of the gross sales, Net Sales, credits, refunds and other pertinent business transactions made from or upon or otherwise relating to the Premises. Such books, receipts and records shall be kept for not less than 2 years after the close of each calendar year to which they relate and shall be available for inspection and audit by Landlord and its representatives at all times during regular business hours. Landlord's receipt of any statement of Net Sales or Tenant's payment of percentage rental for any period shall not bind Landlord as to the correctness of the statement or amount of the payment. Within 2 years after the receipt of any such statement, Landlord or its designated Certified Public Accountant shall be entitled to audit Tenant's gross sales and Net Sales following 48 hours' advance written notice to Tenant. Such audit shall be conducted during normal business hours at either the Premises or Tenant's principal place of business. If such audit determines that there has been a deficiency in the payment of percentage rental, then such deficiency shall become immediately due and payable with interest at the maximum lawful interest rate from the date said payment should have been made. In addition, if an annual statement of Tenant is found to have understated Net Sales by more than 2% and if Landlord is entitled to any additional percentage rental as a result of such understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due Landlord. If such audit discloses an additional liability for percentage rental of \$1,000 or more for the period covered by the audit, Landlord may, in addition to any other remedies it may have for Tenant's breach of this Lease, terminate this Lease by written notice to Tenant given within 60 days after Landlord's receipt of the audit report. Any information obtained from such statements, audits or inspections shall be treated by Landlord as confidential and shall not be disclosed except to carry out the purposes of this Lease, but Landlord may divulge the contents of any such statements in connection with any financing arrangements involving, or assignment of Landlord's interest in, the Premises, Shopping Center, or this Lease, or in connection with any administrative or judicial proceedings in which Landlord is involved and in which such information is in issue.

Any failure by Tenant to maintain and keep full and accurate books of account, records and other pertinent data as required hereunder shall be deemed a default and breach of this Lease under Article 26 hereof.

11. POSSESSION AND USE.

11.1 Permitted Uses and Prohibited Conduct. Possession of the Premises shall be delivered to Tenant free and clear of all tenants and occupants and the rights of either, and free of liens and encumbrances other than those specified in Article 15 hereof. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit any person to use the Premises for conducting a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws, ordinances, regulations and requirements of the United States or the State, County and City where the Shopping Center is located, or any other lawful authority. Tenant shall, during the Term, keep the Premises in a clean and wholesome condition, free of any objectionable noises, odors or nuisances, and shall comply with all health and police regulations. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities and any enclosed mall of the Shopping Center).

11.2 Insurance Coverage Use Restrictions. Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increases in Landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical equipment in the Premises which overloads the electrical lines of the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.3 Deliveries. Tenant shall use its best efforts to complete all deliveries, loading, unloading and services to the Premises before 10:00 a.m. each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

12. UTILITIES SERVICES.

12.1 Utilities Installation. Landlord agrees that to the extent provided for in Exhibit "C" hereof, it will initially make available to Tenant (i) facilities for the removal of sewage and the delivery to and distribution within the Premises of water, electricity, telephone service and natural gas (which shall be used by Tenant for cooking and demonstration of gas operated sales items only) (these facilities are collectively referred to in this Article 12 as "utilities"), and (ii) a heating, ventilation and air conditioning

system (the "HVAC system"). Unless Landlord agrees otherwise, Tenant shall use or those utilities and any HVAC system provided for under Exhibit "C" to serve the Premises. If required under Exhibit "C", a separate meter shall measure the consumption of utilities and/or the HVAC system.

If not required to be furnished by Landlord under Exhibit "C", Tenant shall be responsible for obtaining any utilities and/or HVAC system required for Tenant's business operations in the Premises.

12.2 Utilities and HVAC System Charges. Tenant shall pay for all utilities used by Tenant on the Premises from and after substantial completion of Landlord's Work in the Premises. If Tenant's utilities and/or HVAC system are separately metered, Tenant shall pay directly to the appropriate utility company the cost of all such utilities used on the Premises. If any of Tenant's utilities and/or HVAC system are furnished by Landlord without separate metering, then during the Term Tenant shall pay as additional rent, monthly in advance, a utilities charge to reimburse Landlord for any such utilities furnished by Landlord to the Premises. This utilities charge shall, at Landlord's election, be established (a) by an estimate of usage made from time to time by Landlord's engineer or the appropriate utility company, and initially based on a typical store layout comparable to Tenant's proposed use of the Premises, or (b) a percentage of such total utility costs equal to a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of Shopping Center actually being furnished with utility service by Landlord at the time of billing. If Tenant's Premises is not separately metered, such utilities and/or HVAC charges may be billed with Tenant's share of Common Area Costs under Section 25.3. The utilities charge to Tenant hereunder for utilities furnished by Landlord shall be based on utility rates which do not exceed those charged by the local public utility company for services it would otherwise furnish directly to Tenant. If the Premises are not initially separately metered, Landlord shall have the right, at its expense, to install separate meters for the Premises at any time during the Term.

12.3 Failure to Pay. If Tenant fails to pay any amount due to Landlord hereunder within 10 days after receipt by Tenant of a bill therefor, Landlord may (in addition to all other rights and remedies provided herein for breach of this Lease and if permitted by law) cut off and discontinue, upon 5 days' advance notice to Tenant and opportunity to cure, any such utilities furnished to the Premises by Landlord until all such amounts are paid in full.

12.4 No Landlord Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) operation of the HVAC system, if any. No such failure or interruption shall entitle Tenant to terminate this Lease or stop making any Rent or other payments due hereunder.

13. INDEMNITY BY TENANT.

Tenant shall indemnify and hold Landlord harmless from any and all costs, claims or liability of any kind arising out of: (a) Tenant's use and occupancy of the Premises; (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorney's fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct.

14. INSURANCE – WAIVER OF SUBROGATION.

14.1 Tenant's Insurance Obligations. Tenant shall, from and after the earlier of (a) substantial completion of Landlord's Work in the Premises, or (b) commencement of any of Tenant's Work in the Premises, and for the remainder of the Lease Term maintain, at its expense, the following types of insurance coverage, in the amounts specified and in the forms hereinafter provided for:

(i) **LIABILITY INSURANCE.** Commercial general liability insurance (sometimes known as comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Such policy shall be an occurrence form and shall include Owner's and Contractor's Protective Liability with respect to construction of improvements by Tenant on the Premises. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be not less than \$1,000,000 per occurrence. The liability insurance obtained by Tenant under this Section 14.1(i) shall (1) be primary and non-contributing; (2) contain cross-liability endorsements; and (3) insure Landlord against Tenant's performance under Article 13(a), (b) and (e) if the matters giving rise to the indemnity under Article 13 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(ii) **PLATE GLASS.** Insurance covering the full replacement cost of all plate glass on the Premises. Tenant shall have the option to self-insure this risk.

(iii) **TENANT IMPROVEMENTS.** Insurance covering all of the items specified as "Tenant's Work" in Exhibit "C", Tenant's leasehold improvements, alterations, additions or improvements permitted under Article 16, and trade fixtures, merchandise and personal property from time to time in, on or upon the Premises. Such insurance shall cover not less than 100% of the full replacement cost of the foregoing from time to time during the Term, and shall provide protection against any peril included within the classification of fire, extended coverage, sprinkler leakage, vandalism, theft, malicious mischief and special extended perils (all risk). Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the provisions of Article 23 hereof.

(iv) **GENERAL INSURANCE PROVISIONS.**

(a) Any insurance required to be maintained by Tenant hereunder shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(b) A certificate of the insurer or the insurer's legal representative evidencing the existence and amount of each insurance policy required of Tenant hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter at least 30 days prior to the expiration of any such policy. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder.

No such policy shall be cancellable except after 30 days' written notice to Landlord. If Tenant fails to deliver any such

evidence of insurance to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Term without Landlord's consent, Landlord shall obtain such insurance coverage, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement therefor.

(c) All insurance shall be maintained with companies holding a "General Policy Rating" of A-XII or better, as set forth in the most current issue of "Best's Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 14.1 may not be available in the future. Tenant acknowledges that the insurance described in this Section 14.1 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall be responsible for obtaining any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

14.2 Landlord's Insurance Obligations. Landlord shall, in connection with its ownership and operation of the Shopping Center, at all times from and after commencement of Landlord's Work in the Premises, maintain in effect policies of insurance providing protection against the following liabilities and/or risks: (a) commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage, and (b) fire and extended coverage insurance (including coverage for Common Area sprinkler damage, vandalism and malicious mischief, and, if required by any lender holding a security interest in the Shopping Center or if deemed necessary by Landlord, flood and earthquake insurance) on the Building and Shopping Center in an amount not less than their full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the Term. The types and coverages of insurance maintained by Landlord hereunder shall be subject to such further requirements as may be imposed by Landlord's lender. Landlord shall also have the right to maintain such additional types and coverages of insurance (including business interruption insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

14.3 Waiver of Subrogation. Landlord and Tenant (for themselves and their insurers) each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, against any of the parties to the REA referred to in Article 15 hereof (the "Parties") and against other tenants of the Shopping Center (provided such Parties and other tenants have waived such rights against Landlord and Tenant), on account of any loss by or damage to the waiving party or its property or the property of others under its control (including as to Tenant the Premises and its contents, and as to Landlord the other portions of the Shopping Center), arising from any risk generally covered by fire and extended coverage insurance. The foregoing waivers of subrogation shall be required hereunder only if (a) then available in the State where the Shopping Center is located, and (b) such waiver does not invalidate the applicable policy.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to the liens or restrictions of (a) any matters or documents of record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, operation and reciprocal easement agreement (the "REA"); and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate the terms of any REA or any other Matters of Record, and (ii) this Lease is subordinate to the REA, if any, and any amendments or modifications thereto. If the REA, if any, is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to the REA upon recordation of the REA. Tenant agrees to execute and return to Landlord within 10 days after written demand therefor by Landlord, an agreement in recordable form satisfactory to Landlord subordinating this Lease to the REA. Any REA shall not prevent Tenant from using the Premises for the purposes set forth in Tenant's Use Clause.

16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 Permitted Improvements. Subject to the terms of this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done and providing Landlord with all plans for such proposed improvement work. Tenant may not make any improvement which reduces the value of the Premises or is of a structural nature. No single improvement costing more than \$500.00 may be made without first obtaining the written approval of Landlord. In addition, no improvement shall be made to any storefront, mechanical system, or exterior wall or to the roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of an existing mezzanine, unless and until the written consent and approval of Landlord is first obtained.

No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord.

Tenant shall reimburse Landlord for all costs incurred by Landlord (including architect's and/or engineer's fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 Construction Requirements. All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors or subcontractors being used. Upon completion of such improvements, Tenant shall file a Notice of Completion for record in the office of the County Recorder where the Shopping Center is located, as required or permitted

by law. Tenant shall provide Landlord "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center.

16.3 Insurance Requirements. If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14.1(III). It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

17. MECHANICS' LIENS.

17.1 Tenant's Covenants. Tenant shall pay all costs for work done by or for Tenant in the Premises (other than Landlord's Work), and Tenant shall keep the Premises, Building and Shopping Center free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises under Article 16 or Exhibit "C"), Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord.

17.2 Tenant's Contest of Lien. If Tenant desires to contest any claim of lien arising from work done by or for Tenant in the Premises, Tenant shall first furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of any such lien for any amount is entered, Tenant shall immediately pay and satisfy such judgment.

17.3 Landlord's Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and Tenant has not given Landlord adequate security to protect the Premises, the property therein, and the Building, Shopping Center and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the maximum lawful rate from the date of Landlord's payment.

17.4 Notice of Lien. If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

18. ADVERTISING MEDIA.

Tenant shall not affix or maintain upon the glass panes or supports of the show windows (or within 24" of any window), doors or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item. Tenant shall not affix any sign to the roof of the Premises.

Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign(s) in accordance with the provisions of the sign criteria attached hereto as Exhibit "E".

19. FIXTURES AND PERSONAL PROPERTY.

19.1 Removal and Replacement. All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 Fixtures. All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical systems, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit "C" (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any Larger Parcel as defined in Section 9.3. Tenant shall pay Landlord the taxes attributable to Tenant's personal property within 15 days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. No taxes, assessments, fees or charges referred to and billed to Tenant under paragraph shall be considered to be taxes for the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP.

20.1 One Year Prohibition Against Transfer. Landlord and Tenant acknowledge that the Shopping Center is an interdependent enterprise and that each party's realization of the benefits of this Lease depends upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further acknowledge that the character and quality of Tenant's operation, and of the Shopping Center, will be enhanced by Tenant's use of its best efforts, for a reasonable period of time, to establish a successful business and business image. Landlord and Tenant further agree that one year is a reasonable period of time to attempt to achieve this goal. Accordingly, Tenant agrees that for a period of one year from the date Tenant initially opens to the public for business in the Premises (the "Occupancy Period"), Tenant shall not, and shall not have the power to, transfer or assign this Lease, sublet the Premises, enter into license or concession agreements, or change ownership (such transactions are hereinafter individually and collectively referred to as a "Transfer"), without first procuring the written consent of Landlord, which may be given or withheld in Landlord's sole discretion. After the expiration of the Occupancy Period, Landlord's consent to any Transfer shall not be unreasonably withheld, subject to the terms, covenants and conditions contained below.

20.2 Restrictions on Transfer. If after expiration of the Occupancy Period Tenant desires to effect a Transfer to anyone (a "Transferee") other than a successor, subsidiary, affiliated or controlling corporation of Tenant (an "Affiliate"), Tenant shall give written notice ("Transfer Notice") to Landlord at least 60 days before the effective date of any such proposed Transfer. The Transfer Notice shall state (a) whether Tenant proposes to assign the Lease, sublet the Premises, enter into a license or concession agreement or change ownership, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) all other material terms of the proposed Transfer, and (e) in detail the type of business operation the proposed Transferee intends to conduct on the Premises. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. In addition, the Transfer Notice shall be accompanied by the proposed Transferee's income statements and balance sheets covering the preceding 36-month period, and each shall be certified as accurate by the Transferee. Landlord may, at any time within 30 days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer (which consent shall not be unreasonably withheld under the business judgment standards set forth in Section 20.3 below) by mailing written notice to Tenant of its decision ("Decision Notice"). If Landlord consents to the proposed Transfer Tenant may thereafter promptly effect a Transfer in accordance with the terms of Tenant's Transfer Notice.

If Landlord consents to the proposed Transfer and Tenant does not consummate the proposed Transfer within 30 days after receipt of Decision Notice, the provisions of the first paragraph of this Section 20.2 shall again apply.

