

<b>UNITED STATES BANKRUPTCY COURT</b> <b>SOUTHERN DISTRICT OF NEW YORK (MANHATTAN)</b>		<b>PROOF OF CLAIM</b>	
In re: <u>Jennifer Convertibles, Inc</u>		Case Number: <u>10-13779</u>	
NOTE: See Reverse for List of Debtors/Case Numbers/ important details. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
<b>Name of Creditor and Address:</b> the person or other entity to whom the debtor owes money or property <div style="border: 1px solid black; padding: 5px;">  25239791002077          HILLTOWN CROSSINGS LP          KANDRIA JAMES REAL ESTATE PARALEGAL LEASE          ADMIN          WOLFSON VERRICCHIA GRP INC          120 W GERMANTOWN PIKE STE 120          PLYMOUTH MEETING, PA 19462       </div>		RECEIVED  OCT 05 2010  BMC GROUP	
Creditor Telephone Number ( ) _____ Name and address where payment should be sent (if different from above): _____			
Payment Telephone Number <u>609 277-8899</u>		Filed on: _____	
<b>1. AMOUNT OF CLAIM AS OF DATE CASE FILED</b> \$ <u>1,585.00</u> <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.          If all or part of your claim is entitled to priority, complete item 5.          If all or part of your claim qualifies as an administrative expense under 11 U.S.C. § 503(b)(9), complete item 6.</small> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.			
<b>2. BASIS FOR CLAIM:</b> _____ <small>(See Instructions #2 and #3a on reverse side.)</small>		<b>3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:</b> _____ 3a. Debtor may have scheduled account as: _____	
<b>4. SECURED CLAIM</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information <b>Nature of property or right of setoff:</b> _____ Describe: _____ <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Property: \$ _____ Annual Interest Rate: _____ % If any: \$ _____ Basis for Perfection: _____ Secured Claim Amount: \$ _____ <b>DO NOT</b> include the priority portion of your claim here. Unsecured Claim Amount: \$ _____ Amount of arrearage and other charges as of time case filed included in secured claim, \$ _____			
<b>5. PRIORITY CLAIM</b> <input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. <b>You MUST specify the priority of the claim:</b> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( _____ ). <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small> Unsecured Priority Claim Amount: \$ _____ Include <u>ONLY</u> the priority portion of your unsecured claim here.			
<b>6. AMOUNT OF CLAIM THAT QUALIFIES AS AN ADMINISTRATIVE EXPENSE UNDER 11 U.S.C. § 503(b)(9):</b> \$ _____ <small>See instruction #6 on reverse side</small>			
<b>7. CREDITS:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
<b>8. SUPPORTING DOCUMENTS:</b> <u>Attach redacted copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 8 and definition of "redacted" on reverse side.) If the documents are not available, please explain. <b>DATE-STAMPED COPY:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b>			
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Eastern Time on October 25, 2010 for Non-Governmental Claimants OR on or before 5:00 pm, prevailing Eastern Time on January 18, 2011 for Governmental Units. <b>BY MAIL TO:</b> BMC Group, Inc Attn: Jennifer Convertibles Claims Processing PO Box 3020 Chanhassen, MN 55317-3020		<b>BY HAND OR OVERNIGHT DELIVERY TO:</b> BMC Group, Inc Attn: Jennifer Convertibles Claims Processing 18750 Lake Drive East Chanhassen, MN 55317	
<b>THIS SPACE FOR COURT USE ONLY</b>  <div style="border: 1px solid black; padding: 5px; text-align: center;">         Jennifer Convertibles            00180       </div>			
DATE: <u>10/4/10</u>	SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>[Signature]</u>		

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

### ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

<p><b>Court, Name of Debtor, and Case Number:</b> Fill in the name of the federal judicial district where the bankruptcy case was filed (for example Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.</p> <p><b>Debtor Name</b> <span style="float: right;"><b>Case No</b></span> See attached sheet</p> <p><b>Creditor's Name and Address:</b> Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).</p> <p><b>1. Amount of Claim as of Date Case Filed:</b> State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item, 4, 5 and 6. Check the box if interest or other charges are included in the claim.</p> <p><b>2. Basis for Claim:</b> State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.</p> <p><b>3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:</b> State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.</p> <p><b>3a. Debtor May Have Scheduled Account As:</b> Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.</p> <p><b>4. Secured Claim:</b> Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.</p>	<p><b>5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).</b> If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.</p> <p><b>6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. §503(b)(9):</b> State the value of any goods received by the debtor within 20 days before the date of commencement for which the goods have been sold to the debtor in the ordinary course of the debtor's business.</p> <p><b>7. Credits:</b> An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p><b>8. Supporting Documents:</b> Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.</p> <p><b>Date and Signature:</b> The person filing this proof of claim <u>must</u> sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.</p> <p><b>Date-Stamped Copy</b> <b>Return claim form and attachments, if any.</b> If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.</p> <p><i>Please read - important information: upon completion of this claim form, you are certifying that the statements herein are true.</i></p> <p>Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."</p>
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### DEFINITIONS

#### DEBTOR

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

#### CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### CLAIM

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

#### PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page

#### SECURED CLAIM Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.

The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

#### UNSECURED NONPRIORITY CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

#### Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other

### INFORMATION

document showing that the lien has been filed or recorded.

#### Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

#### Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

**ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING [www.bmcgroup.com](http://www.bmcgroup.com)**

Hilltown Crossings, LP  
Jennifer Convertibles  
Post-Petition Claim from 9/1/10

Post Petition

9/1/2010 Sign Removal	\$ 1,585.00
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Total Post Petition	\$ 1,585.00
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## WOLFSON VERRICHIA GROUP, INC.

• Meetinghouse Business Center •

120 W. Germantown Pike • Suite 120 • Plymouth Meeting, PA 19462

Phone (610) 277-8899; Fax (610) 277-8880

VIA EMAIL AND UPS SECOND DAY

Email – Counsel for Tenant – owincig@aol.com

June 23, 2010

Owen Wincig, Esquire  
Law Offices of Wincig & Wincig  
137 Fifth Avenue 9<sup>th</sup> Floor  
New York, NY 10010

Re: Lease Dated July 1, 1999 as Amended ("Lease") Between Hilltown Crossings, LP ("Landlord") and Jennifer Convertibles, Inc. ("Tenant") For Jennifer Convertibles ("Premises") Located at Hilltown Crossings, Hatfield, PA ("Property")

Dear Owen:

Landlord is in receipt of your letter dated June 17, 2010 ("Notice of Termination"), informing us that Tenant has vacated the Premises effective June 15, 2010. Section 2 of the Second Amendment to Lease Agreement ("Second Amendment") states:

"Commencing on October 1, 2009, the Term of the Lease shall continue upon the same terms and conditions set forth in the Lease (as amended pursuant to Section 1 herein) and shall end on the date which is the last day of the calendar month following the expiration of ninety (90) days after either party has given a written notice of termination to the other party. Tenant shall continue to pay all Minimum Rent and other charges payable under the Lease (as modified herein) through the date of such termination."

Since Tenant has given its Notice of Termination on June 17, 2010, pursuant to Section 2 of the Second Amendment, Tenant shall be responsible for Minimum Rent and other charges through September 30, 2010.

By letter dated June 10, 2010, Landlord served Tenant with a notice of default for Tenant's failure to pay the June Minimum Rent and the 2009 Annual Reconciliation for CAM in the amount of \$6,430.65. In addition, Tenant is responsible for the legal fees in the amount of \$757.40 that Landlord has incurred for Tenant's prior legal default for non-payment of the May Minimum Rent. Therefore, if Landlord does not receive payment in the amount of \$10,188.05 by June 28, 2010, Landlord will forward this matter to its legal counsel.

Please also be aware that Landlord has not inspected the Premises yet. Upon inspecting the Premises, if Landlord determines that Tenant is responsible for any costs it deems necessary, it will invoice Tenant. Should you have any questions or need assistance please feel free to contact me.

Best regards,

Wolfson Verrichia Group, Inc.  
Agent for Hilltown Crossings, LP

By:

Kandria James

Real Estate Paralegal and Lease Administrator

cc (via UPS 2<sup>nd</sup> Day): Jennifer Convertibles, Inc.  
417 Crossways Park Drive  
Woodbury, NY 11797

cc (via email): Steve Wolfson  
Tom Verrichia  
Ed Moyer  
Marc Kanuk  
Dashnee Brachelli

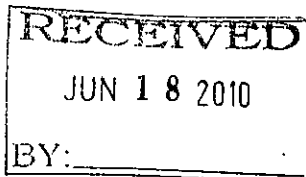
*Law Offices of*  
**WINCIG & WINCIG**

BERNARD WINCIG  
OWEN WINCIG

TAMARA KENWORTHY

UMAR A. SHEIKH  
OF COUNSEL  
ALSO ADMITTED IN N.J.

ANDREW KLINE  
WASHINGTON D.C. COUNSEL  
ADMITTED ONLY IN D.C. & MD.



*137 Fifth Avenue, New York, N.Y. 10010*

TELEPHONE: 212-575-8333

FACSIMILE: 212-575-8525

[www.wincig.com](http://www.wincig.com)

June 17, 2010

BY UPS

Ms. Kandria James  
Wolfson Verrichia Group, Inc.  
120 West Germantown Pike - Suite 120  
Plymouth Meeting, PA 19462

Re: Jennifer Convertibles, Inc.  
Premises: Hilltown Crossing Shopping Center  
Our File No.: 1402-5584

Dear Kandria:

As you know, the referenced premises were vacated on June 15, 2010, left vacant and broom cleaned. Delivered herewith, please find keys to the premises. Thank you for all courtesies afforded in connection with this matter.

Very truly yours,

OWEN WINCIG

OW/lc

Enclosures

H:\0610\061710-1402-5584-KJ ltr.doc

**SECOND AMENDMENT TO LEASE AGREEMENT**

**THIS SECOND AMENDMENT TO LEASE AGREEMENT** (the "Second Amendment") is made as of the 14 day of October, 2009, by and between **HILLTOWN CROSSINGS, L.P.**, a Pennsylvania limited partnership (the "Landlord") and **JENNIFER CONVERTIBLES, INC.**, a Delaware corporation (the "Tenant").

**WITNESSETH:**

A. On July 1, 1999, Landlord and Jennifer Hilltown Convertibles, Inc., a Pennsylvania corporation ("Jennifer Hilltown") entered into a Shopping Center Lease (said lease together with all amendments, and as further amended hereby, is collectively called the "Lease") pursuant to which Landlord leased to Jennifer Hilltown, and Jennifer Hilltown accepted from Landlord, certain premises (the "Premises") containing approximately 6,000 leasable square feet in the Hilltown Crossings Shopping Center, located in Hilltown Township, Bucks County, Pennsylvania, as more particularly described in the Lease.

B. On April 1, 2001, Jennifer Hilltown assigned the Lease to Tenant pursuant to a certain Assignment of Lease Agreement by and between Jennifer Hilltown and Tenant, all in accordance with the terms and conditions more specifically set forth therein.

C. On September 21, 2004, Tenant exercised its Option to Extend pursuant to the First Amendment to Lease Agreement, all in accordance with the terms and conditions more specifically set forth therein.

D. Landlord and Tenant now desire to further extend the Lease in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the covenants and conditions set forth herein, the parties hereto, intending to be legally bound, hereby agree that the Lease is hereby amended and supplemented as follows:

1. **Recitals/Definitions.** The foregoing recitals are true and correct and are hereby incorporated herein by this reference. Any and all capitalized terms not defined herein shall have the definitions set forth in the Lease.

2. **Extension of Term.** Commencing on October 1, 2009, the Term of the Lease shall continue upon the same terms and conditions set forth in the Lease (as amended pursuant to Section 3 herein) and shall end on the date which is the last day of the calendar month following the expiration of ninety (90) days after either party has given a written notice of termination to the other party. Tenant shall continue to pay all Minimum Rent and other charges payable under the Lease (as modified herein) through the date of such termination. The parties acknowledge that Tenant does not have any further options to renew or extend the Term of the Lease.

3. **Minimum Rent.** Commencing on October 1, 2009 and continuing through the expiration of the Term of the Lease, Tenant shall pay to Landlord, on or before the first day of each calendar month and in lieu of the Minimum Rent, the Tax Charge and the CAM Charge otherwise payable under Sections 4.03, 5.01 and 8.03 of the Lease, respectively, Minimum Rent in the amount

① 4

of \$3,000.00 per month. Notwithstanding anything herein to the contrary, Tenant shall remain responsible for paying for utilities used or consumed in the Premises.

4. **Broker.** Tenant and Landlord warrant that they have had no dealings with any broker or agent in connection with the negotiations or execution of this Second Amendment, and Landlord and Tenant agree to indemnify the other against all costs, expenses, attorney's fees, or other liability for commissions or other compensation or charges resulting from a breach of such representations.