20.3 Grounds for Withholding Consent. Landlord may withhold consent to a proposed Transfer if, in Landlord's reasonable business judgment, any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Premises, as compared to the merchandising operation conducted by Tenant prior to the date of Transfer Notice; (ii) the proposed Transferee lacks a good business reputation or sufficient relevant business experience; (iii) the financial worth of the proposed Transferee as of the date of Transfer Notice is less than the combined financial worth of Tenant and Tenant's guarantor (if any) as of either the date of this Lease or the date of Transfer Notice; (iv) the proposed Transferee's proposed use of the Premises conflicts with Tenant's Use Clause or is otherwise incompatible with the tenant mix of the Shopping Center; (v) the annual percentage rent Landlord reasonably anticipates receiving from the proposed Transferee is significantly less than the annual percentage rent Landlord could reasonably anticipate receiving from Tenant; or (vi) the proposed Transfer would breach any covenant of Landlord respecting radius restrictions, use or exclusivity rights in any other lease, or any financing or other agreement relating to the Shopping Center. Any attempted or purported Transfer without Landlord's written consent shall be void and of no force or effect.

20.4 No Release from Liability. No Transfer, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease, from its covenants and obligations hereunder during the Term. Tenant shall, promptly upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with the processing and documentation of any requested Transfer.

20.5 Transferee's Obligations. Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the Transferee. Each such Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One fully executed copy of such written instrument shall be delivered to Landlord. Failure to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 20 shall prevent any Transfer from becoming effective.

20.6 Division of Profit Between Landlord and Tenant. Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of Transfer Notice, depreciated on a straight-line basis over the Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided equally between Landlord and Tenant. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as additional rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon 48 hours' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

20.7 Further Restrictions. Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. For purposes of this Article 20, if Tenant is a partnership, any withdrawal(s) or change(s) of partners cumulatively owning a 50% or more interest in the partnership, or if Tenant is a corporation, any transfer(s) cumulating 50% or more of its stock, shall constitute a voluntary Transfer and shall be subject to the provisions hereof. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

21.1 Tenant's Operating Covenants. Tenant agrees that from and after its initial opening for business it shall, subject to the provisions of Section 23.5 hereof, operate and conduct its business in the Premises during all Shopping Center Business Hours (as hereinafter defined) and in accordance with the provisions of this Lease. Tenant shall at all times keep and maintain in the Premises an adequate stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

21.2 Hours and Days of Operation. Tenant recognizes that it is in the interests of both Tenant and Landlord to regulate the minimum hours of business for all tenants of the Shopping Center and Tenant agrees that commencing with its initial opening for business in the Premises and for the remainder of the Term it shall be continuously open for business during all hours on all days that the Shopping Center is open for business to the public, as determined by Landlord in its sole discretion (the "Shopping Center Business Hours"). Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during Shopping Center Business Hours. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays or national holidays.

21.3 Radius Provision. If, during the first 5 years after Tenant initially opens for business in the Premises, Tenant directly or indirectly operates or owns within Tenant's Radius any type of business (other than a business already operated or owned by Tenant on the date of this Lease) similar to its business in the Premises (a "Similar Business"), Landlord may, at its option and for so long as Tenant is operating such Similar Business(es), include the net sales (as "Net Sales" is defined in Section 10.1) of each such Similar Business with the Net Sales made from the Premises for the purpose of computing the percentage rent due from Tenant under this Lease. Tenant shall provide Landlord with a statement of Tenant's Net Sales in accordance with the provisions of Sections 10.1 and 10.2 hereof for each Similar Business operated by Tenant within Tenant's Radius. If after expiration of this 5 year period Tenant continues to operate an existing Similar Business or opens another Similar Business within Tenant's Radius, then the Minimum Annual Rent payable under Article 9 hereof shall be adjusted promptly following expiration of such 5 year period in the case of an existing Similar Business(es), and from time to time upon the opening of another Similar Business, in the following manner: From the statements of Net Sales submitted by Tenant under Article 10 and this Section 21.3, Landlord shall compute a sum which represents the highest annual percentage rental paid or payable by Tenant under Sections 9.4 and 21.3 hereof during any consecutive 12 month period of the immediately preceding 60 month period, and this sum, if any, shall be added to the amount from time to time specified in Sections 3.h., 9.1, 9.2 and this Section 21.3 as the then Minimum Annual Rent. This resulting sum shall be the new Minimum Annual Rent payable beginning with the expiration of the first 5 years of the Term or the date of opening for business of such other Similar Business(es) within Tenant's Radius, whichever is applicable, and shall be subject to further adjustment thereafter in accordance with Section 9.2 hereof. Whenever a Similar Business opens for business within Tenant's Radius, Tenant shall give Landlord written notice of the location and opening date of such Similar Business. Landlord shall give Tenant written notice of the new Minimum Annual Rent payable by Tenant hereunder whenever adjusted as herein provided.

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 Tenant's Obligations. Tenant shall, at its expense and at all times from and after substantial completion of the Premises, repair, replace and maintain in good and tenantable condition, the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation, the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor coverings, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises, and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Landlord shall, at Tenant's expense, contract with a qualified service company for the monthly maintenance of the HVAC system serving the Premises. Landlord may bill Tenant for the cost of such HVAC maintenance contract as part of Common Area Costs under Article 25 hereof.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises, damage due to insured casualty losses covered by Article 23 or for any items of repair which are Landlord's obligation under Section 22.2.

22.2 Landlord's Obligations. Subject to Tenant's obligations under Section 22.1 and Landlord's further obligations, if any, under Section 25.2, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good and tenantable condition the roof, exterior walls, structural parts of the Premises and Building (including the structural floor) and HVAC system serving the Premises. Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, (1) Tenant shall be responsible for the cost of repairs to the HVAC system serving the Premises (which Landlord may bill to Tenant as a part of Common Area Costs under Article 25 hereof), and (2) Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant, or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required to) make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf, Tenant shall pay to Landlord any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs, alterations, replacements or improvements to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete those repairs within a reasonable period of time following receipt of Tenant's notice.

22.3 Tenant's Failure to Maintain Premises. If Tenant fails to repair or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right (in addition to all other rights and remedies provided herein for breach of this Lease), upon giving Tenant reasonable written notice of its election to do so (and opportunity to cure), to make

such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event the cost of such work shall be paid to Landlord by Tenant promptly following receipt of a bill therefor.

22.4 Landlord's Right of Entry. Landlord or its authorized representatives may enter the Premises at all times during Shopping Center Business Hours to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or the Insurance Services Office or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 Insured Casualty. If the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then within 90 days after the date of such damage Landlord shall commence repair, reconstruction and restoration of the Premises and diligently complete such repairs, in which event this Lease shall continue in full force and effect. Notwithstanding the foregoing, if there is partial or total destruction of the Premises during the last 3 years of the Term, Landlord and Tenant shall each have the option to terminate this Lease by written notice to the other given within 30 days after such destruction. For purposes of this option "partial destruction" shall mean destruction to the extent of 33 1/3% or more of the full replacement cost of the Premises as of the date of destruction.

23.2 Uninsured Casualty. If the Premises are damaged to any extent by act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance (including flood or earthquake damage if not covered under insurance maintained by Landlord), Landlord may within 90 days following the date of such damage, either (a) commence repair, reconstruction or restoration of the Premises and diligently complete it, in which event this Lease shall continue in full force and effect, or (b) elect not to repair, reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of destruction. In either such event Landlord shall give Tenant written notice of its election hereunder within said 90 day period.

23.3 Reconstruction Responsibilities. Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit "C" and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant, at its expense, shall reconstruct all items set forth as Tenant's Work, and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment, and resume normal business operations in the Premises.

23.4 Release from Liability. Upon any termination of this Lease under any of the provisions of this Article 23 each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14.1 covering the items set forth as "Tenant's Work" in Exhibit "C" and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.5 Abatement of Rent. In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for in Section 23.3. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management, and the obligation of Tenant to pay percentage rental and additional rent hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereto, or the reconstruction or replacement thereof.

23.6 Waiver of Statutory Rights of Termination. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises, Building or Shopping Center which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

24. EMINENT DOMAIN.

24.1 Takings Resulting in Termination. If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If 25% or more of the Floor Area of the Premises is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election within 30 days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than 25% of the Floor Area of the Shopping Center or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within 30 days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 Takings Not Resulting in Termination. If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken, and (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as existed

prior to such taking, and (b) the Minimum Annual Rental provided for in Section 3.1, and Article 3 shall be reduced on an equitable basis, taking into account the value of the portion of the Premises taken as compared to the portion remaining. Tenant hereby waives any statutory right of compensation which may arise by reason of partial taking of the Premises under the power of eminent domain.

24.3 Award. If this Lease is terminated under Section 24.1, or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all real property interests in the Premises. The Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 Transfer Under Threat of Taking. For the purposes of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

25. COMMON AREAS.

25.1 Use of Common Areas. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord agrees that the Common Areas shall be initially constructed on the areas generally shown on Exhibit "A", and, subject to the preceding sentence, shall be maintained and operated at all times following completion thereof for the benefit and/or use of the customers and patrons of Tenant and of other tenants, owners and occupants of the Shopping Center. The original construction and installation of the Common Areas shall be at Landlord's expense.

25.2 Landlord's Maintenance Responsibilities; Common Area Costs. Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to Common Area and Shopping Center facilities. Notwithstanding the foregoing, all expenses incurred by Landlord in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include without limitation, all sums expended in connection with the Common Areas and Shopping Center for: general maintenance and repairs; resurfacing; painting; restriping; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; lighting, HVAC and other utility expenses; maintenance, repair, cleaning and replacement of public toilets, music program equipment and loudspeakers, sidewalks, stairways, curbs, Shopping Center signs, sprinkler systems, planting and landscaping, floors, walls, ceilings, roofs, skylights, windows, directional signs, markers and bumpers, fire protection systems and equipment (including fire sprinklers), security systems, lighting systems and fixtures (including replacement of tubes and bulbs), storm drainage systems, plumbing, electrical, HVAC and other utility systems which do not exclusively serve the interior of tenants' premises, and all mechanical equipment (including automatic door openers, escalators and elevators); personnel to implement the foregoing services, including, if Landlord deems necessary, the cost of security guards; all on-site costs and personnel expenses of Landlord incurred to manage the Shopping Center (which may be contracted for with third parties); all real (as generally defined in Section 9.3b of this Lease) and personal (as generally defined in Section 19.3 of this Lease) property taxes and assessments on the improvements and land comprising the Common Areas and Shopping Center or any personalty in use on the Common Areas or Shopping Center; any sums paid to third parties for the purpose of seeking reduction of property taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas or Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and premiums for adequate comprehensive general liability and property damage insurance covering Landlord's ownership and operation of the Common Areas and Shopping Center, fire and extended coverage insurance on the Common Areas and the Shopping Center (which may include earthquake and flood damage endorsements) and vandalism and plate glass insurance covering the Common Areas and Shopping Center. Common Area Costs shall also include a charge for appropriate reserves for the costs of repainting, re-roofing and resurfacing Common Areas. In addition, Common Area Costs shall include a sum to be payable to Landlord for supervision of the Common Areas and for accounting, bookkeeping and collection of Common Area Costs, in an amount equal to 10% of the total of all of the foregoing Common Area Costs incurred in each calendar year. Landlord may have any or all services and management performed in connection with the Common Areas and Shopping Center provided by an independent contractor(s).

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit "A", then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 Method of Payment. Portions of the Shopping Center may be owned or leased by the occupants of those buildings designated by Landlord as a "Major Store" on Exhibit "A" (hereinafter referred to as the "Major Store Occupants"). The contributions of the Major Store Occupants towards the Common Area Costs shall be credited toward payment of the entirety of the Common Area Costs and the balance of the Common Area Costs shall be prorated among the other tenants of the Shopping Center in the following manner:

(i) From and after the date Rent has commenced, and thereafter during the Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

(ii) Within 60 days following the end of each calendar year (or as soon thereafter as possible), Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under subparagraph (i) above. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under subparagraph (i) above, Tenant shall pay Landlord the deficiency within 10 days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant may offset the excess against payments thereafter coming due under subparagraph (i) above or receive a refund following the expiration of the Term. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs as of the commencement of Rent and expiration of the Term. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term.

Tenant's failure to pay any sums due hereunder shall constitute a default under this Lease equivalent to a failure to pay Minimum Annual Rent when due.

25.4 Control of Common Areas. Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

25.5 Rules and Regulations. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit "B".

25.6 Employee Parking. Landlord shall at all times have the right to designate a particular parking area to be used by employees of Tenant and other occupants of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord from time to time with an accurate current list of its and all its employees' automobile license plate numbers within 15 days after taking possession of the Premises and thereafter within 5 days after any change in the accuracy of the list. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant \$25.00 per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within 10 days after demand by Landlord.

26. DEFAULTS BY TENANT.

26.1 Events of Default. Each of the following shall constitute a material default and breach under this Lease:

- (a) If Tenant is at any time in default of its obligation to pay any Rent or other charges, and such default continues for more than 10 days after written notice of such default;
- (b) If Tenant is in default in the prompt and full performance of any other of its obligations under this Lease and such default continues more than 30 days after written notice specifying the particulars of such default;
- (c) If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;
- (d) (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder; or
- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

26.2 Remedies Upon Breach of Lease. On the occurrence of any breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

- (a) Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or
- (b) Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Shopping Center is located.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as

Notwithstanding any other term or provision hereof to the contrary, this Lease shall terminate on the occurrence of any act which affirms Landlord's intention to terminate this Lease as provided in this Section 26.2, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees, incurred by Landlord in connection with the filing, commencement, pursuing or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Minimum Annual Rent and other Rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 Landlord's Damages. If Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease, Landlord may recover from Tenant as damages, all of the following:

- (i) The worth at the time of award of any unpaid Rent and other charges which has been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves Landlord could have reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid Rent and other charges which Tenant would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, (c) expenses of reletting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus
- (v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest on unpaid amounts at the rate of 10% per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank located nearest to the Shopping Center in effect at the time of award, plus 1%.

For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36 month period, except that if it becomes necessary to compute such rental before such 36 months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 Fixtures and Personal Property. In the event of Tenant's default, all of Tenant's merchandise, Fixtures and other Personal Property shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 No Waiver. The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

27. DEFAULTS BY LANDLORD.

If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period), then such failure shall constitute a default hereunder and Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's default; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, or of partners or principals of such partners comprising Landlord, if any, or of Landlord's officers, shareholders or directors, if any) wherever situated, shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Tenant hereby waives any right to satisfy a judgment against Landlord except from the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center.

the default as provided below, then (subject to the provisions of Section 22.2. hereof) Tenant shall have the right to cure that default at Landlord's expense. In such event, Landlord shall pay the reasonable cost of such cure promptly following receipt of a bill from Tenant itemizing the cost of such cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any cost of such cure against any payments of Rent or any other charges due and payable to Landlord under this Lease, except as otherwise specifically provided in this Lease.