5. **Entire Agreement.** There are no oral agreements between the parties hereto affecting the Lease or this Second Amendment, and this Second Amendment, together with the Lease, supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Second Amendment or the Lease. This Second Amendment and the Lease, including any exhibits attached hereto or thereto, sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises. No alteration, amendment, change or addition to this Second Amendment or the Lease shall be binding upon Landlord or Tenant unless reduced to writing, signed by them and mutually delivered between them.

6. **Miscellaneous.** Except as expressly set forth herein, the Lease is unmodified and in full force and effect. This Second Amendment shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

0 9

- SIGNATURE PAGE TO FOLLOW -

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the date first written above.

**LANDLORD:**

**HILLTOWN CROSSINGS, L.P.,** a Pennsylvania limited partnership

By: **HILLTOWN CROSSINGS CORP.,** a Pennsylvania corporation, its sole general partner

Witness: \_\_\_\_\_

Thomas F. Verrichia

By: \_\_\_\_\_

Steven B. Wolfson, President

**TENANT:**

**JENNIFER CONVERTIBLES, INC.,** a Delaware corporation

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: EDWARD B. SEIDNER  
EXECUTIVE V.P.

**CONSENT OF GUARANTOR**

The undersigned guarantor hereby consents to this Second Amendment and acknowledges and affirms that its guaranty of the full, faithful and timely payment and performance by Tenant of all the payments, covenants and other obligations of Tenant under or pursuant to the Lease, as set forth in that certain Guaranty dated June 22, 1999, including, without limitation, the warrants of attorney and confessions of judgment contained therein, shall continue in full force and effect.

**JENNIFER CONVERTIBLES, INC.**

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: EDWARD B. SEIDNER  
EXECUTIVE V.P.



**FIRST AMENDMENT TO LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (the "First Amendment") is made this 21<sup>st</sup> day of September, 2004, by and between HILLTOWN CROSSINGS, L.P., a Pennsylvania limited partnership (the "Landlord") and JENNIFER ~~HILLTOWN~~ CONVERTIBLES, INC., a ~~Pennsylvania~~ DELAWARE corporation (the "Tenant").

**WITNESSETH:**

A. Landlord and Tenant entered into a Shopping Center Lease dated the 1<sup>st</sup> day of July, 1999 (the "Lease") pursuant to which Landlord leased to Tenant, and Tenant accepted from Landlord store number A-1 consisting of approximately six thousand (6,000) leasable square feet (the "Premises") in the Hilltown Crossings Shopping Center located in Hilltown Township, Bucks County, Pennsylvania, as more particularly described in the Lease.

B. Tenant desires to exercise its Option to Extend contained in the Lease upon the terms and conditions more specifically set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties hereto, intending to be legally bound, hereby agree that the Lease is hereby amended and supplemented as follows:

1. **Recitals/Definitions.** The above recitals are true and correct and are hereby incorporated into this First Amendment as if set forth herein at length. Any and all capitalized terms not defined herein shall have the definitions set forth in the Lease.

2. **Extension Period.** Tenant hereby exercises its Option to Extend by extending the Term of the Lease from the Expiration Date of September 30, 2004, for a period of five (5) years to a date certain of September 30, 2009, after which date the term shall fully and finally terminate in its entirety.

3. **No Further Options.** Any and all Option and Extension Periods set forth in the Lease are hereby deleted in their entirety.

4. **Minimum Rent.** The Minimum Rent set forth in Section 4.03(a) of the Lease is hereby amended and supplemented with the following:

"Beginning with October 1, 2004 and continuing through the Expiration Date, the Minimum Rent shall be the sum of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) annually (Twelve and 50/100 Dollars (\$12.50) per square foot annually), payable in equal consecutive monthly installments of Six Thousand Two Hundred Fifty and 00/100 Dollars (\$6,250.00) each."

5. **Miscellaneous.** Tenant hereby ratifies and confirms all of the terms, conditions and obligations of the Lease, including, without limitation, the warrants of attorney and confessions of judgment contained therein. Except as expressly set forth herein, the Lease is unmodified and in full force and effect. In the event of any conflict between the terms of the

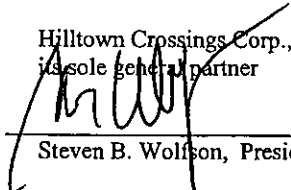
Lease and the terms of this First Amendment, the terms of this First Amendment shall control. This First Amendment shall be binding upon and shall inure to the benefit of the parties and their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the date first written above.

**LANDLORD:**

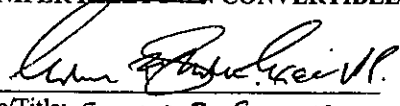
**HILLTOWN CROSSINGS, L.P.**

By: Hilltown Crossings Corp.,  
its sole general partner

By:   
Steven B. Wolfson, President

**TENANT:**

**JENNIFER ~~HILLTOWN~~ CONVERTIBLES, INC.**

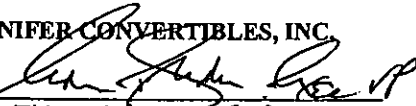
By:   
Name/Title: EDWARD D. SEIDNER  
EXECUTIVE VICE PRESIDENT

Attest: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**CONSENT OF GUARANTOR**

The undersigned guarantor hereby consents to this First Amendment and acknowledges and affirms that its guaranty of the full, faithful and timely payment and performance by Tenant of all the payments, covenants and other obligations of Tenant under or pursuant to the Lease, as set forth in that certain Guaranty dated the 22<sup>nd</sup> day of June, 1999, including, without limitation, the warrants of attorney and confessions of judgment contained therein, shall continue in full force and effect.

**JENNIFER CONVERTIBLES, INC.**

By:   
Name/Title: EDWARD D. SEIDNER EXEC. V.P.

Attest: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

ORIGINAL  
Number 1 of  
1 executed  
counterparts

**HILLTOWN CROSSINGS SHOPPING CENTER**

**HILLTOWN CROSSINGS, L.P.**

**LANDLORD**

**AND**

**JENNIFER HILLTOWN CONVERTIBLES, INC.**

**TENANT**

**LOCATION**

**Route 309 & Orvilla Road  
Hilltown Township  
Bucks County, Pennsylvania**

Hilltown Crossings Shopping Center

**HILLTOWN CROSSINGS SHOPPING CENTER**

**LEASE**

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Landlord: 

Tenant: 

Hilltown Crossings Shopping Center

SHOPPING CENTER LEASE

HILLTOWN CROSSINGS SHOPPING CENTER

July 1<sup>st</sup> THIS SHOPPING CENTER LEASE (the "Lease") is executed and made as of 1999, by and between HILLTOWN CROSSINGS, L.P. (herein called "Landlord"), a Pennsylvania general partnership, and JENNIFER HILLTOWN CONVERTIBLES, INC., a Pennsylvania corporation (herein called "Tenant"), Landlord and Tenant having the following notice addresses on the date of this Lease (See Sec. 23.03):

Landlord: Hilltown Crossings, L.P.  
c/o Wolfson Verrichia Group, Inc.  
621 E. Germantown Pike, Suite 305  
Norristown, PA 19401  
Attn: Thomas F. Verrichia or Steven B. Wolfson  
  
Telephone No. (610) 277-8899 Fax No. (610) 277-8880

Tenant: Jennifer Hilltown Convertibles, Inc.  
c/o Jennifer Convertibles, Inc.  
419 Crossways Park Drive  
Woodbury, New York 11797  
  
Telephone No. (516) 496-1900 Fax No. (516) 496-0008  
  
Tax I.D. No./Social Security No.

Copies of Notices to Tenant shall also be delivered to:

Law Offices of Wincig & Wincig  
Attn: Bernard Wincig, Esquire  
574 Fifth Avenue  
New York, New York 10036

FUNDAMENTAL LEASE PROVISIONS

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

- (a) Tenant's Trade Name: Jennifer Convertibles (See Sec. 7.01)  
(b) Term: (See Sec. 3.01)

Five (5) years beginning on the Rent Commencement Date and ending on the last day of the month in which the fifty (5th) anniversary of the Rent Commencement Date occurs (the "Expiration Date").

Provided that there exists no monetary Event of Default or material non-monetary Event of Default, that exists beyond any applicable cure period, on the part of Tenant under the Lease at the time of the exercise of the Option to Extend, or at the commencement of the Extension Period, and provided that Jennifer Hilltown Convertibles, Inc. ("Original Tenant") is the "Tenant" hereunder and this Lease has not been assigned and no portion of the Premises has been sublet, Tenant shall have the option to extend (sometimes the "Option to Extend") the Term for one extension period of five (5) years (such extension period is hereinafter referred to as the

Landlord:  Tenant: \_\_\_\_\_

**Hilltown Crossings Shopping Center**

"Extension Period") on the same terms and conditions as specified in the Lease, except that the Minimum Rent during the Extension Period shall be as specified in Section 4.03 hereof. If Tenant fails to give Landlord written notice of Tenant's election to exercise each Option to Extend at least three hundred (300) days prior to the expiration of the Term (but no sooner than eighteen (18) months prior to the expiration of the preceding Term), the Option to Extend shall automatically terminate and be of no further force or effect, it being understood that time is of the essence with respect to the exercise of the Option to Extend. In the event of a valid exercise of the Option to Extend, the "Expiration Date" shall likewise be extended to be the last day of the Extension Period if validly exercised pursuant to the Option to Extend.

(c) **Tenant Store Number:**

(d) **GLA of Premises:**

(See Sec. 1.04)

Approximately 6,000 leasable square feet

(e) **Plan Approval and Permit Process:**

(See Secs. 2.03 and 2.04)

**Plans Submission Date:** fifteen (15) days after the date hereof

**Outside Permit Date:** N/A

(f) **Construction Process:**

(See Article 2)

**Outside Delivery Date:** August 1, 1999

**Construction Commencement Date:**

(See Sec. 2.05)

Ten (10) days after the date (the "Delivery Date") on which Landlord delivers the Premises to the Tenant for the commencement of Tenant's Work.

**Tenant's Construction Period:** ninety (90) days (See Sec. 2.05)

(g) **Minimum Rent:**

(See Sec. 4.03)

(h) **Percentage Rent:**

None

(See Sec. 4.04)

**Percentage:** N/A

**Gross Sales Break Point:** N/A

(i) **Required Opening Date:**

(See Secs. 2.06 and 4.02)

ninety (90) days after the Delivery Date

Delivered 7/1/99  
September 29, 1999

(j) **Security Deposit:**

(See Sec. 16.04)

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

**Pro Rata Tax Charge:**

(See Sec. 5.01)

Estimated as to the first Lease Year to be \$1.00 per square foot

**Pro Rata CAM Charge:**

(See Sec. 8.03)

Estimated as to the first Lease Year to be \$1.50 per square foot (including insurance)

Landlord:   *Ø*   Tenant:

Hilltown Crossings Shopping Center

- (l) **To Whom Rent Payable:** Hilltown Crossings, L.P.  
c/o Wolfson Verrichia Group, Inc.  
621 Commons  
621 E. Germantown Pike, Suite 305  
Norristown, PA 19401
- (m) **Use:** Retail sale and rental of sofas, furniture, home furnishings and related and ancillary items, and for no other use. Tenant acknowledges receipt of the exclusive covenants granted to the tenants listed on **Exhibit "I"** attached hereto, **"Title Exceptions and Exclusives"**, and agrees not to use the Premises in any manner in violation of any such exclusive covenants; and this Lease is made under and subject to such exclusive covenants and the other matters set forth on such Exhibit.
- (n) **Agent:** Name: None  
**Party Responsible**  
**for Agent's Commissions:** Not Applicable
- (o) **Termination Right:** So long as Jennifer Hilltown Convertibles, Inc. ("Original Tenant") is not in default of any of its obligations hereunder beyond the expiration of any applicable cure periods, Tenant shall have the right, at any time after the date that is two (2) years after the Rent Commencement Date (the "Termination Date") by written notice to Landlord, to terminate this Lease, which termination shall be effective sixty (60) days after receipt by Landlord of such notice. The rights granted under this paragraph may only be exercised by Tenant or a Qualified Assignee (hereinafter defined) if Tenant has assigned this Lease to a Qualified Assignee, and the same shall not apply to Original Tenant or any of Original Tenant's or a Qualified Assignee's assignees or sublessees. A "Qualified Assignee" is a subsidiary company of Jennifer Convertibles, Inc. of which Jennifer Convertibles, Inc. owns one hundred percent (100%) of the stock or other voting rights. In the event of a valid termination of this Lease by Tenant under this paragraph (o), Tenant shall be liable to Landlord for an amount equal to six (6) months of Minimum Rent payable at the rate in effect on the effective date of such termination (the "Termination Payment"), in addition to any accrued and unpaid amounts hereunder. Upon any such termination, Tenant shall quit and surrender the Premises to Landlord as required in this Lease. Any termination under this paragraph shall not be effective unless and until Tenant pays all sums due to Landlord hereunder and vacates the Premises as provided herein.
- (p) For so long as (i) this Lease shall remain in full force and effect, (ii) there shall not exist any uncured Event of Default on the part of Tenant hereunder, (iii) Tenant shall have opened and shall be continuing to operate the Premises in accordance with subparagraph (m) above (entitled "Use") (or, if such operations shall not be continuing then such operations shall have ceased by reason of a casualty or other event not within the reasonable control of Tenant and Tenant shall be acting diligently to restore operations, but in no event longer than nine (9) months from the date of cessation of operations), then Landlord shall not lease or permit the occupancy of any part of the Shopping Center (except as set forth below) to be occupied for the primary purpose of operating a store that sells or displays convertible sofas (the "Restriction"). For purposes thereof, the space (including expansions) leased or to be leased or expected to be leased to the following tenants (regardless of the actual tenants or occupants of such space) shall be excluded from the foregoing Restriction: Wal-Mart Stores, Inc. and Shop N' Save. In addition to and not in limitation of the foregoing exclusions, each tenant who has executed a lease for any portion of the Shopping Center as of the date hereof, and their respective successors, assigns and sublessees, shall be exempt from the foregoing Restriction, and no part of the space leased under such existing leases shall be subject to

Landlord:  Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

such Restriction, if such tenant is permitted under its lease to sell goods of the type described in the Permitted Use.