Tenant agrees to send by certified or registered mail to any mortgagee or deed of trust beneficiary of the Shopping Center whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, Tenant shall provide any such mortgagee or beneficiary with notice of such failure and such mortgagee or beneficiary shall have an additional 30 days following receipt of such notice to cure such default; provided that if such default cannot reasonably be cured within that additional 30 day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

28. ATTORNEYS' FEES.

If at any time after the date hereof either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the losing party in such action or proceeding shall reimburse the winning party for its reasonable expenses of attorneys' fees and all costs and disbursements incurred, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the winning party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the winning party.

29. SUBORDINATION - ATTORNMEN.

29.1 Subordination. Within 10 days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien or security interest of the first mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease), the interest of any lease in which Landlord is the lessee, or any REA that may burden the Premises, Building, Shopping Center, Property or any future improvements made to the Property.

29.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than 10 days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit "D" certifying (i) that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (ii) the dates to which the Rent and other charges are paid in advance, if any; (iii) the Commencement Date and expiration date of the Lease Term, (iv) whether Tenant has assigned or transferred this Lease or any interest of Tenant therein; and (v) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rent, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Building and the Premises are a part. Tenant's failure to deliver such statement within the time required shall be conclusive and binding upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent, and (c) no more than one month's Rent has been paid in advance.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any REA and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

31. MERCHANTS' ASSOCIATION.

31.1 Merchants' Association. If either Landlord or a majority of tenants in the Shopping Center determine at any time that it is in the best interests of the Shopping Center, Tenant will become a member of, participate fully in, and remain in good standing in a non-profit Merchants' Association (the "Association") formed and organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the by-laws, rules and regulations of such Association. Landlord and each member tenant shall have one vote in the operation of the Association. The articles of incorporation and by-laws of the Association shall be approved by a majority vote of the Association members and shall be subject to amendment as provided in the by-laws. The objectives of the Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and centerwide advertising. Tenant agrees to pay annual dues to the Association in an amount and at the time determined by a vote of the members of the Association from time to time. Default in payment of such dues shall be deemed a default in payment of Rent hereunder.

31.2 Grand Opening Promotional Fund. Tenant shall separately pay when billed the sum of \$.25 per square foot of Floor Area in its Premises to provide Landlord with funds to promote the "grand opening" of the Shopping Center, and/or Tenant's business.

32. CAPTIONS; JOINT AND SEVERAL LIABILITY.

32.1 Captions. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 Joint and Several Liability. If two or more persons or entities execute this Lease as Landlord or Tenant then such persons or entities shall be jointly and severally liable for compliance with and performance of the terms, covenants and provisions of this Lease.

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Section 3.g. hereof. Either party may change such address by written notice to the other as herein provided.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing and shall not be unreasonably withheld, unless otherwise expressly permitted in this Lease. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent.

If Landlord or Tenant unreasonably fails to give any such consent, the other party shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT.

36.1 Payment of Security Deposit. Tenant has deposited with Landlord the sum specified in Section 2.k. hereof as the "Security Deposit", receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

36.2 Application of Security Deposit. If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much as is necessary to compensate Landlord for loss of Minimum Annual Rent or additional rent, or other damages sustained by Landlord due to such default by Tenant. Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the Security Deposit (or the balance thereof remaining) shall be returned in full to Tenant not later than 14 days following the end of the Term and delivery of possession of the Premises to Landlord.

36.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

36.4 Transfer of Landlord's Interest. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises and Landlord shall thereupon be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

37. MISCELLANEOUS.

37.1 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

37.2 Severability. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 Corporate Authority; Partnership Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership, certificate of limited partnership or other evidence of partnership satisfactory to Landlord.

37.4 Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease.

There are no other representations, covenants or warranties between the parties and any reliance on any representation is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drawn by Landlord, the parties agree that this clause alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

37.5 Governing Law. The laws of the state where the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

37.6 Waiver or Consent Limitations. A waiver of any breach or default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant's contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance hereunder.

37.8 Waiver of Redemption Rights. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

37.10 Right to Enter. Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 Definition of Landlord. As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Shopping Center. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

38.1 **Broker's Commission.** Upon completion and delivery of this Lease by Landlord and Tenant, Landlord shall pay to Landlord's Broker the commission set forth in Section 3.b hereof, if any, or the commission provided for in the written agreement (the "Agreement") between Landlord and Landlord's Broker covering brokerage services rendered in this transaction. Landlord shall also pay Landlord's Broker a further commission as provided in the Agreement if Tenant exercises any option to extend the Term of this Lease or to renew the Lease or to expand the Premises. If a Tenant's Broker is named at Section 3.b, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if Landlord's Broker and Tenant's Broker have so agreed between them. Landlord shall have no obligation to pay a commission or fee to anyone other than Landlord's Broker in connection with this Lease.

38.2 **Protection of Brokers.** If Landlord sells its interest in the Premises or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Premises or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article 38 or the Agreement. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this Article 38. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Section is included in this Lease for the benefit of Landlord's Broker.

38.3 **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 3.b of this Lease are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease.

39. COMPLIANCE.

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

LANDLORD AND TENANT have signed this Lease on the dates set forth below.

Date: _____
Landlord: Arena Group 2000
a Limited Partnership
By: _____
Print Name: Al Lee Hunt
Title: arena group
By: _____
Print Name: _____
Title: _____

Date: _____
Tenant: Victor Heredia
an Individual
By: Heredia
Print Name: Victor Heredia
Title: _____
By: _____
Print Name: _____
Title: _____

SEE YOUR ATTORNEY — THIS LEASE IS TO BE GIVEN TO YOUR ATTORNEY FOR REVIEW AND APPROVAL BEFORE YOU SIGN IT. BECAUSE EACH LEASE TRANSACTION IS UNIQUE, AND THE BUSINESS AND LEGAL CONCERNS OF EACH PART ARE UNIQUE, CB COMMERCIAL CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR RECOMMENDATION CONCERNING THE LEGAL EFFECT, LEGAL SUFFICIENCY, OR TAX CONSEQUENCES OF THIS LEASE. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND FINANCIAL ADVISORS. IN ANY REAL ESTATE TRANSACTION IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

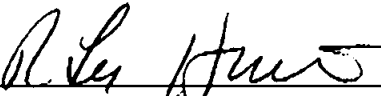
**AMENDMENT #1 TO LEASE DATED DECEMBER 29, 2000 BETWEEN ARENA
GROUP 2000 (LESSOR) AND VICTOR HEREDIA (LESSEE)**

1. Lease for Suite J is hereby extended for the term June 11, 2001 to March 31, 2002. After March 31, 2002, occupancy to be on a month-to-month basis with 30 days written notice required by either party to cancel the contract. Notice can be given on any day of the month.
2. Rent to be \$500/month effective June 11, 2001.

All other terms and conditions of the lease remain in full force and effect. Lessee agrees to keep the terms of this extension confidential.

LESSOR:

LESSEE:



Arena Group 2000



Victor Heredia

May 28, 2001
Date

5-15-01
Date

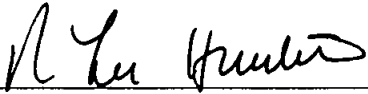
**ADDENDUM TO LEASE DATED DECEMBER 29, 2000 BETWEEN ARENA GROUP
2000 (LESSOR) AND VICTOR HEREDIA (LESSEE)**

1. Lessee to lease 3350 Sports Arena Blvd., Suite J on a month-to-month basis with 30 days written notice required by either party to cancel the contract. Notice can be given on any day of the month.
2. The suite is being leased in an "As Is" condition.
3. First month's rent of \$400 and Security Deposit of \$400 is due upon signing of this agreement.
4. Lessee is responsible for contracting directly with SDG&E for electricity to the suite.
5. Lessee acknowledges that they have been informed of the planned redevelopment of the shopping center.
6. Lessee acknowledges that they have been informed that the shopping center is subject to a Ground Lease with the City of San Diego.

All other terms and conditions of the lease remain in full force and effect.

LESSOR:

LESSEE:



Arena Group 2000



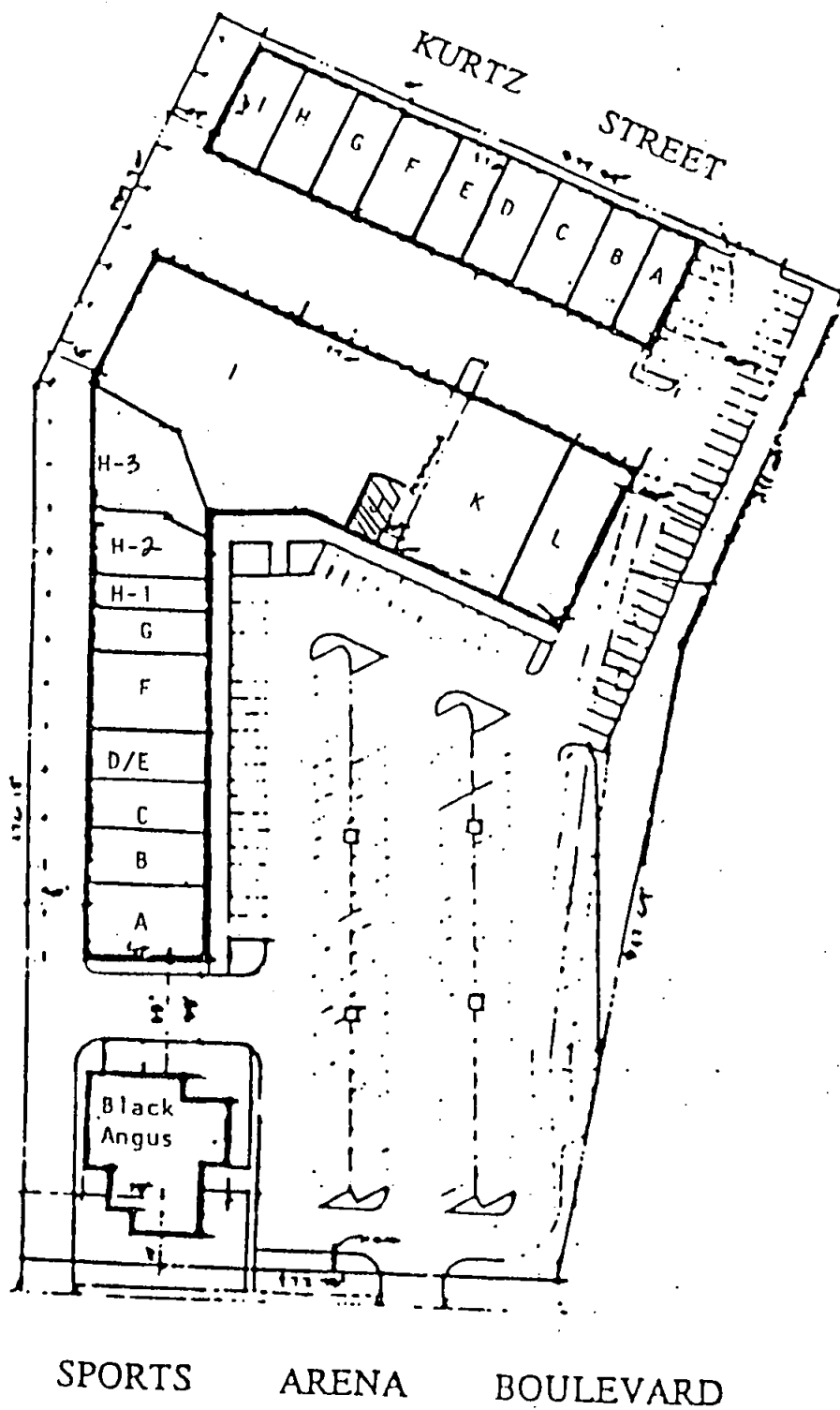
Victor Heredia

Jan 3 2001
Date

12-30-2000
Date

EXHIBIT "A"

SPORTS ARENA SQUARE
SITE PLAN



Tenant: *Victor Heredia*

Space: *33SD-J*

Lease Date: *12/21/00*

Applicable Lease Provision: EXHIBIT "B"

RULES AND REGULATIONS

FOR

SPORTS ARENA SQUARE

The following is a list of Rules and Regulations adopted by the Landlord. The purpose of these specific prohibitions is not exclusive, but solely as a means to ensure that all Tenants and its customers may enjoy a clean, well managed shopping center which is conducive to maximum convenience, comfort and safety at Sports Arena Square:

1. Tenant and its authorized representatives and invitees shall use any roadway, walkway, only for ingress to or egress from the stores in the shopping center. Use of the common areas shall be in an orderly manner in accordance with the directional or other signs or guides. Roadways

shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers or inventory in designated areas. Walkways shall be used for pedestrian travel only.

2. Tenant and its authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. For the purpose of this section, the size of the motor vehicles shall not exceed 6,000 lbs. and shall not contain more than 3 axles. During peak periods of business activity, Landlord can impose limitations in all or parts of the parking areas as to the length of time for parking use.

3. No person shall use any utility area, truck loading area, or other area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. No Tenant or employee of any Tenant shall use any area for motor vehicle parking except the area specifically designated for Tenant or employees Tenants

parking, if any. No Tenant shall designate an area for employee parking except the area designed in writing by Landlord, if any.

5. Without the consent of Landlord, no person shall use any of the common areas for:

(a) Vending, peddling, or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet, or other matter;

(b) Exhibiting any sign, placard, banner, notice, or other written material;

(c) Distributing any circular, booklet, handbill, placard, or other material;

(d) Soliciting membership in any organization, group, or association, or soliciting contributions for any purpose;

(e) Parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the common areas or be

detrimental to any of the business establishments in the shopping center;

(f) Using the common areas for any purpose when none of the business establishments in the shopping center is open for business;

(g) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles;

(h) Using a sound-making device of any kind or making or permitting any noise that is annoying, unpleasant, or distasteful;

6. Damage caused by any Tenant or its authorized representatives to any sign, light standard, or other improvement or property within the common area shall be repaired at Tenant's cost.

7. Tenant and its authorized representatives and invitees shall not make or permit any noise in the center that is annoying, unpleasant, or distasteful, that interfere in any way with other tenants or invitees.

8. Tenant shall not permit its representatives and invitees to do anything or permit any activity on the Premises that is illegal, immoral or unlawful such as:

(a) The possession and/or use of illicit drugs;

(b) The possession and/or use of firearms;

(c) The possession and/or consumption of alcohol by minors; and

(d) Lewd or illegal behavior by any patrons causing the presence of police or other law enforcement agencies.

9. Upon termination of its tenancy, Tenant shall deliver to Landlord or its agent the keys of the unit leased that were furnished to Tenant or that Tenant had made. In case Tenant loses any keys furnished to it by Landlord, Tenant shall pay Landlord for them.

10. Tenant shall notify Landlord's agent, Coldwell Banker of the time and manner of all moving of

furniture, freight or equipment of any kind done by or at the request of Tenant. Any and all damage done to the Premises and/or the common area caused by the moving of such furniture, freight or equipment shall be repaired at Tenant's costs.

11. Except as may be reasonably required for security purposes, Tenant shall observe strict care that all water faucets, water apparatus and electrical apparatus have been entirely shut off before Tenant or its authorized representatives and invitees leave the store premises so as to prevent waste or damage.

12. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of these rules and regulations by any other Tenant or other person. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition to its occupancy of the spaced leased.

Initials: Lo
 P. J. W.

SPORTS ARENA SQUARE

Tenant Sign Criteria

Prepared By



GRAPHIC SOLUTIONS

GRAPHIC DESIGN • SIGN PLANNING • FABRICATION
1750 Kettner Boulevard, San Diego, California 92101 2524 1619 239 1315

232 5047

EXHIBIT "E"

PURPOSE

The purpose of these sign criteria is to establish optimum tenant identification with overall harmony of design for Tierrasanta Town Center.

CONFORMANCE

Conformance to these criteria will be strictly enforced. Non-conforming or unapproved signs shall be brought into conformance or removed at the expense of the tenant within 30 days written notice.

PAYMENT

The tenant responsibility for costs of identification signs is defined under Acceptable Sign Type description. In addition, the tenant shall pay for installation and maintenance where required as well as all necessary permits and approvals.

APPROVALS

All drawings, designs, colors, typestyles and logos shall be submitted to the owner for specific approval prior to fabrication. Only approved copy/logos shall be incorporated into each sign.

NON-ACCEPTABLE SIGN TYPES

The following sign types are unacceptable as tenant identification signs:

- A. Hand-painted lettering, signs, employing luminous paint, painted cardboard signs, stickers or decals hung around or behind glass.
- B. Animated, flashing or audible signs.
- C. Political posters, displays, campaign signs, etc.
- D. Pole signs, or other free-standing ground signs, other than those already indicated.

BASIC SIGN CONSTRUCTION

- A. Non-corrosive construction materials including bolts, framing and clips shall be used on all exterior wall signs.
- B. All signs and their installation must comply with local building and electrical codes.

EXCEPTIONS

No exceptions to the above criteria shall be permitted without the express written authorization of the owner.

STANDARD TYPESTYLE

Helvetica Medium

abcdefghijklmnopqrstuvwxyz

ABCDEFGHIJKLMNOPQRSTUVWXYZ

1234567890 (&.,:;!?"'""-*\$¢%/£)

SINGLE TENANT ILLUMINATED WALL SIGN
(Illustration Next Page)

Sign Type A

Each tenant with exclusive entrance is entitled to (1) wall identification consisting of business name.

LOCATION: Tenant sign centered over shop entrance.

SIGN DESCRIPTION: Tenant sign cabinet shall be fabricated aluminum or galvanized metal, suitably primed, and painted with polyurethane enamel. Sign cabinet shall be built exactly to match existing sign cabinet in shape and thickness.

Tenant sign shall have fluorescent lights sufficient to achieve even illumination of sign face.

CABINETS SIZE: Height shall be 2'-4-7/8"; length shall be no more than 70% of store frontage, or existing cabinet may be used.

LETTERS:

Standard: #2283 Red; 1/8" acrylic.

Custom: 3/4" Black trimcap, subject to owners prior written approval. Sample may be required.

TYPESTYLES

Standard: Helvetica Medium

Custom: Tenant logo or custom typestyle may be permitted subject to owners prior written authorization.

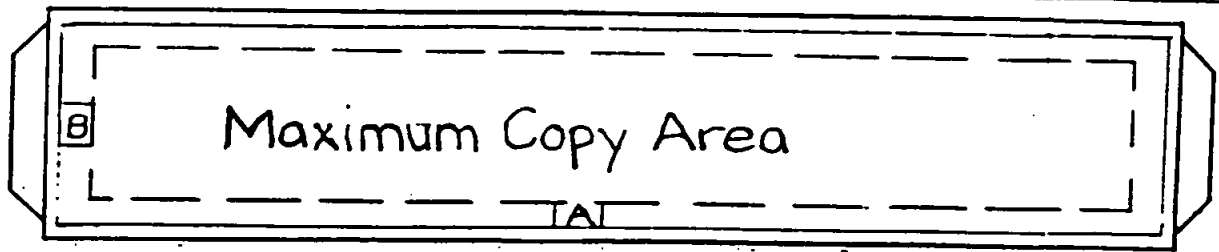
COLORS: Sign cabinet: As installed by Landlord.
Sign background: #2416 3/16" Ivory acrylic.
Letters: #2283 1/8" Red acrylic.

MAXIMUM COPY AREA: (See illustrations for margin requirements)

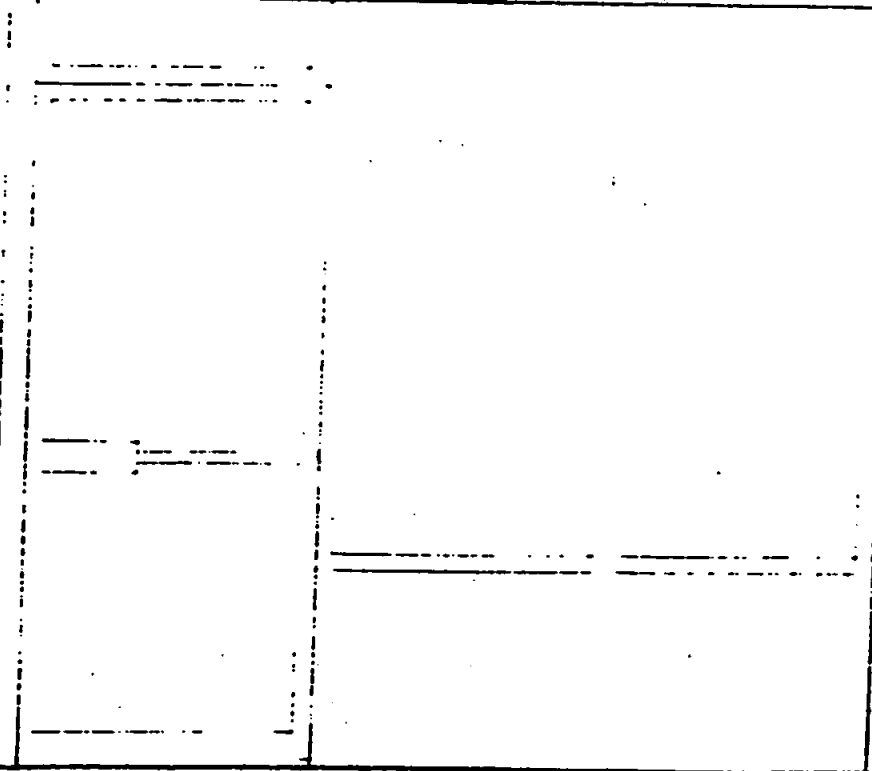
Tenant is responsible for cost of cabinet, letters, installation and permitting.

MAXIMUM 70% OF SIGN FRONTAGE

2' 4 7/8"



Minimum
Margin Requirements:
A: 3" VISIBLE MARGIN
B: 4" VISIBLE MARGIN



Sign Type A

1/2" = 1' 0"

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Lease Agreement dated February 22, 1996 and filed in the office of the City Clerk as Document No. 00-18261 ("Master Lease") entered into with Kathryn Crake Huntington, and subsequently assigned to

Arena Group 2000, a California limited partnership

("LESSEE") pursuant to a Consent to Assignment of Lease Agreement effective December 8, 1999, hereby consents to that certain shopping lease ("Sublease") between the above LESSEE ("SUBLESSOR") and

Lynn Luckey, an individual

("SUBLESSEE") dated May 17, 2004. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego. An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be two million dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall

submit to CITY a copy of the new insurance policy.

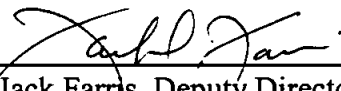
LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated February 20, 1996, between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

LESSOR:

THE CITY OF SAN DIEGO

Dated 10-14-04

By 
Jack Farris, Deputy Director
Real Estate Assets Department
for the City Manager

SUBLESSOR:

ARENA GROUP 2000

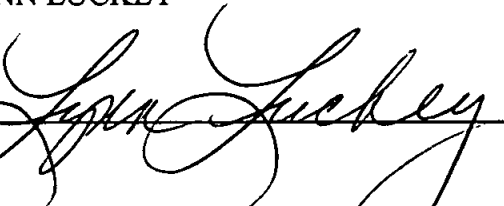
Dated 7/19/04

By 

SUBLESSEE:

LYNN LUCKEY

Dated 7/15/04

By 
APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Dated 11/12/04

By 
Deputy City Attorney

CRG/cdj
6/24/04

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SHOPPING CENTER LEASE

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This Lease between Arena Group 2000
a Limited Partnership ("Landlord"), and Lynn Luckey
an Individual ("Tenant"), is dated 5/17/04.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 9.5) to be paid by Tenant and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the plan attached hereto as Exhibit "A", and further described at Section 3.j. The Premises are located within the Shopping Center described in Section 3.i. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.d.).

2. LEASE REVIEW OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease and to have this Lease reviewed, approved, and modified as needed by its attorneys before the Lease is signed.

3. DEFINITIONS.

As used in this Lease, the following terms have the following meanings:

a. **Annual Percentage Rental Rate (Section 9.4):** 0 % of Tenant's Net Sales.

b. **Broker(s)**
Landlord's Broker: URE Management
Tenant's Broker: N/A

Commission Payable to Landlord's Broker (Section 38.1): \$ As per schedule.

Landlord's Broker hereby discloses to Landlord and Tenant that Landlord's Broker is acting in this transaction as the agent of (check applicable box below):

- ☒ Landlord exclusively; or
☐ both Landlord and Tenant.

Landlord and Tenant each consent to such representation by Landlord's Broker.

c. **Commencement Date:** The earliest of the following dates:

(i) The date Tenant initially opens for business in the Premises;

(ii) ~~30 days after substantial completion of Landlord's Work in the Premises (as defined in Exhibit "C" to the Lease). The date of such substantial completion is the date the Premises are substantially complete to the extent of Landlord's Work, except for such work that Landlord cannot complete until Tenant performs necessary portions of Tenant's Work (as defined in Exhibit "C"). Substantial completion of Landlord's Work shall be evidenced by notice to Tenant from Landlord's architect or designated representative that substantial completion has occurred, or~~

(iii) June 1, 2004

Tenant's Tentative Commencement Date (Article 7) is _____.

Tenant shall commence Tenant's Work promptly upon substantial completion of Landlord's Work and shall diligently complete Tenant's Work so that Tenant can promptly open for business in the Premises.

d. **Common Areas:** All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, roofs, walls, plazas, malls (including any enclosed malls where climate control is provided), thoroughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit "A". Landlord shall have the right to regulate or restrict the use of the Common Areas.

e. **Floor Area:** As to both the Premises and the Shopping Center, the respective measurements of floor area as are from time to time subject to lease by Tenant and all tenants of the Shopping Center, respectively, as determined and applied by Landlord on a consistent basis throughout the Shopping Center.

f. **Index (Section 9.2):** The United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside
Average, Subgroup "All Items" (1982 - 84 = 100).

- g. Landlord's Mailing Address: c/o LRC Management
3525 Del Mar Heights Road, #299 San Diego, CA 92130
- Tenant's Mailing Address: 3350 Sports Arena Blvd., Suite 6
San Diego, CA 92110
- h. Minimum Annual Rent (initial) (Section 9.1): \$ 15,840. - per year, payable in twelve (12) equal monthly installments each year.
- i. Outside Date for Delivery of Possession (Article 7): None
- j. Premises: That portion of the Shopping Center containing approximately 1,560 square feet of Floor Area, shown by diagonal lines on Exhibit "A", located on the grade level of the Shopping Center and designated space 6. The Premises has dimensions of approximately 24 feet in frontage and approximately 65 feet in depth.
- k. Security Deposit (Article 36): \$ 1,000. -
- l. Shopping Center: The building of which the Premises is a part (the "Building") and any other buildings and improvements on the real property (the "Property") located at 3350 Sports Arena Blvd. and further described on Exhibit "A". The Shopping Center is known as Sports Arena Square
- m. Tenant's First Adjustment Date (Section 9.2): ~~The first day of the calendar month following the Commencement Date~~ plus Twelve (12) months from the Commencement Date.
- n. Tenant's Proportionate Share (Initial): N/A %.
- Such share is a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of the buildings in the Shopping Center available for exclusive use and occupancy by tenants (excluding the Floor Area of those areas, if any, designated by Landlord on Exhibit "A" as "Major Stores"), as determined by Landlord from time to time on a consistent basis. As of the date of this Lease the Shopping Center (excluding any Major Stores) contains a total Floor Area of 77,163 square feet.
- o. Tenant's Radius (Section 21.3): _____ miles from the Premises.
- p. Tenant's Sales Breakpoint: That dollar sum equal to the then Minimum Annual Rent payable by Tenant divided by the Annual Percentage Rental Rate. As of the Commencement Date Tenant's Initial Sales Breakpoint is \$ _____.
- q. Tenant's Trade Name (Article 11): Luckey You, Inc.
- r. Tenant's Use Clause (Article 11): The Premises shall be used and occupied only for the purpose of Children's Clothing

and for no other use or purpose.
- s. Term: The Term of this Lease shall begin as of the date hereof and shall continue thereafter for a period of 1 years and 0 months (plus any partial month) following the Commencement Date. The Commencement Date and expiration date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit "F". The Notice shall be served on Tenant promptly following determination of the Commencement Date under Section 3.c.

4. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" - Plan Showing the Premises and Shopping Center (See Sections 3.j, 3.l and Article 5)
- b. Exhibit "B" - Shopping Center Rules and Regulations (See Section 25.5)
- ~~c. Exhibit "C" - Landlord's Work and Tenant's Work~~
- ~~d. Exhibit "D" - Sample Form of Tenant Estoppel Certificate (See Section 29.3)~~
- e. Exhibit "E" - Shopping Center Sign Criteria
- ~~f. Exhibit "F" - Landlord's Notice of Lease Term Dates (See Section 3.c)~~
- ~~g. Exhibit "G" - Guaranty of Lease~~
- i. Addenda:
See attached Addendum

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit "A" shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit "A" and may eliminate or add any improvements to any portion of the Shopping Center, but Landlord agrees (i) not to materially change the size or location of the Premises without Tenant's consent, and (ii) that any such changes will not materially adversely affect ingress to and egress from the Premises, visibility of the Premises or parking availability in the Shopping Center.

6. OTHER TENANCIES.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord and Landlord's Broker do not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term.

7. DELIVERY OF POSSESSION.

Landlord agrees to deliver to Tenant and Tenant agrees to accept from Landlord possession of the Premises promptly upon substantial completion of Landlord's Work. If for any reason Landlord does not deliver possession of the Premises to Tenant with Landlord's Work substantially complete at least 30 days before Tenant's Tentative Commencement Date, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but the Commencement Date shall be delayed by the number of days delivery is delayed and Rent shall be abated until 30 days following the date of substantial completion of Landlord's Work in the Premises. Notwithstanding anything to the contrary contained herein, if Landlord does not deliver possession of the Premises to Tenant on or before the Outside Date for Delivery of Possession, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall have no further obligations hereunder.

8. TENANT'S WORK.

Tenant shall commence construction of Tenant's Work as defined in Exhibit "C" no later than the date of substantial completion of Landlord's Work in the Premises and shall diligently complete Tenant's Work. Landlord shall give Tenant not less than 10 days' advance written notice of such anticipated date of substantial completion of Landlord's Work. Tenant shall, at any time requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder. Tenant shall open the Premises for business within 30 days following the date of substantial completion of Landlord's Work in the Premises.

9. RENT.

9.1 *Payment of Minimum Annual Rent.* Tenant agrees to pay the Minimum Annual Rent during the Term for its use and occupancy of the Premises. Minimum Annual Rent shall be payable in advance on the first day of each calendar month of the Term without notice, setoff or deduction, in twelve (12) equal monthly installments during each year of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Minimum Annual Rent for the partial month shall be prorated on a daily basis, based on a 30 day month. Tenant shall pay Landlord the first installment of Minimum Annual Rent when Tenant executes this Lease.

9.2 *Adjusted Minimum Annual Rent.*

a. The Minimum Annual Rent set forth at Section 3.h. shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based only upon increases (if any) in the Index. The Index in publication 3 months before the Commencement Date shall be the "Base Index." The Index in publication 3 months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Minimum Annual Rent payable during the ensuing twelve-month period shall be determined by increasing the initial Minimum Annual Rent by a percentage equal to the percentage increase, if any, in the applicable Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for any preceding Adjustment Date (or the Base Index, in the case of the First Adjustment Date), the Minimum Annual Rent for the ensuing twelve-month period shall remain the amount of Minimum Annual Rent payable during the preceding twelve-month period. When the Minimum Annual Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Minimum Annual Rent and the corresponding adjusted Tenant's Sales Breakpoint and the manner in which each was computed. The Minimum Annual Rent as so adjusted from time to time shall be the "Minimum Annual Rent" for all purposes under this Lease.

b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" hereunder.

9.3 *Property Taxes.*

a. Beginning with the Commencement Date and for the balance of the Term, Tenant shall pay to Landlord as "additional rent" the amount of taxes and assessments levied and assessed for any year upon the Premises and the underlying Property (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360 day year.

If the Premises and the underlying Property are not separately assessed, but are assessed as part of the land and improvements on a larger parcel (hereinafter the "Larger Parcel"), Tenant's share of Premises Property Taxes shall be a fractional portion of the property taxes on the Larger Parcel, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of all the areas available for exclusive use and occupancy by tenants of the Larger Parcel. Tenant shall pay Premises Property Taxes to Landlord as part of Common Area Costs at the times and in the manner provided for the payment of Common Area Costs at Section 25.3 of this Lease. For purposes hereof, an equitable adjustment shall be made for buildings which are only partially completed on the date such property taxes become a lien.

If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate

proration for any partial year, and statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

b. The term "Premises Property Taxes" shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, Property or the Shopping Center; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Premises, Property or the Shopping Center or against Landlord's business of leasing space in the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises, Property or Shopping Center by or through any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises, Property or Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, Property or Shopping Center; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Premises Property Taxes" do not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

~~9.4 Percentage Rental. In addition to the Minimum Annual Rent and other sums required to be paid by Tenant under this Lease, Tenant shall pay as "percentage rental" a sum equal to the Annual Percentage Rental Rate times the amount of Net Sales of Tenant (as "Net Sales" is defined in Section 10.1 hereof) made from or upon the Premises during each calendar year, less the amount of Minimum Annual Rent paid by Tenant during such calendar year. Percentage rental shall be computed each calendar month and on or before the date the following month's installment of Minimum Annual Rent becomes due Tenant shall pay to Landlord the amount by which the sum computed as the Annual Percentage Rental Rate of Tenant's Net Sales during that period exceeds the Minimum Annual Rent payable by Tenant during that period. Within 90 days after the end of each calendar year the Net Sales of Tenant during that calendar year and the amounts payable to Landlord as Minimum Annual Rent and as percentage rental for that calendar year shall be determined. If Tenant has overpaid percentage rental, Tenant shall receive a prompt refund of the overpayment; if Tenant has underpaid percentage rental, Tenant shall immediately pay the deficiency to Landlord.~~

Percentage rental due for any partial month of the Term shall be prorated on a daily basis based on a 30-day month. The obligations hereunder shall survive the expiration of the Lease Term.

9.5 **Additional Rent.** Tenant shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12, 22, 25 and Exhibit "C", and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent." All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "Rent."

9.6 **Interest and Late Charges.** If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment.

Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, and processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to 10% of such installment. Such late charge is in addition to any interest due pursuant to the preceding paragraph of this Section 9.6. Landlord and Tenant agree that this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 **Payment of Rent.** All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at Landlord's management office in the Shopping Center, or at such other place as may from time to time be designated by Landlord in writing at least 10 days prior to the next ensuing payment date.

10. NET SALES.

~~10.1 Definition of "Net Sales." "Net Sales" of Tenant, as used in this Lease, means the gross selling price of all merchandise or services sold in or from the Premises by Tenant, its subtenants, licensees and/or concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, but excluding the following:~~

- (i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made on such merchandise;
- (ii) The selling price of goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant;
- (iii) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of accepting a trade-in;
- (iv) Delivery charges;
- (v) Cash refunds made to customers in the ordinary course of business. This exclusion shall not include any amount paid or payable for what are commonly known as trading stamps;
- (vi) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales, where such charges are not included in the merchandise sales price;
- (vii) Receipts from public telephones, stamp machines or vending machines installed solely for the use of Tenant's employees;
- (viii) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected from customers separately from the selling price of merchandise or services; and
- (ix) Sales of fixtures, equipment or property which are not stock in trade.

All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and ~~payment of the account may occur at another location and even though actual filling of the sale or service order and actual~~

delivery of the merchandise may be made from a place other than the Premises. A sale on installment or credit shall be treated as a sale for the full cash price at the time of sale.

10.2 Statement of Net Sales. Tenant shall furnish Landlord with an accurate statement of Tenant's Net Sales within 30 days after the close of each calendar month, and an annual statement of Net Sales (which shall include a monthly breakdown of Net Sales) within 60 days after the close of each calendar year. Such statements shall be signed and certified as accurate by Tenant. The annual statement of Net Sales shall be audited and certified as correct by Tenant's Certified Public Accountant. In addition, Tenant shall furnish Landlord with a copy of its state and local sales and use tax returns within 30 days after any such return is filed or required to be filed with the appropriate governmental agency.

Tenant shall keep and shall require any subtenants, licensees and/or concessionaires to keep, at the Premises or at such other place approved by Landlord in writing, full and accurate books of account, records and other pertinent data (including cash register receipts) of the gross sales, Net Sales, credits, refunds and other pertinent business transactions made from or upon or otherwise relating to the Premises. Such books, receipts and records shall be kept for not less than 2 years after the close of each calendar year to which they relate and shall be available for inspection and audit by Landlord and its representatives at all times during regular business hours. Landlord's receipt of any statement of Net Sales or Tenant's payment of percentage rental for any period shall not bind Landlord as to the correctness of the statement or amount of the payment. Within 2 years after the receipt of any such statement, Landlord or its designated Certified Public Accountant shall be entitled to audit Tenant's gross sales and Net Sales following 48 hours' advance written notice to Tenant. Such audit shall be conducted during normal business hours at either the Premises or Tenant's principal place of business. If such audit determines that there has been a deficiency in the payment of percentage rental, then such deficiency shall become immediately due and payable with interest at the maximum lawful interest rate from the date said payment should have been made. In addition, if an annual statement of Net Sales is found to have understated Net Sales by more than 2% and if Landlord is entitled to any additional percentage rental as a result of such understatement, then Tenant shall pay all of Landlord's reasonable costs and expenses incurred in connection with performing such audit and collecting the amounts due Landlord. If such audit discloses an additional liability for percentage rental of \$1,000 or more for the period covered by the audit, Landlord may, in addition to any other remedies it may have for Tenant's breach of this Lease, terminate this Lease by written notice to Tenant given within 60 days after Landlord's receipt of the audit report. Any information obtained from such statements, audits or inspections shall be treated by Landlord as confidential and shall not be disclosed except to carry out the purposes of this Lease, but Landlord may divulge the contents of any such statements in connection with any financing arrangements involving, or assignment of Landlord's interest in, the Premises, Shopping Center, or this Lease, or in connection with any administrative or judicial proceedings in which Landlord is involved and in which such information is in issue.

Any failure by Tenant to maintain and keep full and accurate books of account, records and other pertinent data as required hereunder shall be deemed a default and breach of this Lease under Article 26 hereof.

11. POSSESSION AND USE.

11.1 Permitted Uses and Prohibited Conduct. Possession of the Premises shall be delivered to Tenant free and clear of all tenants and occupants and the rights of either, and free of liens and encumbrances other than those specified in Article 15 hereof. Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit any person to use the Premises for conducting a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws, ordinances, regulations and requirements of the United States or the State, County and City where the Shopping Center is located, or any other lawful authority. Tenant shall, during the Term, keep the Premises in a clean and wholesome condition, free of any objectionable noises, odors or nuisances, and shall comply with all health and police regulations. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities and any enclosed mall of the Shopping Center).

11.2 Insurance Coverage Use Restrictions. Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increases in Landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical equipment in the Premises which overloads the electrical lines of the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.3 Deliveries. Tenant shall use its best efforts to complete all deliveries, loading, unloading and services to the Premises before 10:00 a.m. each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

12. UTILITIES SERVICES.

12.1 Utilities Installation. Landlord agrees that to the extent provided for in Exhibit "C" hereof, it will initially make available to Tenant (i) facilities for the removal of sewage and the delivery to and distribution within the Premises of water, electricity, telephone service and natural gas (which shall be used by Tenant for cooking and demonstration of gas operated sales items only) (these facilities are collectively referred to in this Article 12 as "utilities"), and (ii) a heating, ventilation and air conditioning

system (the "HVAC system"). Unless Landlord agrees otherwise, Tenant shall use only those utilities and any HVAC system provided for under Exhibit "C" to the Premises. If required under Exhibit "C", a separate meter shall measure the consumption of utilities and/or the HVAC system.

If not required to be furnished by Landlord under Exhibit "C", Tenant shall be responsible for obtaining any utilities and/or HVAC system required for Tenant's business operations in the Premises.

12.2 Utilities and HVAC System Charges. Tenant shall pay for all utilities used by Tenant on the Premises from and after substantial completion of Landlord's Work in the Premises. If Tenant's utilities and/or HVAC system are separately metered, Tenant shall pay directly to the appropriate utility company the cost of all such utilities used on the Premises. If any of Tenant's utilities and/or HVAC system are furnished by Landlord without separate metering, then during the Term Tenant shall pay as additional rent, monthly in advance, a utilities charge to reimburse Landlord for any such utilities furnished by Landlord to the Premises. This utilities charge shall, at Landlord's election, be established (a) by an estimate of usage made from time to time by Landlord's engineer or the appropriate utility company, and initially based on a typical store layout comparable to Tenant's proposed use of the Premises, or (b) a percentage of such total utility costs equal to a fraction, the numerator of which is the Floor Area of the Premises, and the denominator of which is the Floor Area of Shopping Center actually being furnished with utility service by Landlord at the time of billing. If Tenant's Premises is not separately metered, such utilities and/or HVAC charges may be billed with Tenant's share of Common Area Costs under Section 25.3. The utilities charge to Tenant hereunder for utilities furnished by Landlord shall be based on utility rates which do not exceed those charged by the local public utility company for services it would otherwise furnish directly to Tenant. If the Premises are not initially separately metered, Landlord shall have the right, at its expense, to install separate meters for the Premises at any time during the Term.

12.3 Failure to Pay. If Tenant fails to pay any amount due to Landlord hereunder within 10 days after receipt by Tenant of a bill therefor, Landlord may (in addition to all other rights and remedies provided herein for breach of this Lease and if permitted by law) cut off and discontinue, upon 5 days' advance notice to Tenant and opportunity to cure, any such utilities furnished to the Premises by Landlord until all such amounts are paid in full.

12.4 No Landlord Liability. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) operation of the HVAC system, if any. No such failure or interruption shall entitle Tenant to terminate this Lease or stop making any Rent or other payments due hereunder.

13. INDEMNITY BY TENANT.

Tenant shall indemnify and hold Landlord harmless from any and all costs, claims or liability of any kind arising out of: (a) Tenant's use and occupancy of the Premises, (b) the conduct of Tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the Premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorney's fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct.

14. INSURANCE – WAIVER OF SUBROGATION.

14.1 Tenant's Insurance Obligations. Tenant shall, from and after the earlier of (a) substantial completion of Landlord's Work in the Premises, or (b) commencement of any of Tenant's Work in the Premises, and for the remainder of the Lease Term maintain, at its expense, the following types of insurance coverage, in the amounts specified and in the forms hereinafter provided for:

(i) **LIABILITY INSURANCE.** Commercial general liability insurance (sometimes known as comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Such policy shall be an occurrence form and shall include Owner's and Contractor's Protective Liability with respect to construction of improvements by Tenant on the Premises. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be not less than \$1,000,000 per occurrence. The liability insurance obtained by Tenant under this Section 14.1(i) shall (1) be primary and non-contributing; (2) contain cross-liability endorsements; and (3) insure Landlord against Tenant's performance under Article 13(a), (b) and (e) if the matters giving rise to the indemnity under Article 13 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(ii) **PLATE GLASS.** Insurance covering the full replacement cost of all plate glass on the Premises. Tenant shall have the option to self-insure this risk.