ARTICLE 1: INTRODUCTORY PROVISIONS

Section 1.01: REFERENCES AND CONFLICTS.

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

Section 1.02: GENERAL DEFINITIONS.

(a) The term "Shopping Center" means: (i) the "Land" (hereinafter defined); and (ii) the "Buildings" (hereinafter defined); (iii) the "Common Areas" (hereinafter defined); and (iv) all other land, buildings, structures and other improvements in, over, on or under the Land whether now or hereafter existing, and the term "Shopping Center" includes the same as reduced, expanded or otherwise altered from time to time. The Shopping Center is currently known by the name set forth in the Fundamental Lease Provisions or such other name as Landlord may hereafter decide from time to time.

(b) The term "Land" means the land described in or shown on Exhibit "A" annexed hereto and by this reference incorporated herein, and the term "Land" includes the same as reduced, expanded or otherwise altered from time to time.

(c) The term "Buildings" means the buildings, structures and other improvements shown in general on Exhibit "B". The term "Buildings" includes the same as reduced, expanded or otherwise altered from time to time.

(d) The term "Common Areas" means all areas, facilities and improvements operated or provided at or in connection with the Shopping Center from time to time for the non-exclusive common use of Landlord and the tenants and other occupants of the Shopping Center and others with the right to use the same, and shall include but not be limited to the parking areas, roadways, ramps, traffic controls, truckways, loading and unloading docks and delivery areas not reserved exclusively for the use of particular tenants, sidewalks, stairways, escalators and elevators (if any), service corridors not reserved exclusively for the use of particular tenants, exits, corridors, seating areas, buffer areas, screening facilities, merchandise pickup stations not reserved exclusively for the use of particular tenants, public restrooms and comfort stations, retaining walls, landscaped areas, open space areas, common utility systems, common sanitary and other waste handling systems, holding tanks, force mains, fire detection and/or suppression systems, life safety systems, security systems, gutters, down spouts drainage systems, lighting (excluding any tenant-specific lighting), pylon signage (excluding individual tenant sign faces), traffic signals and traffic control devices. The term "Common Areas" includes the same as reduced, expanded or otherwise altered from time to time. If the Premises are located in a building containing more than one tenant, "Common Areas" shall also include the roofs, structural elements, foundations, walls, chases, conduits and other common-use elements of such building.

(e) The term "Majors' Premises" (or "Major's Premises") means the premises shown on Exhibit "B" by such term, or by the word "Major" or by the words "Free Standing Building", or name of the prospective or actual principal occupant thereof (the "Majors" or a "Major"), and

Landlord:                      Tenant:



## Hilltown Crossings Shopping Center

the term "Majors' Premises" (or "Major's Premises") includes the same as reduced, expanded or otherwise altered from time to time. Without limiting the foregoing, "Majors" shall include Shop N' Save supermarket and Wal-mart Stores, Inc.; provided that no representation or covenant is made by Landlord concerning the actual tenancy or occupancy or business operations of either such named party. The term "Major" (or "Majors") includes any replacement for or other substitute for the primary occupant of a Major's Premises as well as, in the case of an expansion or addition on, of or to the Shopping Center, the primary occupant of (i) any premises equal or exceeding, in the GLA, the GLA of any one (1) of the Majors' Premises shown on Exhibit "B" but not marked "Free Standing Building" thereon and (ii) any additional free standing buildings constructed for use by a single user (and its subtenants and licenses, if any), whether or not such premises or building is shown on Exhibit "B". References in this Lease to a Major or Majors shall include any such replacement, substitute or additional Major and its building(s) is included within the terms "Major's Premises" and "Majors' Premises".

(f) The term "Premises" means the space situated in Buildings in the approximate location marked on Exhibit "B" (annexed hereto and by this reference incorporated herein) to the ceiling heights above the structural floor specified in the Exhibits hereto or, if not so specified, then as designated by Landlord. The Premises shall be subject to, and Landlord reserves to the use of Landlord and all affected tenants and occupants of the Shopping Center, and to all utility suppliers, a right of way and easement through and within all exterior walls, party walls, ceilings (above the level of the lower face of the finished drop-ceiling), and other areas outside of the area of space enclosed by the interior surfaces of the walls, ceiling and floor slab enclosing the Premises (but also including interior columns, pipes, chases, conduits), for the installation, operation, use, maintenance, repair and replacement of ducts, pipes, conduits, wires and other facilities, devices and equipment providing utility services to, and for the structural support of, other portions of the Shopping Center.

(g) The term "GLA" means, with respect to the Premises and all other leasable areas, Landlord's best good-faith estimate of the number of square feet of area on all floors of the Buildings in the Shopping Center for the exclusive use by the tenants or other occupants thereof and their customers, clients or other invites including, without limitation, mezzanines and balconies if used for the sale of goods and/or rendition of services (but excluding all other areas and space defined herein as part of Common Areas). GLA shall be measured from the exterior face of exterior walls and the center line of any wall shared in common with other tenants or occupants. No deduction from GLA shall be made for columns, stairs, elevators, or any interior construction or equipment. From time to time during the Term, Landlord may give Tenant notice of the GLA of the Buildings, at a given time or for a given period of time, as such GLA may be revised because of reductions, expansions or other alterations of the Buildings or as such GLA may be adjusted pursuant to provisions in the leases of other tenants or occupants similar to those set forth in Section 1.04. The GLA of the Premises and of the Buildings shall be utilized to calculate the GLA Fraction [defined in Section 1.02(h)] and, except as set forth in Article 4 hereof, to make any other calculations required to determine certain charges to Tenant, some of which are set forth in the Fundamental Lease Provisions.

(h) The term "GLA Fraction" means a fraction, the numerator of which shall be the GLA of the Premises and the denominator of which shall be the GLA of the Buildings.

### Section 1.03: EXHIBITS.

The following plans and special provisions are attached hereto as Exhibits and hereby made a part of this Lease:

- EXHIBIT A - Legal description of the Shopping Center as presently constituted;
- EXHIBIT B - Plan of the Shopping Center as presently constituted;
- EXHIBIT C - Description of "Tenant's Work";
- EXHIBIT D - Rules and Regulations;
- EXHIBIT E - Completion Certificate;

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

- EXHIBIT F - Contractor's Waiver of Liens (See Section 2.08);
- EXHIBIT G - Tenant Signage Requirements;
- EXHIBIT H - Guaranty and Surety Agreement
- EXHIBIT I - Title Exceptions and Exclusives

### Section 1.04: GLA OF PREMISES

The estimated GLA of the Premises is set forth in Paragraph (d) of the Fundamental Lease Provisions. Promptly following the Delivery Date, Landlord shall have the right to cause the Premises to be measured by Landlord's contractor or architect, who shall certify the actual GLA of the Premises to Landlord and Tenant, and which measurement shall, absent manifest error, be final. If, but only if, the actual GLA of the Premises shall be at variance with that set forth in the Fundamental Lease Provisions by more than four percent (4%), the Minimum Rent shall be adjusted proportionately. If Percentage Rent is payable under this Lease, and if Percentage Rent is payable under this Lease, and if the Gross Sales Break Point is expressed as a specific dollar amount, the Gross Sales Break Point and the Partial Year Break Point (collectively, the "Break Points", all as defined in Article 4) shall likewise be adjusted by multiplying the Minimum Rent and the Break Points by a fraction, the numerator of which shall be the actual GLA of the Premises and the denominator of which shall be the GLA of the Buildings.

### Section 1.05: CHANGES TO SHOPPING CENTER

As between Landlord and Tenant, Landlord may at any time and from time to time eliminate Land from, or add to or substitute for Land of, the Shopping Center or any part thereof, or eliminate, add or substitute any improvements, or change or consent to a change in the shape, size, location, number, height, or extent of the improvements to the Shopping Center or any part thereof. Unless required by applicable law, Landlord shall not construct any buildings or improvements immediately adjacent to the Premises if the same will materially and adversely affect visibility of or access to the Premises, nor shall Landlord reduce the size or dimensions of the Premises.


## ARTICLE 2: PREMISES; CONDITION OF DELIVERY AND TENANT'S WORK

### Section 2.01: LEASE OF PREMISES

Landlord, in consideration of the "Rent" (defined in Section 4.01) to be paid and the covenants to be performed by Tenant, does hereby demise and lease unto Tenant, and Tenant hereby leases and takes from Landlord, for the Term, at the rentals, and upon the covenants, conditions and other terms herein set forth, the interior commercial space referred to herein as the Premises, together with the right to the joint and non-exclusive use of the Common Areas, in common with Landlord and all other parties with a possessory or leasehold interest in the Shopping Center (and to the extent therein granted, parties having rights therein granted pursuant to any reciprocal rights under any easement agreements affecting the Shopping Center), together with their customers, invitees, employees and contractors, for the purposes for which such Common Areas are intended.

### Section 2.02: CONDITION OF DELIVERY

(a) Landlord shall deliver the Premises to the Tenant in its "as-is" "where-is" condition, free and clear of all violations, tenancies, occupants, hazardous materials and personal property. Upon delivery of the Premises to Tenant, the base building of the Premises shall be in compliance with applicable laws, including the Americans with Disabilities Act, and Tenant shall have the right, so long as it complies with applicable building codes and other relevant codes and ordinances, to obtain a certificate of occupancy therefor. In addition, upon the Delivery Date, the roof will be water-tight and free of leaks, and the HVAC system, plumbing system and all other building systems serving the Premises shall be in good working order. Landlord shall have no obligation to construct any buildings, improvements or alterations, or to extend or provide any

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

services (including without limitation utility services) on or to the Premises or to or for the benefit of Tenant, or to make any repairs or replacements to the Premises; and Landlord makes no representation or warranty to Tenant concerning the Premises, including without limitation any warranties of merchantability, habitability, fitness or any other condition thereof for any particular purpose.

(b) Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable in any manner to Tenant for damages or any other claim resulting from failure to deliver the Premises or for any delay in delivering the Premises, and Tenant hereby waives all such liability. In the event Landlord does not deliver possession of the Premises to Tenant on or before the Outside Delivery Date set forth in the Fundamental Lease Provisions, then either Landlord or Tenant may terminate this Lease (and in the case of Tenant, such right of termination shall be Tenant's sole and exclusive remedy and such right may be exercised by Tenant only by written notice to Landlord received not later than thirty (30) days prior to Landlord's delivery of the Premises), and in the event of such termination this Lease shall automatically become null, void and of no force or effect and both parties hereto shall be relieved of all obligations hereunder, in which event each party will, at the other's request, execute an instrument in recordable form containing a release and surrender of all right, title and interest in this Lease and to the Premises.