(iii) **TENANT IMPROVEMENTS.** Insurance covering all of the items specified as "Tenant's Work" in Exhibit "C", Tenant's leasehold improvements, alterations, additions or improvements permitted under Article 16, and trade fixtures, merchandise and personal property from time to time in, on or upon the Premises. Such insurance shall cover not less than 100% of the full replacement cost of the foregoing from time to time during the Term, and shall provide protection against any peril included within the classification of fire, extended coverage, sprinkler leakage, vandalism, theft, malicious mischief and special extended perils (all risk). Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated under the provisions of Article 23 hereof.

(iv) GENERAL INSURANCE PROVISIONS.

(a) Any insurance required to be maintained by Tenant hereunder shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(b) A certificate of the insurer or the insurer's legal representative evidencing the existence and amount of each insurance policy required of Tenant hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter at least 30 days prior to the expiration of any such policy. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancellable except after 30 days' written notice to Landlord. If Tenant fails to deliver any such

evidence of insurance to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance coverage, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement therefor.

(c) All insurance shall be maintained with companies holding a "General Policy Rating" of A-XII or better, as set forth in the most current issue of "Best's Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 14.1 may not be available in the future. Tenant acknowledges that the insurance described in this Section 14.1 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under the Lease, Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall be responsible for obtaining any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

14.2 Landlord's Insurance Obligations. Landlord shall, in connection with its ownership and operation of the Shopping Center, at all times from and after commencement of Landlord's Work in the Premises, maintain in effect policies of insurance providing protection against the following liabilities and/or risks: (a) commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit for bodily injury and property damage, and (b) fire and extended coverage insurance (including coverage for Common Area sprinkler damage, vandalism and malicious mischief, and, if required by any lender holding a security interest in the Shopping Center or if deemed necessary by Landlord, flood and earthquake insurance) on the Building and Shopping Center in an amount not less than their full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the Term. The types and coverages of insurance maintained by Landlord hereunder shall be subject to such further requirements as may be imposed by Landlord's lender. Landlord shall also have the right to maintain such additional types and coverages of insurance (including business interruption insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

14.3 Waiver of Subrogation. Landlord and Tenant (for themselves and their insurers) each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, against any of the parties to the REA referred to in Article 15 hereof (the "Parties") and against other tenants of the Shopping Center (provided such Parties and other tenants have waived such rights against Landlord and Tenant), on account of any loss by or damage to the waiving party or its property or the property of others under its control (including as to Tenant the Premises and its contents, and as to Landlord the other portions of the Shopping Center), arising from any risk generally covered by fire and extended coverage insurance. The foregoing waivers of subrogation shall be required hereunder only if (a) then available in the State where the Shopping Center is located, and (b) such waiver does not invalidate the applicable policy.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to the liens or restrictions of (a) any matters or documents of record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, operation and reciprocal easement agreement (the "REA"); and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate the terms of any REA or any other Matters of Record, and (ii) this Lease is subordinate to the REA, if any, and any amendments or modifications thereto. If the REA, if any, is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to the REA upon recordation of the REA. Tenant agrees to execute and return to Landlord within 10 days after written demand therefor by Landlord, an agreement in recordable form satisfactory to Landlord subordinating this Lease to the REA. Any REA shall not prevent Tenant from using the Premises for the purposes set forth in Tenant's Use Clause.

16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 Permitted Improvements. Subject to the terms of this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done and providing Landlord with all plans for such proposed improvement work. Tenant may not make any improvement which reduces the value of the Premises or is of a structural nature. No single improvement costing more than \$500.00 may be made without first obtaining the written approval of Landlord. In addition, no improvement shall be made to any storefront, mechanical system, or exterior wall or to the roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of an existing mezzanine, unless and until the written consent and approval of Landlord is first obtained.

No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord.

Tenant shall reimburse Landlord for all costs incurred by Landlord (including architect's and/or engineer's fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 Construction Requirements. All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors or subcontractors being used. Upon completion of such improvements, Tenant shall file a Notice of Completion for record in the office of the County Recorder where the Shopping Center is located, as required or permitted

by law. Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center.

16.3 Insurance Requirements. If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14.1(iii). It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

17. MECHANICS' LIENS.

17.1 Tenant's Covenants. Tenant shall pay all costs for work done by or for Tenant in the Premises (other than Landlord's Work), and Tenant shall keep the Premises, Building and Shopping Center free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises under Article 16 or Exhibit "C"), Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord.

17.2 Tenant's Contest of Lien. If Tenant desires to contest any claim of lien arising from work done by or for Tenant in the Premises, Tenant shall first furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of any such lien for any amount is entered, Tenant shall immediately pay and satisfy such judgment.

17.3 Landlord's Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and Tenant has not given Landlord adequate security to protect the Premises, the property therein, and the Building, Shopping Center and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the maximum lawful rate from the date of Landlord's payment.

17.4 Notice of Lien. If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

18. ADVERTISING MEDIA.

Tenant shall not affix or maintain upon the glass panes or supports of the show windows (or within 24" of any window), doors or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item. Tenant shall not affix any sign to the roof of the Premises.

Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign(s) in accordance with the provisions of the sign criteria attached hereto as Exhibit "E".

19. FIXTURES AND PERSONAL PROPERTY.

19.1 Removal and Replacement. All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 Fixtures. All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical systems, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit "C" (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any Larger Parcel as defined in Section 9.3. Tenant shall pay Landlord the taxes attributable to Tenant's personal property within 15 days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. No taxes, assessments, fees or charges referred to and billed to Tenant under this paragraph shall be considered to be taxes under the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP.

20.1 One Year Prohibition Against Transfer. Landlord and Tenant acknowledge that the Shopping Center is an interdependent enterprise and that each party's realization of the benefits of this Lease depends upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. Landlord and Tenant further acknowledge that the character and quality of Tenant's operation, and of the Shopping Center, will be enhanced by Tenant's use of its best efforts, for a reasonable period of time, to establish a successful business and business image. Landlord and Tenant further agree that one year is a reasonable period of time to attempt to achieve this goal. Accordingly, Tenant agrees that for a period of one year from the date Tenant initially opens to the public for business in the Premises (the "Occupancy Period"), Tenant shall not, and shall not have the power to, transfer or assign this Lease, sublet the Premises, enter into license or concession agreements, or change ownership (such transactions are hereinafter individually and collectively referred to as a "Transfer"), without first procuring the written consent of Landlord, which may be given or withheld in Landlord's sole discretion. After the expiration of the Occupancy Period, Landlord's consent to any Transfer shall not be unreasonably withheld, subject to the terms, covenants and conditions contained below.

20.2 Restrictions on Transfer. If after expiration of the Occupancy Period Tenant desires to effect a Transfer to anyone (a "Transferee") other than a successor, subsidiary, affiliated or controlling corporation of Tenant (an "Affiliate"), Tenant shall give written notice ("Transfer Notice") to Landlord at least 60 days before the effective date of any such proposed Transfer. The Transfer Notice shall state (a) whether Tenant proposes to assign the Lease, sublet the Premises, enter into a license or concession agreement or change ownership, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) all other material terms of the proposed Transfer, and (e) in detail the type of business operation the proposed Transferee intends to conduct on the Premises. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. In addition, the Transfer Notice shall be accompanied by the proposed Transferee's income statements and balance sheets covering the preceding 36-month period, and each shall be certified as accurate by the Transferee. Landlord may, at any time within 30 days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer (which consent shall not be unreasonably withheld under the business judgment standards set forth in Section 20.3 below) by mailing written notice to Tenant of its decision ("Decision Notice"). If Landlord consents to the proposed Transfer Tenant may thereafter promptly effect a Transfer in accordance with the terms of Tenant's Transfer Notice.

If Landlord consents to the proposed Transfer and Tenant does not consummate the proposed Transfer within 30 days after receipt of Decision Notice, the provisions of the first paragraph of this Section 20.2 shall again apply.

20.3 Grounds for Withholding Consent. Landlord may withhold consent to a proposed Transfer if, in Landlord's reasonable business judgment, any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Premises, as compared to the merchandising operation conducted by Tenant prior to the date of Transfer Notice; (ii) the proposed Transferee lacks a good business reputation or sufficient relevant business experience; (iii) the financial worth of the proposed Transferee as of the date of Transfer Notice is less than the combined financial worth of Tenant and Tenant's guarantor (if any) as of either the date of this Lease or the date of Transfer Notice; (iv) the proposed Transferee's proposed use of the Premises conflicts with Tenant's Use Clause or is otherwise incompatible with the tenant mix of the Shopping Center; (v) the annual percentage rent Landlord reasonably anticipates receiving from the proposed Transferee is significantly less than the annual percentage rent Landlord could reasonably anticipate receiving from Tenant; or (vi) the proposed Transfer would breach any covenant of Landlord respecting radius restrictions, use or exclusivity rights in any other lease, or any financing or other agreement relating to the Shopping Center. Any attempted or purported Transfer without Landlord's written consent shall be void and of no force or effect.

20.4 No Release from Liability. No Transfer, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease, from its covenants and obligations hereunder during the Term. Tenant shall, promptly upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees incurred in conjunction with the processing and documentation of any requested Transfer.

20.5 Transferee's Obligations. Each Transfer to which Landlord has consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the Transferee. Each such Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One fully executed copy of such written instrument shall be delivered to Landlord. Failure to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 20 shall prevent any Transfer from becoming effective.

20.6 Division of Profit Between Landlord and Tenant. Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of Transfer Notice, depreciated on a straight-line basis over the Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided equally between Landlord and Tenant. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as additional rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon 48 hours' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

20.7 Further Restrictions. Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. For purposes of this Article 20, if Tenant is a partnership, any withdrawal(s) or change(s) of partners cumulatively owning a 50% or more interest in the partnership, or if Tenant is a corporation, any transfer(s) cumulating 50% or more of its stock, shall constitute a voluntary Transfer and shall be subject to the provisions hereof. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

21. TENANT'S CONDUCT OF BUSINESS.

21.1 *Tenant's Operating Covenant.* Tenant agrees that from and after its Initial Opening for business it shall, subject to the provisions of Section 23.5 hereof, operate and conduct its business in the Premises during all Shopping Center Business Hours (as hereinafter defined) and in accordance with the provisions of this Lease. Tenant shall at all times keep and maintain in the Premises an adequate stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

21.2 *Hours and Days of Operation.* Tenant recognizes that it is in the interests of both Tenant and Landlord to regulate the minimum hours of business for all tenants of the Shopping Center and Tenant agrees that commencing with its initial opening for business in the Premises and for the remainder of the Term it shall be continuously open for business during all hours on all days that the Shopping Center is open for business to the public, as determined by Landlord in its sole discretion (the "Shopping Center Business Hours"). Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during Shopping Center Business Hours. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays or national holidays.

21.3 *Radius Provision.* If, during the first 5 years after Tenant initially opens for business in the Premises, Tenant directly or indirectly operates or owns within Tenant's Radius any type of business (other than a business already operated or owned by Tenant on the date of this Lease) similar to its business in the Premises (a "Similar Business"), Landlord may, at its option and for so long as Tenant is operating such Similar Business(es), include the net sales (as "Net Sales" is defined in Section 10.1) of each such Similar Business with the Net Sales made from the Premises for the purpose of computing the percentage rent due from Tenant under this Lease. Tenant shall provide Landlord with a statement of Tenant's Net Sales in accordance with the provisions of Sections 10.1 and 10.2 hereof for each Similar Business operated by Tenant within Tenant's Radius. If after expiration of this 5 year period Tenant continues to operate an existing Similar Business or opens another Similar Business within Tenant's Radius, then the Minimum Annual Rent payable under Article 9 hereof shall be adjusted promptly following expiration of such 5 year period in the case of an existing Similar Business(es), and from time to time upon the opening of another Similar Business, in the following manner: From the statements of Net Sales submitted by Tenant under Article 10 and this Section 21.3, Landlord shall compute a sum which represents the highest annual percentage rental paid or payable by Tenant under Sections 9.4 and 21.3 hereof during any consecutive 12 month period of the immediately preceding 60 month period, and this sum, if any, shall be added to the amount from time to time specified in Sections 3.h., 9.1, 9.2 and this Section 21.3 as the then Minimum Annual Rent. This resulting sum shall be the new Minimum Annual Rent payable beginning with the expiration of the first 5 years of the Term or the date of opening for business of such other Similar Business(es) within Tenant's Radius, whichever is applicable, and shall be subject to further adjustment thereafter in accordance with Section 9.2 hereof. Whenever a Similar Business opens for business within Tenant's Radius, Tenant shall give Landlord written notice of the location and opening date of such Similar Business. Landlord shall give Tenant written notice of the new Minimum Annual Rent payable by Tenant hereunder whenever adjusted as herein provided.

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 *Tenant's Obligations.* Tenant shall, at its expense and at all times from and after substantial completion of the Premises, repair, replace and maintain in good and tenantable condition, the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation, the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor coverings, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises, and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Landlord shall, at Tenant's expense, contract with a qualified service company for the monthly maintenance of the HVAC system serving the Premises. Landlord may bill Tenant for the cost of such HVAC maintenance contract as part of Common Area Costs under Article 25 hereof.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises, damage due to insured casualty losses covered by Article 23 or for any items of repair which are Landlord's obligation under Section 22.2.

22.2 *Landlord's Obligations.* Subject to Tenant's obligations under Section 22.1 and Landlord's further obligations, if any, under Section 25.2, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good and tenantable condition the roof, exterior walls, structural parts of the Premises and Building (including the structural floor) and HVAC system serving the Premises. Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, (1) Tenant shall be responsible for the cost of repairs to the HVAC system serving the Premises (which Landlord may bill to Tenant as a part of Common Area Costs under Article 25 hereof), and (2) Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant, or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required to) make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf, Tenant shall pay to Landlord any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs, alterations, replacements or improvements to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete those repairs within a reasonable period of time following receipt of Tenant's notice.

22.3 *Tenant's Failure to Maintain Premises.* If Tenant fails to repair or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right (in addition to all other rights and remedies provided herein for breach of this Lease), upon giving Tenant reasonable written notice of its election to do so (and opportunity to cure), to make

such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event the cost of such work shall be paid to Landlord by Tenant promptly following receipt of a bill therefor.

22.4 Landlord's Right of Entry. Landlord or its authorized representatives may enter the Premises at all times during Shopping Center Business Hours to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or the Insurance Services Office or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 Insured Casualty. If the Premises are damaged by fire or other perils covered by Landlord's fire and extended coverage insurance, then within 90 days after the date of such damage Landlord shall commence repair, reconstruction and restoration of the Premises and diligently complete such repairs, in which event this Lease shall continue in full force and effect. Notwithstanding the foregoing, if there is partial or total destruction of the Premises during the last 3 years of the Term, Landlord and Tenant shall each have the option to terminate this Lease by written notice to the other given within 30 days after such destruction. For purposes of this option "partial destruction" shall mean destruction to the extent of 33⅓% or more of the full replacement cost of the Premises as of the date of destruction.

23.2 Uninsured Casualty. If the Premises are damaged to any extent by act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Landlord's fire and extended coverage insurance (including flood or earthquake damage if not covered under insurance maintained by Landlord), Landlord may within 90 days following the date of such damage, either (a) commence repair, reconstruction or restoration of the Premises and diligently complete it, in which event this Lease shall continue in full force and effect, or (b) elect not to repair, reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of destruction. In either such event Landlord shall give Tenant written notice of its election hereunder within said 90 day period.

23.3 Reconstruction Responsibilities. Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit "C" and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant, at its expense, shall reconstruct all items set forth as Tenant's Work, and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment, and resume normal business operations in the Premises.

23.4 Release from Liability. Upon any termination of this Lease under any of the provisions of this Article 23 each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14.1 covering the items set forth as "Tenant's Work" in Exhibit "C" and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.5 Abatement of Rent. In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for in Section 23.3. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management, and the obligation of Tenant to pay percentage rental and additional rent hereunder shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereto, or the reconstruction or replacement thereof.

23.6 Waiver of Statutory Rights of Termination. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises, Building or Shopping Center which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

24. EMINENT DOMAIN.

24.1 Takings Resulting in Termination. If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If 25% or more of the Floor Area of the Premises is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election within 30 days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than 25% of the Floor Area of the Shopping Center or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within 30 days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 Takings Not Resulting in Termination. If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken, and (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as existed

prior to such taking; and (b) the Minimum Annual Rental provided for in Section 3.b. and Article 9 shall be reduced on an equitable basis, taking into account the relative value of the portion of the Premises taken as compared to the portion remaining. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

24.3 Award. If this Lease is terminated under Section 24.1, or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all real property interests in the Premises. The Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 Transfer Under Threat of Taking. For the purposes of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

25. COMMON AREAS.

25.1 Use of Common Areas. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord agrees that the Common Areas shall be initially constructed on the areas generally shown on Exhibit "A", and, subject to the preceding sentence, shall be maintained and operated at all times following completion thereof for the benefit and/or use of the customers and patrons of Tenant and of other tenants, owners and occupants of the Shopping Center. The original construction and installation of the Common Areas shall be at Landlord's expense.

25.2 Landlord's Maintenance Responsibilities; Common Area Costs. Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to Common Area and Shopping Center facilities. Notwithstanding the foregoing, all expenses incurred by Landlord in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include without limitation, all sums expended in connection with the Common Areas and Shopping Center for: general maintenance and repairs; resurfacing; painting; restriping; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; lighting, HVAC and other utility expenses; maintenance, repair, cleaning and replacement of public toilets, music program equipment and loudspeakers, sidewalks, stairways, curbs, Shopping Center signs, sprinkler systems, planting and landscaping, floors, walls, ceilings, roofs, skylights, windows, directional signs, markers and bumpers, fire protection systems and equipment (including fire sprinklers), security systems, lighting systems and fixtures (including replacement of tubes and bulbs), storm drainage systems, plumbing, electrical, HVAC and other utility systems which do not exclusively serve the interior of tenants' premises, and all mechanical equipment (including automatic door openers, escalators and elevators); personnel to implement the foregoing services, including, if Landlord deems necessary, the cost of security guards; all on-site costs and personnel expenses of Landlord incurred to manage the Shopping Center (which may be contracted for with third parties); all real (as generally defined in Section 9.3b of this Lease) and personal (as generally defined in Section 19.3 of this Lease) property taxes and assessments on the improvements and land comprising the Common Areas and Shopping Center or any personally in use on the Common Areas or Shopping Center; any sums paid to third parties for the purpose of seeking reduction of property taxes; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas or Shopping Center; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and premiums for adequate comprehensive general liability and property damage insurance covering Landlord's ownership and operation of the Common Areas and Shopping Center, fire and extended coverage insurance on the Common Areas and the Shopping Center (which may include earthquake and flood damage endorsements) and vandalism and plate glass insurance covering the Common Areas and Shopping Center. Common Area Costs shall also include a charge for appropriate reserves for the costs of repainting, re-roofing and resurfacing Common Areas. In addition, Common Area Costs shall include a sum to be payable to Landlord for supervision of the Common Areas and for accounting, bookkeeping and collection of Common Area Costs, in an amount equal to 10% of the total of all of the foregoing Common Area Costs incurred in each calendar year. Landlord may have any or all services and management performed in connection with the Common Areas and Shopping Center provided by an independent contractor(s).

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit "A", then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 Method of Payment. Portions of the Shopping Center may be owned or leased by the occupants of those buildings designated by Landlord as a "Major Store" on Exhibit "A" (hereinafter referred to as the "Major Store Occupants"). The contributions of the Major Store Occupants towards the Common Area Costs shall be credited toward payment of the entirety of the Common Area Costs and the balance of the Common Area Costs shall be prorated among the other tenants of the Shopping Center in the following manner:

(i) From and after the date Rent has commenced, and thereafter during the Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

(ii) Within 60 days following the end of each calendar year (or as soon thereafter as possible), Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under subparagraph (i) above. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under subparagraph (i) above, Tenant shall pay Landlord the deficiency within 10 days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant may offset the excess against payments thereafter coming due under subparagraph (i) above or receive a refund following the expiration of the Term. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs as of the commencement of Rent and expiration of the Term. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term.

Tenant's failure to pay any sums due hereunder shall constitute a default under this Lease equivalent to a failure to pay minimum Annual Rent when due.

25.4 Control of Common Areas. Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

25.5 Rules and Regulations. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit "B".

25.6 Employee Parking. Landlord shall at all times have the right to designate a particular parking area to be used by employees of Tenant and other occupants of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord from time to time with an accurate current list of its and all its employees' automobile license plate numbers within 15 days after taking possession of the Premises and thereafter within 5 days after any change in the accuracy of the list. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant \$25.00 per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within 10 days after demand by Landlord.

26. DEFAULTS BY TENANT.

26.1 Events of Default. Each of the following shall constitute a material default and breach under this Lease:

- (a) If Tenant is at any time in default of its obligation to pay any Rent or other charges, and such default continues for more than 10 days after written notice of such default;
- (b) If Tenant is in default in the prompt and full performance of any other of its obligations under this Lease and such default continues more than 30 days after written notice specifying the particulars of such default;
- (c) If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;
- (d) (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder; or
- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

26.2 Remedies Upon Breach of Lease. On the occurrence of any breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

- (a) Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or
- (b) Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or
- (c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Shopping Center is located.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as

alforesaid, Landlord shall have in addition to its rights under Section 26.4 hereof, the right, but not the obligation, to remove from the Premises any personal property located therein and to place it in storage at a public warehouse at the expense and risk of Tenant.

Notwithstanding any other term or provision hereof to the contrary, this Lease shall terminate on the occurrence of any act which affirms Landlord's intention to terminate this Lease as provided in this Section 26.2, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees, incurred by Landlord in connection with the filing, commencement, pursuing or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Minimum Annual Rent and other Rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 Landlord's Damages. If Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease, Landlord may recover from Tenant as damages, all of the following:

- (i) The worth at the time of award of any unpaid Rent and other charges which has been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves Landlord could have reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid Rent and other charges which Tenant would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, (c) expenses of reletting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus
- (v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest on unpaid amounts at the rate of 10% per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank located nearest to the Shopping Center in effect at the time of award, plus 1%.

For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36 month period, except that if it becomes necessary to compute such rental before such 36 months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 Fixtures and Personal Property. In the event of Tenant's default, all of Tenant's merchandise, Fixtures and other Personal Property shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 No Waiver. The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

27. DEFAULTS BY LANDLORD.

If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within 30 days after receipt of written notice from Tenant specifying such failure (or if such failure cannot reasonably be cured within 30 days, if Landlord does not commence to cure the failure within that 30 day period), then such failure shall constitute a default hereunder and Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's default; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, or of partners or principals of such partners comprising Landlord, if any, or of Landlord's officers, shareholders or directors, if any) wherever situated, shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Tenant hereby waives any right to satisfy a judgment against Landlord except from the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, Building and/or Shopping Center.

If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided below, the [REDACTED] subject to the provisions of Section 22.2. hereof, Tenant shall have the right to cure that default at Landlord's expense. In such case Landlord shall pay the reasonable cost of such cure promptly following receipt of a bill from Tenant itemizing the cost of such cure. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any cost of such cure against any payments of Rent or any other charges due and payable to Landlord under this Lease, except as otherwise specifically provided in this Lease.

Tenant agrees to send by certified or registered mail to any mortgagee or deed of trust beneficiary of the Shopping Center whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, Tenant shall provide any such mortgagee or beneficiary with notice of such failure and such mortgagee or beneficiary shall have an additional 30 days following receipt of such notice to cure such default; provided that if such default cannot reasonably be cured within that additional 30 day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

28. ATTORNEYS' FEES.

If at any time after the date hereof either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the losing party in such action or proceeding shall reimburse the winning party for its reasonable expenses of attorneys' fees and all costs and disbursements incurred, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the winning party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the winning party.

29. SUBORDINATION - ATTORNMENT.

29.1 Subordination. Within 10 days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien or security interest of the first mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease), the interest of any lease in which Landlord is the lessee, or any REA that may burden the Premises, Building, Shopping Center, Property or any future improvements made to the Property.

29.2 Attornment. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than 10 days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit "D" certifying (i) that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (ii) the dates to which the Rent and other charges are paid in advance, if any; (iii) the Commencement Date and expiration date of the Lease Term, (iv) whether Tenant has assigned or transferred this Lease or any interest of Tenant therein; and (v) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rent, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Building and the Premises are a part. Tenant's failure to deliver such statement within the time required shall be conclusive and binding upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent, and (c) no more than one month's Rent has been paid in advance.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any REA and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

31. MERCHANTS' ASSOCIATION.

31.1 Merchants' Association. If either Landlord or a majority of tenants in the Shopping Center determine at any time that it is in the best interests of the Shopping Center, Tenant will become a member of, participate fully in, and remain in good standing in a non-profit Merchants' Association (the "Association") formed and organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the by-laws, rules and regulations of such Association. Landlord and each member tenant shall have one vote in the operation of the Association. The articles of incorporation and by-laws of the Association shall be approved by a majority vote of the Association members and shall be subject to amendment as provided in the by-laws. The objectives of the Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and centerwide advertising. Tenant agrees to pay annual dues to the Association in an amount and at the time determined by a vote of the members of the Association from time to time. Default in payment of such dues shall be deemed a default in payment of Rent hereunder.

31.2 Grand Opening Promotional Fund. Tenant shall separately pay when billed the sum of \$.25 per square foot of Floor Area in its Premises to provide Landlord with funds to promote the "grand opening" of the Shopping Center, and/or Tenant's business.

32. CAPTIONS; JOINT AND SEVERAL LIABILITY.

32.1 Captions. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 Joint and Several Liability. If two or more persons or entities execute this Lease as Landlord or Tenant then such persons or entities shall be jointly and severally liable for compliance with and performance of all the terms, covenants and provisions of this Lease.

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Section 3.g. hereof. Either party may change such address by written notice to the other as herein provided.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein; all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing and shall not be unreasonably withheld, unless otherwise expressly permitted in this Lease. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent.

If Landlord or Tenant unreasonably fails to give any such consent, the other party shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT.

36.1 Payment of Security Deposit. Tenant has deposited with Landlord the sum specified in Section 2.k. hereof as the "Security Deposit"; receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

36.2 Application of Security Deposit. If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much as is necessary to compensate Landlord for loss of Minimum Annual Rent or additional rent, or other damages sustained by Landlord due to such default by Tenant. Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the Security Deposit (or the balance thereof remaining) shall be returned in full to Tenant not later than 14 days following the end of the Term and delivery of possession of the Premises to Landlord.

36.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

36.4 Transfer of Landlord's Interest. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises and Landlord shall thereupon be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

37. MISCELLANEOUS.

37.1 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

37.2 Severability. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 Corporate Authority; Partnership Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership, certificate of limited partnership or other evidence of partnership satisfactory to Landlord.

37.4 Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease.

There are no other representations, covenants or warranties between the parties and any reliance on representations of a party is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drawn by Landlord, the parties agree that the circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

37.5 Governing Law. The laws of the state where the Shopping Center is located shall govern the validity, performance and enforcement of this Lease.

37.6 Waiver or Consent Limitations. A waiver of any breach or default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant's contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance hereunder.

37.8 Waiver of Redemption Rights. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

37.10 Right to Enter. Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 Definition of Landlord. As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 Tenant's Financial Condition. Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Shopping Center. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

38. BROKERS.

38.1 **Broker's Commission.** Upon execution and delivery of this Lease by Landlord and Tenant, Landlord shall pay to Landlord's Broker the commission set forth at Section 3.b hereof, if any, or the commission provided for in the written agreement (the "Agreement") between Landlord and Landlord's Broker covering brokerage services rendered in this transaction. Landlord shall also pay Landlord's Broker a further commission as provided in the Agreement if Tenant exercises any option to extend the Term of this Lease or to renew the Lease or to expand the Premises. If a Tenant's Broker is named at Section 3.b, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if Landlord's Broker and Tenant's Broker have so agreed between them. Landlord shall have no obligation to pay a commission or fee to anyone other than Landlord's Broker in connection with this Lease.

38.2 **Protection of Brokers.** If Landlord sells its interest in the Premises or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Premises or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article 38 or the Agreement. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this Article 38. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Section is included in this Lease for the benefit of Landlord's Broker.

38.3 **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 3.b of this Lease are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease.

39. COMPLIANCE.

The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

LANDLORD AND TENANT have signed this Lease on the dates set forth below.