### Section 2.03: PREPARATION AND APPROVAL OF PLANS.

Not later than the Plans Submission Date, Tenant shall, at Tenant's sole cost and expense, submit to Landlord for Landlord's written approval (which shall be granted or withheld with no additional fees or charges by Landlord), which shall not be unreasonably withheld or delayed, conceptual drawings and elevations (if exterior work is included) depicting Tenant's Work (as defined below) and related improvements to be constructed by Tenant on the Premises pursuant to Exhibit "C". Within ten (10) business days after the submission thereof, Landlord shall notify Tenant of Landlord's approval or disapproval thereof, as the case may be, and the reasons why, if any, that such drawings and specifications are not approved. In the event Landlord shall have failed to notify Tenant of Landlord's approval or disapproval within the foregoing ten (10) business day period, then Tenant's plans as so submitted shall be deemed to have been approved. The drawings and specifications finally approved by Landlord are herein collectively called the "Approved Conceptual Plans". Within twenty (20) business days after Landlord and Tenant approve the Approved Conceptual Plans, Tenant shall, at Tenant's sole cost and expense, cause detailed construction and working drawings of the work included in Tenant's Work to be prepared by a licensed architect reasonably satisfactory to Landlord, and shall submit such drawings and related specifications to Landlord, for Landlord's written approval, which shall not be unreasonably withheld or delayed. Within ten (10) business days after the submission thereof, Landlord shall notify Tenant of Landlord's approval or disapproval thereof, as the case may be, and the reasons why, if any, that such drawings and specifications are not approved. In the event Landlord shall have failed to notify Tenant of Landlord's approval or disapproval within the foregoing ten (10) business day period, then Tenant's plans as so submitted shall be deemed to have been approved. The drawings and specifications finally approved or deemed approved by Landlord and Tenant are herein collectively called the "Approved Final Plans". Thereafter, no material change shall be made to the Approved Final Plans or in the construction derived therefrom without first obtaining written approval of Tenant and Landlord, which approval shall not be unreasonably withheld or delayed. If either Landlord or Tenant disapproves the plans submitted by the other party pursuant to the foregoing procedure, the submitting party shall submit, for approval, such further plans and elevations (if applicable) containing the revisions reasonably required to obtain approval for plans constituting the Approved Final Plans. If the Landlord and Tenant have not approved Approved Final Plans on or before the Plans Approval Date set forth in the Fundamental Lease Provisions, either party may cancel this Lease by written notice to the other party at any time prior to the approval of the Approved Final Plans. Each party covenants to act diligently and in good faith in connection with the preparation and approval of all plans and specifications contemplated herein, and each party shall provide the other with such reasonable information and documentation as may be reasonably required in connection with the preparation and review of such plans and specifications.

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

Section 2.04: PERMITS AND APPROVALS.

(a) Promptly following the approval of the Approved Final Plans by both parties, Tenant shall commence submissions to authorities having jurisdiction to obtain all requisite applications and all other applications and drawings required to obtain all building, plumbing, electrical and other permits and approvals required by governmental authorities having jurisdiction for the construction of Tenant's Work depicted on the Approved Final Plans (collectively, the "Permits"), at Tenant's cost and expense; and Tenant shall thereafter diligently prosecute such applications to conclusion. Landlord agrees to join in the aforesaid applications whenever such joinder shall be reasonably necessary and to cooperate with Tenant in the processing of the aforesaid applications for approvals. Without limiting Tenant's obligations for the payment of the costs of obtaining necessary governmental approvals for the construction of the Tenant's Work and other improvements depicted on the Approved Final Plans, Tenant shall be solely responsible for, and agrees to indemnify and hold Landlord harmless from, any and all application fees, contributions and other charges imposed in connection with the issuance of building, plumbing, electrical and other permits and approvals required to enable Tenant to construct Tenant's Work and all of its proposed improvements, or in connection with the provision of utility services thereto; provided that Landlord shall be solely responsible for all application fees, contributions and other charges imposed in connection with the issuance to Landlord of all approvals and permits for operation of the Shopping Center generally.

(b) INTENTIONALLY OMITTED.

Section 2.05: TENANT'S WORK.

(a) Tenant shall perform all of the work required to be performed by Tenant pursuant to the terms and conditions of Exhibit "C", all of such work being collectively herein called "Tenant's Work" in a good and workmanlike manner, employing materials of good quality, and substantially in compliance with the approved Approved Final Plans therefor and in compliance with all applicable permits and authorizations and building and zoning laws and with all other applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments, departments, commissions, boards and offices, and in compliance with the terms and conditions of this Lease.

(b) Not less than ten (10) days prior to commencing construction of Tenant's Work, Tenant shall notify the Landlord of the date on which Tenant's contractor intends to commence work and the date on which Tenant's building permit was or is expected to be issued. Subject to unavoidable delay (pursuant to Section 23.06) Tenant shall commence construction of Tenant's Work not later than the Construction Commencement Date set forth in the Fundamental Lease Provisions. On or before the Construction Commencement Date, Tenant shall deposit with Landlord certificates of insurance as required in Article 11 and a true copy of Tenant's building permit and filed Contractor's Waiver of Liens as required under Section 2.08. Tenant shall endeavor diligently to substantially complete construction of Tenant's Work (including installation of Tenant's trade fixtures, equipment and furnishings) on or before the expiration of Tenant's Construction Period, subject to Section 23.06 hereof; provided that failure of Tenant to complete such construction or other work by Tenant for any reason or the application of any of the events set forth in Section 23.06 hereof shall not delay or abate the occurrence of the Rent Commencement Date. Promptly upon the completion of such construction, Tenant shall deliver to Landlord a reasonably complete set of the "as built" drawings thereof. "Completion", with reference to Tenant's Work, shall include the issuance a certificate of occupancy or other comparable approval (final if available or temporary if final is not available pending the

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

completion of work by Tenant or other persons) by the applicable governmental authority(ies) if the same is required to be issued for occupancy. Tenant shall be solely responsible to obtain and to pay for all permits and approvals relating in any way to the Tenant's Work.

(c) Title to all leased improvements constructed by Tenant, when made, erected, constructed, installed or placed upon the Premises (with the exception of Tenant's trade fixtures, equipment and personal property as specified in Section 14.01) shall be and remain in Landlord, subject to the leasehold estate and interest created in Tenant hereunder until the expiration or sooner termination of this Lease, and upon such expiration or sooner termination, title to the Leased Improvements, in the condition in which Tenant has agreed to maintain them pursuant to the provisions of this Lease, shall automatically pass to, vest in and belong exclusively to Landlord without any interest on the part of Tenant and without further action on the part of either party and without cost or charge to Landlord.

### Section 2.06: OPENING OF PREMISES

Subject only to the application of any of the events set forth in Section 23.06 hereof, Tenant agrees to open its business to the public in the Premises no later than the "Required Opening Date" [specified in Section (i) of the "Fundamental Lease Provisions"]. If Tenant fails to open its business to the public in the Premises on or before the Required Opening Date (as it may be extended by reason of the application of any of the events set forth in Section 23.06 hereof), and in addition to Landlord's other rights and remedies under this Lease, Tenant shall pay to Landlord, in addition to Minimum Rent and Additional Rent, an amount equal to one half of one percent ( $\frac{1}{2}\%$ ) of the annual Minimum Rent for each day Tenant's business remains not open in the Premises from and after the Required Opening Date (counting the said Required Opening Date as the first such day). Any and all sums and other charges payable by Tenant to Landlord pursuant to the immediately preceding sentence shall be paid on demand to offset administrative costs and expenses incurred by Landlord as a result of Tenant's late opening and shall in no way abrogate, or relieve Tenant from any of, Tenant's obligations under this Lease, including without limitation the obligation to open its business in the Premises. By opening for business, and except for (i) any unperformed punch-list items previously accepted by the Landlord in writing, (ii) such other deficiencies as Tenant may otherwise specify in writing to Landlord prior to Tenant's opening for business (iii) Landlord's express warranty obligations under Section 2.02 (b), above, and (iv) Landlord's other express obligations under this Lease, Tenant shall be deemed to have acknowledged that all work required to be performed in connection with the Premises and any and all obligations to be performed by Landlord on or before, or as conditions to, the opening of the Premises have been fully performed. Within thirty (30) days after Tenant's opening of the Premises to the public for business, Tenant shall deliver to Landlord a certificate hereinafter referred to as the "Completion Certificate" and in the form attached hereto as Exhibit "E".

### Section 2.07: MECHANIC'S LIENS

Tenant will not permit to be created or to remain undischarged any lien, encumbrance or other charge (arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialman or any mortgage, conditional sale, security agreement or chattel mortgage, or otherwise by or for Tenant) which might be or become a lien or encumbrance or other charge (collectively a "Charge") against or upon the Premises, the Shopping Center or any part thereof. Tenant will not suffer any other matter or thing whereby the estate, rights, title and interests of Landlord in the Premises, the Shopping Center or any part thereof might be impaired. If any claim or lien or notice of claim or lien on account of an alleged debt of Tenant or any notice of contract or Charge by a person engaged by Tenant or Tenant's contractor to work on the Premises shall be filed against or upon the Premises, the Shopping Center or any part thereof, Tenant shall within ten (10) days after demand from Landlord cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such claim or lien or notice of claim or lien or other Charge to be discharged within the period aforesaid, then, in addition to any other right or remedy it may have, Landlord may, but shall not be obligated to, discharge the same by

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

payment, deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of the same by the claimant and to pay the amount of any judgment in favor of the claimant with interest, costs and allowances. Any amount so paid by Landlord and all interest, costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection therewith shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Nothing herein contained shall obligate Tenant to pay or discharge any charge created by Landlord. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work by Tenant or Tenant's contractor in or about the Premises. No work which Landlord permits Tenant to do shall be deemed to be for the immediate use and benefit of Landlord and no mechanics' or other claim, lien or other Charge shall be allowed against the estate, rights, title or interests of Landlord by reason of any consent given by Landlord to Tenant to do work in or about the Premises or provide materials therefor. Prior to commencement of any work or the delivery of any material to the Premises by any contractor, subcontractor or materialman (herein collectively called "Contractor"), Tenant shall deliver to the Landlord a signed, acknowledged and sealed waiver of liens (herein called "Contractor's Waiver of Liens") from each such Contractor in the form attached hereto as Exhibit "F", and Tenant shall at Tenant's expense cause a duly executed and notarized counterpart thereof to be filed with the Prothonotary of the county in which the Shopping Center is located. Contractor's Waiver of Liens provides, among other things, that the Contractor waives any and all lien rights that it may have against Landlord's estate, rights, title and interests in the Shopping Center and any part thereof including without limitation the Buildings. Landlord shall have the right to post and keep posted in the Premises notices of non-responsibility, or such other notices as Landlord may deem to be proper for the protection of Landlord or Landlord's estate, right, title and interests in the Shopping Center and any part thereof.

### Section 2.08: INSPECTION.

Landlord and its architects and engineers shall have the right from time to time during the course of construction of Tenant's Work, and any subsequent alterations or improvements, to inspect the work being done to ensure that the same is being constructed in accordance with the approved plans therefor and in compliance with the requirements of this Lease.

## ARTICLE 3: TERM

### Section 3.01: TERM OF THIS LEASE.

The term of this Lease (sometimes herein called the "Term") means the period of the "Interim Term" (hereafter defined) followed immediately by the period of the "Rent Term" (hereafter defined). The "Interim Term" means the period commencing on the date of this Lease and ending on the date of immediately preceding the Rent Commencement Date. The "Rent Term" means the period commencing on the Rent Commencement Date and ending on the Expiration Date (as it may be extended by the valid exercise of any Option to Extend expressly granted hereunder) and shall include each Extension Period (if any are expressly granted herein but not otherwise) actually and validly exercise, unless sooner terminated as provided herein.

### Section 3.02: YEARS.

The term "Year" means each successive twelve (12) month period from January 1 through December 31 occurring during the Term. "Partial Year" means the period between and including the Rent Commencement Date, if that date is not January 1, and the next succeeding December 31. If the Term ends on other than a December 31, the term "Partial Year" includes the period beginning on the last January 1 of the Term and ending on the last day of the Term. The term "Rent Year" means the period beginning with and including the Rent Commencement Date and ending on the last day of the month in which the first anniversary of the Rent Commencement Date occurs and each twelve (12) month period thereafter during the Term (as it may be extended), together with any period less than twelve (12) months comprising the period between the last full twelve-month period and the Expiration Date (as it may be extended).

Landlord:  Tenant: \_\_\_\_\_

## ARTICLE 4: RENT

Section 4.01: TENANT'S AGREEMENT TO PAY RENT.

Tenant hereby agrees to pay, at the times and in the manner herein provided, the Minimum Rent, Percentage Rent (if any is specified in the Fundamental Lease Provisions but not otherwise) and Additional Rent. As used in this Lease, the term "Rent" means, collectively, the Minimum Rent, Percentage Rent (if any is specified in the Fundamental Lease Provisions but not otherwise) and Additional Rent.

Section 4.02: RENT COMMENCEMENT DATE.

As used in this Lease, the term "Rent Commencement Date" shall mean the earlier of: (i) the date on which Tenant initially opens its business to the public in the Premises (the "Actual Opening Date"); or (ii) the calendar date or other specific time set forth as the Required Opening Date in Section (i) of the Fundamental Lease Provisions without regard to any extension thereof by reason of any of the events specified in Section 23.06 hereof. Notwithstanding the foregoing, if Tenant opens for business prior to the Required Opening Date, then, until the Required Opening Date, Tenant's liability to pay Rent shall be limited to payment of Percentage Rent (if any is specified in the Fundamental Lease Provisions but not otherwise) and Additional Rent, and commencing on the Required Opening Date, Tenant shall commence payment of all Rent specified herein.