Date: _____

Landlord: Arena Group 2000

a Limited Partnership

By: [Signature]

Print Name: Ernest W. Hahn III

Title: _____

By: _____

Print Name: _____

Title: _____

Date: 5/24/04

Tenant: Lynn Luckey

a an Individual

By: [Signature]

Print Name: Lynn Luckey

Title: _____

By: _____

Print Name: _____

Title: _____

SEE YOUR ATTORNEY — THIS LEASE IS TO BE GIVEN TO YOUR ATTORNEY FOR REVIEW AND APPROVAL BEFORE YOU SIGN IT. BECAUSE EACH LEASE TRANSACTION IS UNIQUE, AND THE BUSINESS AND LEGAL CONCERNS OF EACH PART ARE UNIQUE, CB COMMERCIAL CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR RECOMMENDATION CONCERNING THE LEGAL EFFECT, LEGAL SUFFICIENCY, OR TAX CONSEQUENCES OF THIS LEASE. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND FINANCIAL ADVISORS.

IN ANY REAL ESTATE TRANSACTION IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

ADDENDUM TO SHOPPING CENTER LEASE

This Addendum to Shopping Center Lease (the "Addendum"), dated for reference purposes only as of the 17th day of May, 2004, is entered into by and between Arena Group 2000 (hereinafter referred to as "Landlord"), and Ms. Lynn Luckey (hereinafter collectively referred to as "Tenant").

RECITALS:

- A. Landlord and Tenant have entered into that certain Shopping Center Lease (hereinafter referred to as the "Lease") and to which this Addendum is attached.
- B. Landlord and Tenant now desire to supplement and amend the Lease and to agree as to certain other matters as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties agree as follows:

- 1. Except as noted to the contrary herein, the terms used herein shall be defined as provided in the Lease, and the Lease is incorporated herein by reference.
- 2. The Recitals set forth above are hereby acknowledged to be true and correct by the undersigned and are incorporated herein by reference.
- 3. The term of the lease is for the period June 1, 2004 to May 31, 2005. After May 31, 2005, occupancy to be on a month-to-month basis with 30 days written notice required by either party to cancel the contract. Notice can be given on any day of the month.
- 4. The Suite is being leased in "As Is" condition.
- 5. Tenant is responsible for contracting directly with SDG&E for electricity to the suite.
- 6. Tenant acknowledges that Sports Arena Square Shopping Center is subject to a Ground Lease with the City of San Diego and agrees to be bound by all applicable terms and conditions of the Lease. Tenant shall not commit or permit to be committed on the premises any act or omission which shall violate any term or condition of the Ground Lease between Arena Group 2000 (successor in interest to Kathryn Crake Huntington) and the City of San Diego. In the event of a termination of the lease between Arena Group 2000 and the City of San Diego, then the lease between Arena group 2000 and Tenant shall terminate coincidentally therewith without any liability of the Arena group 2000 to Tenant. Tenant acknowledges receipt of a copy of the Ground Lease.

7. ARTICLE 13 INDEMNITY BY TENANT specified in the Lease is held for naught and shall be of no further force and effect and the following shall be substituted therefore:

As between Tenant and Landlord, Tenant shall be solely responsible for and Tenant shall indemnify, defend and hold Landlord, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and the respective directors, officers shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, attorneys fees (including fees and disbursements on in-house and outside counsel) of any kind whatsoever resulting from (a) Tenant's use and occupancy of the premises; (b) the conduct of tenant's business or any work, activity or other things allowed or permitted by Tenant to be done in or on the premises; (c) any breach or default in the performance of any of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; and/or (e) any other acts or omissions of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim or liability and shall indemnify Landlord from and against all costs, attorneys fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage to property or injury to persons in, on or about the Premises from any cause and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's willful misconduct or sole negligence.

Tenant shall indemnify, defend and hold Landlord, and its current and future, direct and indirect parent companies, subsidiaries, affiliates and the respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings losses, liabilities, penalties, fines, damages, costs or expenses including attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by Tenant of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with its occupancy and/or use of the premises and tenant's violation of any third party license to use intellectual property in connection with the premises, including, without limitation any deliverable.

If any claim or action is brought against Landlord, Tenant shall defend, and, unless in the opinion of counsel for Landlord a conflict of interest between Landlord and Tenant may exist with respect to such claim or action, Tenant shall assume the defense of such claim or action with counsel reasonably acceptable to Landlord. If Tenant does not assume the defense of Landlord, or if a conflict precludes Tenant from assuming the defense, then Tenant shall reimburse Landlord on a monthly basis for Landlord's defense through separate counsel of Landlord's choice. Even if Tenant assumes the defense of Landlord with acceptable counsel, Landlord, at is sole option and expense, may participate in the defense with counsel of Landlord's own choice without relieving Tenant of any obligation hereunder. Tenant's

obligation to indemnify Landlord shall not be limited in any way by any limitation on the amount of type of damages, compensation, penalty or benefits payable by or for Tenant under any statutory scheme, including without limitation, any Workers Compensation Acts, benefit acts of other employee benefit acts.

8. ARTICLE 21 TENANT'S CONDUCT OF BUSINESS shall be held for naught and shall be of no further force and effect and the following shall be substituted therefore:

Tenant shall comply with the rules and regulations attached hereto with such reasonable modifications as Landlord may from time to time make. Landlord shall not be responsible for the violation of those rules and regulations by other tenants or occupants of the building. Landlord warrants to use its best efforts to enforce the rules and regulations in a non-discriminatory fashion.

9. SECTION 37.5 GOVERNING LAW of the Lease is hereby held for naught and shall be of no further force and effect and the following shall be substituted therefore:

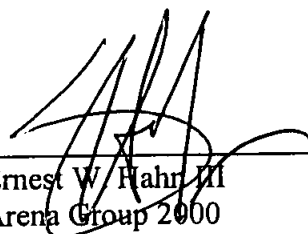
The laws of the state of California shall govern the validity, performance and enforcement of this lease. Tenant shall comply with all laws, ordinances, rules or regulations of any governmental authority regulating Tenant's use of the premises: provided, however, that Tenant may, at its sole cost and expense, contest the validity or application of any law, statute ordinance or governmental rule or regulation.

Tenant shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances and regulations of the City of San Diego, County of San Diego, State of California, and federal governments at Tenant's sole cost and expense. In addition, Tenant shall comply with any and all notices issued by the City Manager of San Diego or his authorized representative under the authority of any such law, statute, ordinance or regulation.

10. AMERICANS WITH DISABILITY ACT OF 1990 ("ADA") The Landlord shall be responsible for dealing with government agencies in complying with the Americans with Disabilities Act of 1990 ("ADA") and the rules and regulations implementing same with respect to all physical characteristics of all common areas and of all public areas of the leased premises. After initial occupancy Tenant shall, at Tenant's cost, comply with the Americans with Disabilities Act of 1990 ("ADA") and the rules and regulations implementing same with respect to operations within the leased premises. Landlord and Tenant shall comply with the respective obligations as aforesaid at such time as Landlord or Tenant, as the case may be, has received a non-appealable order from an authorized governmental agency requiring such compliance. Landlord shall indemnify and hold Tenant harmless with respect to claims made on account of Landlord's failure to comply with ADA and Tenant shall indemnify and hold Landlord harmless with respect to claims made on account of Tenant's failure to comply with ADA.

Lessee agrees to keep the terms and conditions of this lease confidential. All other terms and conditions of the lease shall remain in full force and effect.

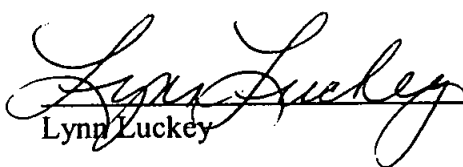
LANDLORD:



Ernest W. Hahn III
Arena Group 2000

6/08/07
Date

TENANT:

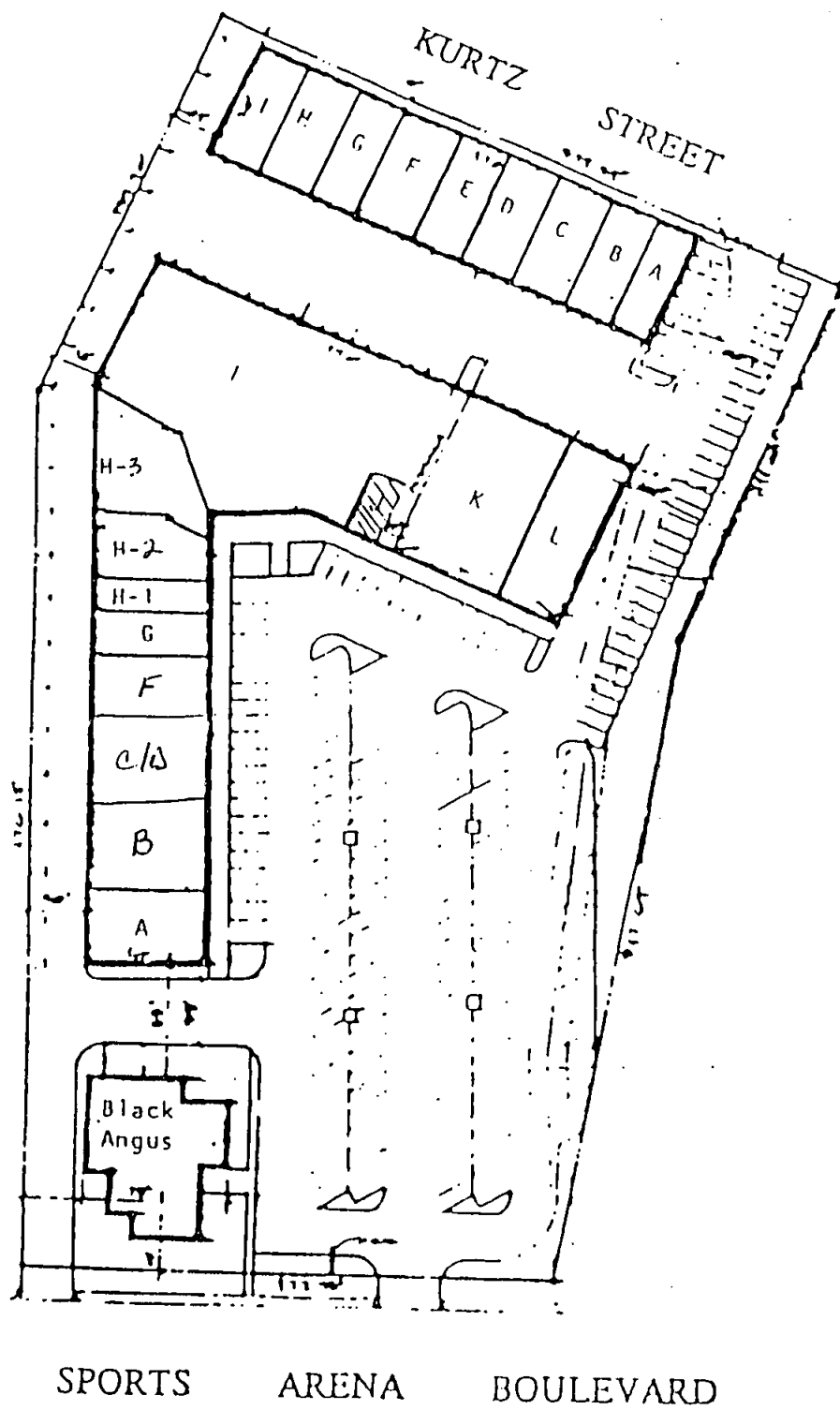


Lynn Luckey

5/24/07
Date

EXHIBIT A

SPORTS ARENA SQUARE SITE PLAN



Tenant: *Lynn Luckey*

Space: *335D-6*

Lease Date: *5/17/04*

Applicable Lease Provision: EXHIBIT "B"

RULES AND REGULATIONS

FOR

SPORTS ARENA SQUARE

The following is a list of Rules and Regulations adopted by the Landlord. The purpose of these specific prohibitions is not exclusive, but solely as a means to ensure that all Tenants and its customers may enjoy a clean, well managed shopping center which is conducive to maximum convenience, comfort and safety at Sports Arena Square:

1. Tenant and its authorized representatives and invitees shall use any roadway, walkway, only for ingress to or egress from the stores in the shopping center. Use of the common areas shall be in an orderly manner in accordance with the directional or other signs or guides. Roadways

shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers or inventory in designated areas. Walkways shall be used for pedestrian travel only.

2. Tenant and its authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. For the purpose of this section, the size of the motor vehicles shall not exceed 6,000 lbs. and shall not contain more than 3 axles. During peak periods of business activity, Landlord can impose limitations in all or parts of the parking areas as to the length of time for parking use.

3. No person shall use any utility area, truck loading area, or other area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. No Tenant or employee of any Tenant shall use any area for motor vehicle parking except the area specifically designated for Tenant or employees Tenants

detrimental to any of the business establishments in the shopping center;

(f) Using the common areas for any purpose when none of the business establishments in the shopping center is open for business;

(g) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles;

(h) Using a sound-making device of any kind or making or permitting any noise that is annoying, unpleasant, or distasteful;

6. Damage caused by any Tenant or its authorized representatives to any sign, light standard, or other improvement or property within the common area shall be repaired at Tenant's cost.

7. Tenant and its authorized representatives and invitees shall not make or permit any noise in the center that is annoying, unpleasant, or distasteful, that interfere in any way with other tenants or invitees.

8. Tenant shall not permit its representatives and invitees to do anything or permit any activity on the Premises that is illegal, immoral or unlawful such as:

(a) The possession and/or use of illicit drugs;

(b) The possession and/or use of firearms;

(c) The possession and/or consumption of alcohol by minors; and

(d) Lewd or illegal behavior by any patrons causing the presence of police or other law enforcement agencies.

9. Upon termination of its tenancy, Tenant shall deliver to Landlord or its agent the keys of the unit leased that were furnished to Tenant or that Tenant had made. In case Tenant loses any keys furnished to it by Landlord, Tenant shall pay Landlord for them.

10. Tenant shall notify Landlord's agent of the time and manner of all moving of

furniture, freight or equipment of any kind done by or at the request of Tenant. Any and all damage done to the Premises and/or the common area caused by the moving of such furniture, freight or equipment shall be repaired at Tenant's costs.

11. Except as may be reasonably required for security purposes, Tenant shall observe strict care that all water faucets, water apparatus and electrical apparatus have been entirely shut off before Tenant or its authorized representatives and invitees leave the store premises so as to prevent waste or damage.

12. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of these rules and regulations by any other Tenant or other person. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition to its occupancy of the spaced leased.

Initials:

Ly