*Rent Commences  
9/29/99*

Section 4.03: MINIMUM RENT.

(a) Commencing on the Rent Commencement Date, Tenant shall pay Landlord, as the minimum base rent for each Rent Year, the amount determined as follows, which applicable amount shall be payable in twelve (12) equal monthly installments, in advance, on the first day of each calendar month:

<u>Rent Year(s)</u>	<u>Minimum Rent Amount (Annual)</u>	<u>Amount Per Square Foot of GLA</u>
1 and 2	\$84,000.00	\$14.00
3 and 4	\$87,000.00	\$14.50
5	\$90,000.00	\$15.00
6 and 7	\$96,000.00	\$16.00
(Extension Period)		
8 and 9	\$99,000.00	\$16.50
(Extension Period)		
10	\$102,000.00	\$17.00
(Extension Period)		

*- 10/1/99 - 9/30/01*

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

(c) The base rent payable by Tenant for a given Year pursuant to Section 4.03(a) or (b), whichever is applicable, is sometimes called the "Minimum Rent" in this Lease.

Section 4.04: PERCENTAGE RENT.

If Paragraph (h) of the Fundamental Lease Provisions specifies a Percentage but not otherwise, then in addition to Minimum Rent, Tenant shall pay Landlord percentage rent (herein called "Percentage Rent") as determined by this Article 4. The Percentage Rent for each Year shall be an amount equal to the "Percentage" (which is set forth in the Fundamental Lease Provisions) times the amount of Gross

Landlord:                      Tenant:

## Hilltown Crossings Shopping Center

Sales made during such Year in excess of the "Gross Sales Break Point" set forth in the Fundamental Lease Provisions. In the event the Gross Sales Break Point is expressed herein with reference to any period other than a calendar year, and as a result a Gross Sales Break Point is specified in one amount for a part of any Year, and in another amount for the remainder of such Year, each such portion of that Year shall be treated as a Partial Year for purposes of this Section. The Percentage Rent for each Partial Year shall be an amount equal to the Percentage set forth in the Fundamental Lease Provisions times the amount of Gross Sales made during such Partial Year in excess of the Partial Year Break Point. The term "Partial Year Break Point" shall mean an amount equal to the Gross Sales Break Point multiplied by the Partial Year Fraction for the applicable Partial Year. For purposes hereof, "Partial Year" also shall include, as to any Year during which Percentage Rent is to be abated in whole or part pursuant to any provision of this Lease, the portion of such Year for which such abatement is not in effect, and the days in such portion shall constitute the numerator of the Partial Year Fraction. In each Year or Partial Year Tenant shall be obligated to pay Percentage Rent beginning with the first month in which the aggregate amount of Gross Sales made for such Year or Partial Year exceeds the Gross Sales Break Point (or Partial Year Break Point in the case of Partial Year). If this Section is applicable, Tenant shall pay Percentage Rent (in addition to Minimum Rent and Additional Rent) for each and every succeeding month during the remainder of such Year or Partial Year on all additional Gross Sales. Each payment of Percentage Rent shall be paid by Tenant to Landlord without demand and otherwise as set forth in this Article 4 together with Tenant's monthly statement of Gross Sales provided for in Section 4.06, subject to the annual adjustment provided for in such Section 4.06, beginning each Year with the month during which Gross Sales have exceeded the Gross Sales Break Point (or, as to any Partial Year, the Partial Year Break Point).


### Section 4.05: GROSS SALES.

(a) The term "Gross Sales" means the total gross receipts and receivables of all merchandise, wares and other goods sold or leased and the actual charges for all services performed and business conducted and accommodations rendered by Tenant and by any subtenant, licensee, concessionaire and other occupant in, at, from, or arising out of the use of the Premises, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without reserve or deduction for inability or failure to collect, including but not limited to sales, leases and services: (i) where the orders therefor originate in, at, from or arising out of the use of the Premises, whether delivery or performance is made from the Premises or from some other place and regardless of the place of bookkeeping for, payment of, or collection of any account; or (ii) made or performed by mail, telephone, or telegraph orders received or filed in, at or from the Premises; or (iii) made or performed by means of telephonic, mechanical or other vending means or devices in or for the Premises; or (iv) which Tenant, and any subtenant, licensee, concessionaire and other occupant, in the normal and customary course of its business, would or does credit or attribute to its operations at the Premises or any part thereof. Any deposit accepted or retained by Tenant shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Tenant receives payment therefor. No franchise, capital stock tax, tax based upon assets or net worth or gross receipts tax, and no income or similar tax based on income or profits shall be deducted from Gross Sales.

(b) Only the following shall be excluded from Gross Sales: (i) any exchange of merchandise between stores of Tenant when such exchange is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at or from the Premises; (ii) returns to suppliers, shippers or manufacturers; (iii) cash or credit refunds to customers on transactions otherwise included in Gross Sales; (iv) sales of fixtures, machinery and equipment, which are not stock for sale or trade, after use thereof in the conduct of Tenant's business; and, (v) amounts separately stated in the sales receipt and collected from customers which are paid by Tenant to any government for any sales or excise tax imposed by law at the point of sale.

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

(a) If Percentage Rent is payable hereunder, Tenant shall furnish to Landlord within fifteen (15) days after the end of each calendar quarter during the Term a complete statement (the "Quarterly Report"), certified by Tenant (or a responsible financial officer thereof if Tenant is a corporation), setting forth (i) the amount of Gross Sales during such month, (ii) the aggregate amount of Gross Sales during such Year (or Partial Year, as the case may be), including such month, (iii) the amount, if any, by which such aggregate amount of Gross Sales exceeds the Gross Sales Break Point (or in the Partial Year Break Point, in the case of the Partial Year), and (iv) the amount of Percentage Rent previously paid by Tenant to Landlord for such Year (or Partial Year, as the case may be). The Quarterly Report shall be in such form and style and contain such details and breakdown as Landlord may reasonably require.

Landlord:  Tenant: \_\_\_\_\_



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(b) Tenant will (regardless whether Percentage Rent is payable hereunder) furnish to Landlord within sixty (60) days after the end of each Year and any Partial Year a complete statement (the "Yearly Report") certified by an independent certified public accountant employed or retained by Tenant, showing in reasonable detail the amount of Gross Sales during such Year and (if Percentage Rent is payable hereunder) the amount paid to Landlord pursuant to Section 4.04(b) for such Year. The Yearly Report shall be accompanied by the signed opinion of the person certifying the Yearly Report specifically stating that such person has read the definition of "Gross Sales" contained in this Lease, that such person has examined the Yearly Report of Gross Sales of such Year, that such person's examination included such tests of Tenant's books and records as such person considered necessary under the circumstances, and that the Yearly Report accurately represents the Gross Sales of such Year. If Percentage Rent is payable hereunder, an adjustment shall be made with the furnishing of each Yearly Report with respect to Percentage Rent as follows: if Tenant shall have paid to Landlord an amount greater than Tenant is required to pay as Minimum Rent and Percentage Rent under the terms of Sections 4.03 and 4.04(a), Tenant shall receive a credit of such excess against payments of Minimum Rent next becoming due to Landlord; or, if Tenant shall have paid an amount less than was required to be so paid, then Tenant shall forthwith pay such difference. In no event, however, shall the Rent to be paid by Tenant and retained by Landlord under the terms of Sections 4.03 and 4.04 for any given Year be less than the Minimum Rent for such Year. The Reports required by this Section 4.06 shall be delivered to Landlord at the notices address of Landlord set forth on the first page of this Lease or to such other person and/or to such other place as may be designated from time to time by notice from Landlord to Tenant.

### Section 4.07: TENANT'S RECORDS & AUDITS.

(a) The business of Tenant and of any subtenant, licensee, concessionaire and other occupant upon the Premises shall be operated so that duplicate dated sales slips, dated invoices or register receipts serially numbered, shall be issued with each sale and other transaction, whether for cash, credit or exchange, and Tenant shall utilize or cause to be utilized such devices as Landlord shall approve to record all sales, which approval shall not be unreasonably withheld. Furthermore, Tenant shall keep at all times during the Term, at the Premises or at the home or regional office of Tenant, full, complete and accurate books of account and records in accordance with accepted accounting practices with respect to all operations of the business to be conducted in or from the Premises, including the recording of Gross Sales and the receipt of all merchandise and other goods into and the delivery of all merchandise and other goods from the Premises during the Term, and shall retain such books and records, copies of all tax reports and tax returns submitted to taxing authorities, as well as copies of contracts, vouchers, checks, inventory records and other documents and papers in any way relating to the operation of such business for at least three (3) years from the end of the period of which they are applicable, or if any audit is required or a controversy should arise between the parties hereto regarding the Rent payable hereunder, until such audit or controversy is terminated even though such retention period may be after the expiration of the Term or earlier termination of this Lease. Such books and records shall be open at all reasonable times during the aforesaid retention period to the inspection of Landlord or its duly authorized representatives, who shall have full and free access to such books and records and the right to require of Tenant, its agents and employees, such information or explanation and audit thereof and the right to require Tenant to make such books, records and other materials which Tenant is required to retain available at the Premises for such examination and audit. The acceptance by the Landlord of payments of Percentage Rent shall be without prejudice to the Landlord's examination and audit rights hereunder. Landlord may at any reasonable time, upon ten (10) days' prior written notice to Tenant, cause a complete audit to be made of Tenant's entire books, records and other materials which Tenant is required to retain (including the books and records of any subtenant, licensee, concessionaire and other occupant) for all or any part of the three (3) year period immediately preceding the day of the giving of such notice by Landlord to Tenant. If such audit shall reveal a deficiency in any payment of Percentage Rent, Tenant shall forthwith pay to Landlord the amount of the deficiency.

(b) If such audit shall disclose that: (1) any of the Reports understates Gross Sales during the reporting period of the Report to the extent of two percent (2%) or more; or (2) Tenant has not recorded Gross Sales, or kept books of account and records, as and for the period required by this Section 4.07; or if Tenant shall be delinquent in delivering to Landlord the Yearly Report or Monthly Reports for two (2) consecutive months, or more than twice in any Year or Partial Year, then such understatement, failure or delinquency shall be an Event of Default. In addition, in the event of such understatement, failure or delinquency, Landlord shall have the right to bill to Tenant the amount of any deficiency in Percentage Rent and for the cost of said audit, which amounts shall be paid by Tenant within ten (10) days after demand and which deficiency will bear interest at the "Default Rate" (defined in Section 16.03 hereof) from and after the date it should have been paid until paid. In the event Tenant fails to pay such

Landlord:                      Tenant:

## Hilltown Crossings Shopping Center

deficiency, costs and interest upon demand as provided in the preceding sentence, Landlord shall have such rights and remedies as may be provided herein, or at law or in equity, arising by virtue of Tenant's failure to pay Rent.

### Section 4.08: ADDITIONAL RENT.

In addition to Minimum Rent and Percentage Rent, Tenant shall pay, as additional rent (herein sometimes collectively called "Additional Rent"), all other amounts, sums of money or charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to this Lease, whether or not the same is designated as "Additional Rent". The terms "Taxes", "Tax Charge", "CAM Sum" and "CAM Charge" are defined in Articles 5 and 8, respectively. In computing the Tax Charge, the CAM Charge and any other charge to Tenant computed on the same or substantially similar basis as the Tax Charge or the CAM Charge (collectively "Other Like Charges"), the net payments by Majors to Landlord toward the Taxes, the CAM Sum or the sums on which Other Like Charges are based (collectively the "OLC Sums") shall be applied respectively to reduce the Taxes, the CAM Sum and the particular OLC Sum before apportionment and determination of the Tax Charge, CAM Charge or Other Like Charge to be paid by Tenant and for the purposes of computing the Tax Charge, the CAM Charge and such Other Like Charge, the denominator shall not include the GLA of the Majors' Premises.

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

Rent payable by Tenant under this Lease (whether Minimum Rent, Percentage Rent, or Additional Rent) shall be paid when due without prior demand therefor, shall be payable without any deductions or setoffs or counterclaims whatsoever (except for offsets or credits expressly permitted by this Lease), and shall be paid by Tenant to Landlord at the address of Landlord set forth in Section (1) in the Fundamental Lease Provisions, or to such payee and/or at such other place as may be designated from time to time by notice to Tenant. At the end of the Term, provided there exists no uncured Event of Default on the part of Tenant and no event which, with the giving of notice and/or the expiration of time will become an Event of Default hereunder if not cured, Landlord shall refund to Tenant any amount of excess Rent paid to Landlord and any other amounts due from Landlord to Tenant. In the event any installment of Minimum Rent, Percentage Rent, Additional Rent or other sum under this Lease shall not be paid within five (5) days following written notice thereof to Tenant, a "Late Charge" of five (5) cents per each dollar so overdue shall be paid by Tenant to Landlord upon demand, as Additional Rent, for the purpose of defraying Landlord's administrative expenses incident to the handling of such overdue payments; provided that Landlord shall not be obligated to give such written notice more than two (2) times in any year, and on the third such failure to timely pay Rent, the Late Fee will be charged without written notice of non-payment to Tenant. In addition, any installment of Minimum Rent, Percentage Rent, Additional Rent or other sum under this Lease, which is not paid by Tenant to Landlord within thirty (30) calendar days after it is due shall bear interest at the Default Rate (as defined below).

## ARTICLE 5: TAXES AND ASSESSMENTS

### Section 5.01: TENANT'S TAX CHARGE.

Tenant shall pay to Landlord in each Year and any Partial Year, as Additional Rent, Tenant's share of all real estate and other ad valorem taxes and other assessments, impositions, excises and other governmental or quasi-governmental charges of every kind and nature (including, but not limited to, general and special assessments, sewer and fire district assessments, foreseen as well as unforeseen) with respect to the Shopping Center or any part thereof. Such taxes and assessments are collectively called the "Taxes" in this Lease. Tenant's share of the Taxes shall be an amount equal to the product obtained by multiplying the Taxes, and Landlord's costs and expenses (including statutory interest, if any) in obtaining or attempting to obtain any refund, reduction or deferral thereof, by the GLA Fraction thereof (with daily proration for any Partial Year) shall be included within the computation of the annual Taxes for the Year in question (the "Tax Charge"). If any tenant of any part of the Shopping Center obtains the right to have its premises separately administered for the collection of real estate taxes and makes payments on account of such real estate taxes directly to the taxing authority, the GLA of such tenant's leased premises shall not be included in the denominator of the GLA Fraction for the applicable purposes of this Section. Provided that Tenant makes timely payment of the Tax Charge, Landlord shall timely and fully pay real estate taxes and assessments against the Shopping Center, subject to Landlord's right to not pay taxes during any contest or other dispute of taxes or assessments. If Landlord receives any refund or rebate of taxes actually paid by Landlord, for which Tenant has made payments to Landlord, Landlord shall, after deducting its costs and expenses in obtaining such refund or rebate, credit Tenant's next payments for the Tax Charge for the amount of such remaining refund or rebate, multiplied by the GLA Fraction or Partial GLA Fraction, as applicable.

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

### Section 5.02: PAYMENT BY TENANT.

The Tax Charge required under this Article 5 shall be paid by Tenant in equal monthly installments in advance in such amounts as are reasonably estimated and billed by Landlord based upon the total Taxes due for the fiscal year of the applicable taxing authority. Landlord may revise its estimate and may adjust such monthly payment at the end of any calendar month. The first such installment shall be due and payable by Tenant on the Rent Commencement Date (prorated for the remaining number of days in the calendar year) and subsequent installments shall thereafter be due and payable at the beginning of each ensuing calendar month during the Term. In addition to the payments provided for in the immediately preceding sentence, if, prior to the Rent Commencement Date, Landlord shall have prepaid all or a portion of the Taxes apportionable to the Term, the Tax Charge shall include and Tenant shall reimburse to Landlord the Tenant's share of such Taxes (calculated in accordance with the provisions of Section 5.01) on or before the Rent Commencement Date. Prior to the Rent Commencement Date, Landlord shall send to Tenant an invoice setting forth Tenant's share of such Taxes, together with copies of receipted bills evidencing Landlord's payment of the Taxes. After Landlord has received the Tax bills for each Year, Landlord will notify Tenant of (i) the amount of Taxes on which the Tax Charge is based, (ii) the amount of any refund, reduction or deferral expenses, (iii) the total GLA of the Premises and the Buildings on which the Tax Charge is based and (iv) the amount of the Tax Charge. If the aforesaid monthly payments on account of the Tax Charge for a given Year or Partial Year are greater than Tenant's share of the Taxes payable for a given Year or Partial Year, Tenant shall receive a credit from Landlord for the excess against installments of the Tax Charge next becoming due to Landlord, and if said payments are less than Tenant's share, Tenant shall forthwith pay Landlord the difference.

### Section 5.03: TENANT'S BUSINESS TAXES.

Tenant shall pay before delinquency any and all taxes, assessments, impositions, excises, fees and other charges levied, assessed or imposed by governmental or quasi-governmental authority upon Tenant or its business operation, or based upon the use or occupancy of the Premises, or upon Tenant's leasehold interest, trade fixtures, furnishings, equipment, leasehold improvements (including, but not limited to, those required to be made pursuant to Tenant's Work) alterations, changes and additions made by Tenant, merchandise and personal property of any kind owned, installed or used by Tenant in, from or upon the Premises, together with all taxes assessed upon Tenant's use and occupancy of the Premises. If the Property of Landlord is included in any of the foregoing items, the aforesaid taxes, assessments, impositions, excises, fees and other charges shall nonetheless be paid by Tenant as herein provided. Tenant shall pay, when due and payable, any sales tax, or other tax, assessment, imposition, excise or other charge now or hereafter levied, assessed or imposed upon or against this Lease or any Rent or other sums paid or to be paid, or Tenant's, Landlord's interest in this Lease, any Rent or other sum paid or to be paid hereunder. Should the appropriate taxing authority require that any tax, assessment, imposition, excise or other charge referred to in this Section 5.03 be collected by Landlord for or on behalf of such taxing authority, then such tax, assessment, imposition, excise or other charge shall be paid by Tenant to Landlord monthly as Additional Rent in accordance with the terms of any notice from Landlord or Agent to Tenant to such effect. If any gross receipts tax shall be payable by Landlord, Tenant shall pay the portion thereof attributable to Landlord's receipts from this Lease. The taxes, assessments, impositions, excises, fees and other charges described in this Section 5.03 shall be the obligation of Tenant and not Landlord. If any tax, assessment, imposition, excise, fee or other charge covered by this Section 5.03 is imposed on Landlord, Tenant shall pay the same to Landlord within thirty (30) days after receipt of each bill therefor.

## ARTICLE 6: SERVICES

### Section 6.01: SERVICES.

Landlord shall designate the utility companies, municipalities and other governmental bodies or authorities (sometimes collectively referred to as the "Service Providers") serving the Premises, and Tenant shall arrange directly with each applicable Service Provider supplying the required utility service (collectively the "Utility") for such utilities, facilities and/or services (including electricity, steam, storm, sanitary, water, gas, telephone and any other utility facility and/or service) as Tenant may require, subject to and in accordance with the rules and regulations of the Service Provider (collectively the "Utility"). Landlord shall at all times have the right to select the Service Providers for the Premises and the Shopping Center, and the Landlord shall have the right at any time and from time to time to change, add or terminate Service Providers for all or any portion of any utility service or for all or any portion of the Premises or Shopping Center, in Landlord's sole discretion. Landlord has no obligation to supply any such services to Tenant or to install any lines, pipes, conduits or other utility facilities except as may

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

expressly be included in Landlord's Work. Excepting only Landlord's Work, all plumbing, electrical and other utility facilities and systems shall be provided to and installed for or within the Premises by Tenant at Tenant's sole cost and expense. During the Term, Tenant shall have the right to tap into and to use such common utility facilities as may be located in the Common Areas and which are suitable for use by Tenant in common with others entitled to the use thereof, provided that Tenant shall not interfere with or impair the use thereof by Landlord or any other present or future tenants, Tenant shall promptly restore all damage caused to the Common Areas by Tenant's work, Tenant shall be solely responsible for the maintenance, repair and replacement of all such connections and for all utility service facilities exclusively serving the Premises, and Tenant shall comply with Landlord's reasonable rules and regulations concerning connection to and use of such common utility facilities. Landlord shall have the right, without any liability to Tenant and without being in default of any covenant or condition of this Lease, to interrupt or suspend utility service by reason of accidents, emergencies or the making of repairs or changes which the Landlord is either required to make or which Landlord deems advisable to make. Landlord shall not be liable to Tenant nor shall this Lease or Tenant's obligations hereunder be affected in the event that any utility, facility and/or service is interrupted, changed or becomes unavailable from any source of supply or for any reason, or if the quantity or character of the service provided by any Service Provider is no longer available or suitable for Tenant's use, unless the foregoing is caused solely by the gross negligence or willful misconduct of Landlord, its employees acting in the scope of their employment and its contractors acting within the scope of their respective contracts.

### Section 6.02: SERVICES CHARGES.

(a) Tenant shall be responsible for and agrees to pay all rates, rents and other charges (including without limitation reservation fees, connection and tap-in fees, minimum rents and usage fees) (herein collectively called the "Services Charges") imposed by each Utility for water, energy, gas, telephone, and sanitary sewer and other utility services as are provided for use at the Premises, as Additional Rent, in advance, on the first day of each month during the Term (pro-rata for any fractional month), the charges of Landlord therefor. Tenant shall operate the Premises in such manner as shall not waste energy or water or burden or harm sanitary service. Tenant shall install or cause a third party to install separate meters at the Premises for the measurement of such utility services. All charges for such service (including the installation thereof and meters therefor) shall be billed directly to Tenant by the Service Provider and shall be paid by Tenant to the appropriate Service Provider as and when they become due and payable.

(b) Tenant shall be solely responsible for trash and garbage removal from the Premises including the placing of all trash and garbage in containers for such purpose as required by Landlord. In the event Landlord elects to furnish such service to the tenants of the Buildings, Tenant agrees to use only the service provided by Landlord and to pay for such service (including, without limitation, both the cost of leasing containers and the cost of removal) monthly, as Additional Rent, in accordance with a schedule of charges to be established by Landlord (the "Refuse Handling Charge") which Landlord may include among the Services Charges. In no event shall Tenant be obligated to pay Landlord more for such trash and garbage removal service than the prevailing competitive rates of independent trash removal contractors for service similar to that provided by Landlord. Tenant also shall be solely responsible for, and shall reimburse to Landlord, all costs arising from the clearing of drains and sewer lines servicing the Premises necessitated by the disposal of grease or waste by Tenant. If Tenant's use of the Premises involves the preparation, sale or service of food and/or beverage products, Tenant shall install and maintain suitable grease traps for the protection of such sewer lines.

## ARTICLE 7: USE OF PREMISES

### Section 7.01: SOLE USE AND TRADE NAME.

Tenant throughout the Term shall use the Premises solely for the use set forth in the Fundamental Lease Provisions and shall use the Premises solely under the trade name set forth in the Fundamental Lease Provisions. Tenant shall not use or permit the Premises to be used for any other use or uses or under any other trade name without the prior written consent of Landlord, which shall not be unreasonably withheld as to the use of a recognized, bona fide trade name used at multiple locations by Tenant or any franchisee, assignee or sublessee permitted to occupy the Premises under the express terms of this Lease. Tenant agrees that if Tenant or anyone else claiming through or under Tenant uses the Premises for a use or trade name not set forth in the Fundamental Lease Provisions without Landlord's prior written consent, such conduct shall constitute an immediate Event of Default. Tenant shall, at its expense, procure any and all governmental licenses and permits including, without limitation, sign permits, required for the conduct of business in or from the Premises and shall, at all times, comply with the requirements of each such license and permit. Landlord does not represent or warrant that it will

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

obtain for Tenant (or that Tenant will be able to obtain) any license or permit. To Landlord's actual knowledge, there are no covenants, restrictions or other matters of record that would prohibit Tenant from using the Premises for the use set forth in the Fundamental Lease Provisions.

### Section 7.02: HOURS:

Tenant covenants and agrees that throughout the Term from and after the date when Tenant opens the Premises for business to the public, Tenant shall continuously operate, conduct its business within and otherwise use the Premises in accordance with the terms and conditions of this Lease, including, without limitation, the provisions of Section 7.01 hereof and all of the other provisions of this Article 7 (unless the Premises are rendered unfit for occupancy by reason of fire or other casualty, in which event Article 12 shall control). Tenant will keep the Premises open for business to the public at least: (a) every Monday through Saturday from 11:00 a.m. until 9:30 p.m.; and (b) also on Sunday from 12:00 p.m. until 6:00 p.m. (unless prohibited by jurisdictional authorities) as required by Landlord. In addition to any other right or remedy, if Percentage Rent is payable by Tenant hereunder, the Gross Sales Break Point (and the Partial Year Break Point in a Partial Year) shall be reduced, at Landlord's option, on a per diem basis for each violation of the foregoing and Tenant shall pay to Landlord the Percentage Rent so computed by Landlord. The per diem reduction shall be the amount of the applicable Break Point divided by 360 for each violation. Tenant agrees that Landlord may change the foregoing business hours from time to time to reflect local custom or seasonal shopping patterns provided that such changes are uniformly applied to the majority of retail tenants of the Buildings. The requirements of this Section 7.02 are subject, with respect to any business controlled by governmental regulations in its hours of operation, to the hours of operation so prescribed by such governmental regulations and are further subject to applicable federal, state and local environmental and other laws, rules, regulations, guidelines, judgments or orders (collectively the "governmental requirements").

### Section 7.03: OPERATIONAL REQUIREMENTS.

Tenant agrees that it: (a) will not in connection with the Premises conduct or permit to be conducted any auction, fire, bankruptcy or going out of business sales or similar type sale, or utilize any unethical method of business; provided, however, that this provision shall not restrict the absolute freedom (as between Landlord and Tenant) of Tenant to determine its own selling prices nor shall it preclude the conduct of periodic or seasonal promotional sales; (b) will not use or permit the use of any apparatus for sound and/or light reproduction or transmission including loudspeakers, phonographs, radios or televisions, or of any musical instrument in such manner that the sounds so reproduced, transmitted or produced shall be audible beyond the interior of the Premises; will not distribute, or cause to be distributed, at the Shopping Center or in any part thereof any handbills or other advertising notices; and will not conduct or permit any activities that might constitute a nuisance, or which are prurient or otherwise not generally considered appropriate in accordance with standards of operation for the Shopping Center established by Landlord; (c) will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Premises; will not cause or permit strong, unusual, offensive or objectionable sound, sights, odors, fumes, dust or vapors to emanate or be dispelled from the Premises; (d) will not load or permit the loading or unloading of merchandise, supplies or other property, nor ship, nor receive, outside the area and entrance designated therefor by Landlord from time to time; will not permit the parking or standing outside of said area of trucks, trailers, or other vehicles or equipment engaged in such loading or unloading in a manner which may interfere with the use of any Common Areas or any pedestrian or vehicular use; will use its best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Premises prior to 4:00 p.m. each day; (e) will not paint or decorate any part of the exterior or interior of the Premises, or change the architectural treatment, fixturing, decor or other appearance of the interior or exterior of the Premises, without first obtaining Landlord's written approval of such paint, decoration or change which has been applied to or installed upon the exterior or interior of the Premises without Landlord's prior written approval; (f) will keep the inside and outside of all glass in the doors and windows of the Premises clean and will replace any cracked or broken glass with glass of the same kind, size and quality; will maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests; will not burn, or permit undue accumulation of, garbage, trash, rubbish and other refuse; will [subject to Section 6.02(b)] remove the same from the Premises to compactors or other receptacles designated by Landlord, and will keep such refuse in proper containers in the interior of the Premises until so removed from the Premises; (g) will comply with all applicable federal, state and local environmental and other governmental requirements and all recommendations of any public or private agency having authority over insurance rates with respect to the use or occupancy of the Premises by Tenant (unless the same require structural repairs not made necessary by Tenant's particular use of the Premises, which shall be Landlord's responsibility); will not use or permit the use of any portion of the Premises for any unlawful purpose; and will conduct its business in the Premises in all respects in a

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

dignified manner and in accordance with high standards of store operation; (h) will not within three (3) feet of any entrance or exit or of any window of the Premises, or upon glass panes and supports of the show windows, or upon doors and exterior walls of the Premises, affix, place, suspend, or maintain any signs, advertising placards, names, banners, display fixtures, insignia, trademark, descriptive materials, merchandise or any such other item or like items, except as approved by Landlord; (i) will keep the storefront sign and display windows in the Premises lighted from dusk until at least midnight, each day, and for such other periods as may be reasonably required by rules and regulations established in accordance with Section 7.03(k) below; (j) will provide, or cause to be provided all security within its Premises as it deems appropriate; (k) will also comply with and observe all reasonable rules and regulations established by Landlord from time to time, so long as the same are reasonable and uniformly applied; (l) will not permit the use of any portion of the Premises for solicitations, demonstrations or itinerant vending, or any activities inconsistent with the standards or operation for the Shopping Center reasonably established by Landlord; (m) will not use, or permit to be used, the Common Areas, sidewalks adjacent to the Premises, or any other space outside of the Premises for the display or sale or offering for sale of any merchandise or for any other business, occupation or undertaking; (n) will provide or cause to be provided within the Premises, without cost or expense to Landlord, adequate lighting and security for its licensees, invitees and employees during such periods as the Premises are open for business; (o) will maintain at all times a full staff of employees and a complete stock of merchandise and other goods consistent with the use of the Premises; (p) will conduct its business to maximize Gross Sales; (q) will conduct its labor relations and its relations with employees in such a manner as to avoid all strikes, picketing, boycotts or handbilling at, or about the Premises and the Shopping Center. Tenant further agrees that if, during the period of any work by or for Tenant in or about the Premises if in connection with such work there is a strike, picketing, boycotting, handbilling or other activity objectionable to Landlord, Tenant shall take prompt legal action to cause the removal from the Premises and the Shopping Center all persons picketing, boycotting or handbilling, to the extent Tenant may cause such removal under applicable laws, or to control and limit (to the extent permitted by law) such activities if Tenant is unable, under applicable laws, to cause the removal of such persons. Notwithstanding the foregoing, and subject to applicable laws, Tenant shall have the right to install professionally-made window signs on the interior side of the store-front windows of the Premises.

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


Tenant shall not without having obtained the prior written consent of the Landlord, perform any work of any nature whatsoever to the roof, exterior walls or to any of the structural portions of the Buildings or the Premises, in the Common Area, or in any other areas reserved to Landlord or excluded from Tenant. Any damage to the Premises or any person or property occurring as a result of a breach of this provision shall be the sole responsibility, cost and expense of the Tenant. Notwithstanding Tenant's rights set forth elsewhere in this Lease, Landlord may erect additional stories or other structures over all or any part of the Buildings and any other part of the Shopping Center, provided the same shall not materially and adversely affect the parking areas adjoining Tenant's Premises, access to the Premises, or the physical integrity of the portions of the Premises operated by Tenant for business to the public, and Landlord shall plan and coordinate all of the same so as to minimize any adverse impact on Tenant's use of and the business operated within the Premises. In connection with such erection, or otherwise, Landlord may relocate Tenant's equipment and may erect temporary scaffolds and other aids to such construction at Landlord's sole cost and expense.

### Section 7.05: OPERATION OF HVAC SYSTEM.

Tenant agrees, during the hours the Premises is open for business, to control and operate the HVAC system serving the Premises regardless of whether such equipment was installed by Landlord or Tenant so that conditions inside the Premises are maintained within a range as may be prescribed by applicable governmental requirements.

### Section 7.06: EMPLOYEE PARKING AREAS.

Landlord may, from time to time, designate that particular portions of the Shopping Center parking areas (the "Employee Parking Areas") are to be used by Tenant and its employees, or other individuals working at or from the Premises (collectively "Employees"). If Landlord does so, Tenant and the Employees shall park their vehicles only in the Employee Parking Areas. Tenant shall furnish Landlord with a list of Tenant's and Employees' vehicle license numbers within ten (10) days after Landlord makes written request therefor. Tenant shall enforce the covenants of this Section among its Employees. If Tenant or any of its employees do not park their vehicles in the Employee Parking Areas, Landlord may give Tenant notice of such violation. If Tenant does not cease such violation, or cause such violation by the Employee to cease, as the case may be, within two (2) days after Landlord's notice

Landlord:  Tenant: \_\_\_\_\_

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of violation is given, Tenant shall pay to Landlord, as Additional Rent, an amount equal to Twenty-Five Dollars (\$25.00) per day per violating vehicles. For any subsequent violations, said Twenty-Five Dollars (\$25.00) per day per violating vehicle charge shall commence without the necessity of further notice, and Landlord shall, in addition, have the right to have the violating vehicles towed at Tenant's expense.

### Section 7.07: NON-COMPETITION COVENANT

Tenant covenants and agrees with Landlord that throughout the Term and any extension or renewal thereof, neither Tenant nor any "Affiliate" of Tenant (as such quoted word is hereinafter defined) shall directly or indirectly own, operate or manage or have a financial interest in any business which is similar to that of Tenant or which sells or displays, directly or indirectly, merchandise or other goods, or services, similar to those sold or offered or displayed by Tenant at or from the Premises (the "Competing Store") within two (2) miles from that property line of the Shopping Center nearest to the Competing Store (the foregoing covenant being hereinafter called "Tenant's Non-Competition Covenant"). "Affiliate" means a proprietorship, corporation, partnership, unincorporated association or other person or entity "controlling", "controlled" by or under common "control" with Tenant. The words "controlling", "controlled" and "control" shall have the meanings given them under the Securities Exchange Act of 1934, as amended. If the Tenant's Non-Competition Covenant is violated, then, in addition to all other rights and remedies, Landlord shall have the right to add the "gross receipts of the Competing Store" (hereinafter defined) to the Gross Sales made by Tenant hereunder for the purpose of computing Percentage Rent. The phrase "gross receipts of the Competing Store" shall be determined by applying the definition of Gross Sales at Section 4.05 to transactions of the Competing Store. Tenant shall include the address and identity of its business at the Premises in all advertisements made by Tenant in which the address and identity of any similar local business of Tenant is mentioned and shall not divert from the Premises any transactions or other business which would occur at or from the Premises.

## ARTICLE 8: COMMON AREAS

### Section 8.01: USE OF COMMON AREAS

Subject to the Landlord's right under Section 1.02(d), above, Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged during the Term to use the Common Areas for their respective intended purposes in common with other persons. Landlord shall at all times have the right to utilize the Common Areas for promotions, exhibits, or events, the leasing of kiosks and food facilities, landscaping, decorative items, and any other use which, in Landlord's reasonable judgment, tends to attract customers to, or benefit the customers of the Shopping Center; provided that such uses shall not materially diminish the parking spaces, in the proximity of the Premises, available for use by Tenant's patrons or unreasonably impair access to the Premises.

### Section 8.02: COMMON AREA MAINTENANCE SUM

(a) The term "Common Area Maintenance Sum" (or the "CAM Sum") shall be charged and prorated in the manner hereinafter set forth and shall mean all sums incurred by Landlord reasonably and appropriately and for the best interests of the Shopping Center in connection with the operation and maintenance of the Common Areas (or any additions thereto), including, without limitation, the costs and expenses of: (i) operation, maintenance, repair and replacement of the storm and sanitary sewer, water, electrical, gas, steam, telephone, lighting (including, poles, bulbs, and fixtures), other utility systems and facilities and services supplied for use within or in connection with the Common Areas (but not for use by individual tenants unless supplied to Tenant in common with other tenants), together with usage, reservation, connection and other fees, rents and charges therefor, including transition fees or other fees paid in connection with the termination, addition or change of Service Providers by Landlord; operation, maintenance, repair and replacement of pylon, monument, directional signs and other traffic signals, markers, controls, signs (including all identification signs) both on and off site (excluding individual tenant sign faces and any other sign fixtures or components maintained by individual Tenants); ducts, conduits and similar items; (ii) snow, ice, trash, and garbage removal (excluding trash and garbage removal for individual tenants unless Landlord supplies such services to Tenant in common with other tenants), pest control, and cleaning, painting, sweeping, striping and repaving all parking surfaces, services areas and other portions of the Common Areas; (iii) operation, maintenance, repair and replacement of heating, ventilating and air cooling, sprinkler, security, emergency, life safety systems, and any other items, facilities, equipment and systems furnished by Landlord as part of the Common Areas; (iv) premiums and other charges for insurance to the extent provided by Landlord, including without limitation liability insurance for personal and bodily injury, death and property damage; insurance covering the Buildings and the Common Areas against fire and extended coverage perils; theft

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

or casualties; workers' compensation; plate glass insurance for glass exclusively serving the Common Areas; boiler insurance (if carried); and rent insurance provided by Landlord pursuant to Section 11.02(a)(iii); (v) operation, maintenance, repair and replacement of fencing and similar items located within the Common Areas and interior and exterior planting, replanting and replacing of all flowers, shrubbery, plants, trees and other landscaping within the Common Areas; (vi) operation, maintenance, repair and replacement of structures forming part of the Common Areas; (vii) maintenance, repair, replacement and depreciation of all machinery and equipment used in the tenancy and depreciation of all machinery and equipment used in the operation or maintenance of the Common Areas (including but not limited to all escalators, elevators and other vertical transportation (if any)), security vehicles and equipment, and all personal property taxes and other charges incurred in connection with such machinery and equipment; (viii) all license and permit fees, and any and all parking surcharges that may result from any environmental or other laws, rules, regulations, guidelines or orders; (ix) the cost of installation and operation of loudspeaker systems, music program services, cable television systems, or similar audio or video transmission systems; (x) personnel, including without limitation, cleaning and maintenance people together with the uniforms, payroll, payroll taxes and employee benefits of all such personnel; (xi) the cost of security personnel and equipment, including, without limitation, uniforms as well as transportation and surveillance equipment; (xii) reasonable reserves for replacement of fixtures and improvements in and equipment servicing the Common Areas, and (xiii) Landlord's supervisory charge in an amount equal to fifteen percent (15%) of the total aggregate cost of operating and maintaining the Common Areas, including but not limited to those things listed in Section 8.02(a). Landlord's fifteen percent (15%) supervisory charge shall not include Real Estate Taxes.

(b) Notwithstanding the foregoing, the CAM Sum shall not include: (i) the cost of any repair or replacement required of Landlord pursuant to the reconstruction obligations of Landlord under any tenant leases on account of uninsured casualty damage; (ii) depreciation (other than depreciation as above specified); (iii) any utilities which are directly metered or submetered to tenants of the Shopping Center; (iv) the costs of tenant improvements, lease negotiations, brokerage fees or commissions or other costs attributable to the leasing of any part of the Shopping Center to specific tenants; (v) mortgage interest or amortization payments or similar financing costs of Landlord; (vi) Landlord's income taxes, gross profits, franchise, personal property or similar taxes or charges upon the profits, assets, franchise, employees or income of Landlord (except that Tenant shall pay any tax imposed directly upon the rentals payable by Tenant hereunder); (vi) the removal or clean-up of asbestos or any other hazardous material from the Shopping Center (but may include routine periodic inspections therefor); (vii) any cost associated with the initial construction of the buildings and capital improvements constituting the Shopping Center or as initial improvements on additional lands subsequently added thereto, or subsequent capital expenditures for the remodeling of the Shopping Center in the nature of aesthetic beautification or modernization (as distinguished in each case from replacements for preservation or maintenance, which are includable in the CAM Sum); (viii) costs of correcting manifest defects in the initial design or construction of the Shopping Center within one year after substantial completion thereof; (ix) expenses for repairs made necessary by fire or other casualty, to the extent that the Landlord receives insurance proceeds therefor; (x) legal expenses incurred in enforcing any other lease, or (xi) direct settlement payments by Landlord in connection with personal injury claims. Capital costs included in the CAM Sum shall be amortized over the reasonable useful life of the applicable equipment, fixture or improvement, and only the amount of such amortization allocable to the applicable billing period shall be included in any payment period.

(c) Notwithstanding anything contained in this Lease to the contrary, in calculating the "CAM Charge" (defined in Section 8.03), the CAM Charge may be based upon Landlord's estimates, which estimates and payments thereon shall be subject to adjustments in future billings to Tenant based on Landlord's actual cost. Landlord may cause any or all maintenance services for the Common Areas to be provided by an independent contractor or contractors or others.

(d) If Landlord from time to time acquires, or makes available, additional land or improvements for parking or other Common Area purposes, the CAM Sum shall also include all costs and expenses incurred by Landlord in connection with the operation or maintenance of said additional land and improvements. The words "maintenance", "maintain" or "maintaining" as used in this Article 8 includes without limitation, all repairs, replacements and other work and service of any type whatsoever, whether capital or non-capital in nature.

### Section 8.03: CAM CHARGE

Tenant shall pay to Landlord, as Additional Rent, Tenant's share of the CAM Sum in the manner hereinbelow set forth. Tenant's share of the CAM Sum for any Partial Year and for each Year through the end of each December 31 shall be an amount equal to the CAM Sum for the period multiplied by the

Landlord:                      Tenant:



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GLA Fraction therefor (the "CAM Charge"). For any Partial Year, the CAM Sum will be multiplied by the Partial Year Fraction with the result multiplied by the GLA Fraction therefor. Tenant shall pay Landlord on the Rent Commencement Date and on the first day of each calendar month in the Term thereafter amounts estimated by Landlord to be Tenant's monthly share of the CAM Sum. Landlord may adjust said amount at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated costs. Within one hundred and twenty (120) days following the end of each December 31, Landlord shall furnish Tenant a statement covering the Year just expired, certified as correct by an independent public accountant or an authorized representative of Landlord, showing the CAM Sum and the amount of the CAM Charge and the payments, made by Tenant with respect thereto as set forth hereinabove. If Tenant's aggregate monthly payments on account of the CAM Charge are greater than Tenant's share of the CAM Sum, Tenant shall receive a credit for the excess against monthly installments on account of the CAM Charge next becoming due to Landlord; if said payments are less than said share, Tenant shall pay to Landlord the difference forthwith. Any statement rendered by Landlord to Tenant for Tenant's share of the CAM Sum shall be deemed accepted by Tenant unless, within two (2) years after the receipt of such statement, Tenant shall notify Landlord in writing of the items it disputes ("Notice of Dispute"). Pending the determination of such dispute, Tenant shall pay all amounts due as indicated on the statement and such payments shall be without prejudice to Tenant. In connection with determining and resolving such dispute, Tenant may upon reasonable prior written notice and at Landlord's home office, inspect and review the books of Landlord kept in connection with the CAM Sum. If the dispute is not amicably settled between Landlord and Tenant within sixty (60) days after completion of Tenant's audit or review, either party may refer the disputed items to a reputable firm of independent certified public accountants, selected by Landlord and approved by Tenant, for a decision, and the decision of such firm shall be conclusive and binding upon Landlord and Tenant. The expenses involved in such determination shall be borne by the party against whom a decision is rendered by such accountants, provided that if more than one (1) item is disputed and the decision shall be against both parties, then the expenses shall be apportioned according to the monetary value of the items decided against each party, provided that Landlord shall bear no expenses in connection with such proceeding if it is determined that the overcharge to Tenant is seven percent (7%) or less than the actual amount due. If the dispute on any item shall be determined in Tenant's favor, the amount of Tenant's overpayment shall be refunded to Tenant within thirty (30) days of such accounting firm's notice of its decision. Notwithstanding the foregoing, if a Major shall have conducted an audit of comparable items for a comparable period, Landlord may provide a copy of such audit to Tenant as final evidence of the cost of items shown therein, and Tenant shall not have the audit right provided herein as to such items and period. If any tenant of any part of the Shopping Center, in lieu of paying a share of the CAM Sum, shall undertake to maintain any designated part of the Common Areas of the Shopping Center, the GLA of such tenant's leased premises shall not be included in the denominator of the GLA Fraction for the applicable purposes of this Section. Landlord represents that the monthly payments of the CAM Charge for 1999 is \$1.00 per square foot, and the monthly Tax Charge for 1999 is \$1.50 per square foot.

### Section 8.04: CHANGES BY LANDLORD.

As between Landlord and Tenant, Landlord shall at all times have the right and privilege of determining the nature and extent of the Common Areas, and of making such changes, rearrangements, additions or reductions therein and thereto from time to time which in its opinion are deemed to be desirable and for the best interests of a significant number of the persons using the Common Areas or which are made as a result of any federal, state or local environmental or other governmental requirements, including but not limited to, the location, relocation, enlargement, reduction or addition of driveways, entrances, exits, automobile parking spaces, employee and customer parking areas (if any), the direction and flow of traffic, installation of prohibited areas, landscaped areas, and any and all other facilities of the Common Areas. Landlord (or others entitled to) may from time to time make alterations, reductions, or additions anywhere to the Buildings, the Common Areas or other part of the Shopping Center or any lands or improvements added thereto, construct additional buildings or improvements on the Common Areas or elsewhere and make alterations thereto, build additional stories on any buildings, construct additional parking facilities, and construct roof, walls, and any other improvements over, or in connection with any part of, or all of, the Common Areas or enclose same. Landlord shall not, however, after approval by Landlord of the Plans make any material change in the dimensions of the Premises or change the location of the Premises without Tenant's consent unless required to make any such change(s) by reason of any federal, state or local environmental law, rule, regulation, guideline, judgment, order or other governmental requirements.

### Section 8.05: LANDLORD'S MAINTENANCE AND CONTROL.

Landlord agrees to maintain and operate, or cause to be maintained and operated, the Common Areas in good and reasonable condition and manner. Landlord shall, as between Landlord and Tenant, at

Landlord:  Tenant: \_\_\_\_\_

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all times during the Term have the sole and exclusive control, management and direction of the Common Areas. The rights of Tenant in and to the Common Areas shall at all times be subject to the rights of others to use the same in common with Tenant, and it shall be the duty of Tenant to keep all of the Common Areas free and clear of any obstructions or interferences created or permitted by Tenant or resulting from Tenant's operation. Landlord may at any time and from time to time close all or any portion of the Common Areas to make repairs or changes, or to such extent as may, in the opinion of Landlord, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, to close temporarily any or all portions of the Common Areas and to do and perform such other acts in and to Common Areas as, in the exercise of a good business judgment, Landlord shall determine to be advisable with regard to use thereof by occupants and tenants, their employees and invites.

### ARTICLE 9: RULES AND REGULATIONS

Tenant agrees that Landlord may establish and from time to time change, alter and amend, and enforce against Tenant, such reasonable rules and regulations as Landlord may deem necessary or advisable for the proper and efficient use, operation and maintenance of the Common Areas, provided that all such rules and regulations affecting Tenant and its invites and employees shall apply equally and without discrimination to substantially all of the retail tenants in the Buildings and shall be consistent with the express terms of this Lease. The rules and regulations herein provided for may include, but shall not be limited to, the hours during which the Common Areas shall be open for use.

### ARTICLE 10: CONSTRUCTION WORK

Tenant shall not perform any construction or make any alterations, additions or changes in or to the Premises at any time during the Term (herein sometimes collectively called "Construction Work") without Landlord's prior written consent; provided that Tenant shall have the right to make interior, non-structural alterations and improvements that do not penetrate the roof, without Landlord's consent if the cost of the same is less than \$10,000. In no event shall Tenant make or cause to be made any penetration through any roof, floor or exterior or shared wall without the prior written consent of Landlord. Tenant shall be directly responsible for any and all damages, including, without limitation, damages to the Buildings, the Premises and the premises of other tenants in the Buildings resulting from any of Tenant's Construction Work, whether or not Landlord's consent therefor was obtained. Any and all Construction Work which is consented to by Landlord shall be performed in accordance with (a) drawings and specifications prepared by a licensed architect, or engineer and approved in writing by the Landlord before the commencement of the Construction Work, (b) all necessary governmental approvals and permits, which approvals and permits Tenant shall obtain at its sole cost and expense, and (c) all applicable laws, rules, regulations, building codes and other governmental requirements relating thereto. All Construction Work shall conform the terms of any approval or consent given by Landlord and shall be performed in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of the Construction Work. Any Construction Work performed by Tenant without Landlord's consent shall be returned to its original condition at Tenant's sole cost and expense upon request by Landlord. Tenant shall perform any Construction Work in such a manner as not to obstruct the access to the premises of any other occupant of the Buildings nor obstruct Common Areas. In the event Tenant shall perform any permitted or required Construction Work, none of the Construction Work need be insured by Landlord under such insurance as Landlord may carry upon the Buildings nor shall Landlord be required under any provisions of this Lease relating to reconstruction of the Premises to reconstruct or reinstall any such Construction Work. If necessary in connection with any Construction Work by Tenant, Landlord and Tenant shall cooperate in designating suitable portions of the Shopping Center lands to serve as a staging area for the storage of Tenant's construction materials, trailers and other equipment, and Tenant shall maintain such areas in a safe and orderly condition. Landlord and Tenant also shall agree upon a suitable access to the Shopping Center for use by all of Tenant's and its contractors' and suppliers' vehicles (and areas for the parking and storage of such vehicles), and Tenant shall cause all of its employees, contractors and suppliers to use only such entrances and no other entrances to the Shopping Center.

### ARTICLE 11: INDEMNITY AND INSURANCE

#### Section 11.01: TENANT'S INSURANCE.

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

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center


(i) Public Liability and Property Damage. General Public Liability Insurance covering the Premises and Tenant's use thereof against claims for personal and bodily injury or death, property damage and product liability occurring upon, in or about the Premises, such insurance to afford protection to the limit of not less than \$3,000,000 in respect of bodily injury or death to any number of persons arising out of any one occurrence and such insurance against property damage to afford protection to the limit of not less than \$1,000,000 in respect of any instance of property damage. The insurance coverage required under this Section 11.01(a)(i) shall, in addition, extend to any liability of Tenant arising out of the indemnities provided for in Section 11.03. The general aggregate limits under the General Public Liability Insurance policy or policies must apply separately to the Premises and to Tenant's use thereof. Accordingly, if Tenant obtains the General Public Liability Insurance herein required under the Commercial General Liability form of policies, or their equivalent, Tenant shall also obtain Insurance Services Office ("ISO") Endorsement CG-25-04-11-85 Amendment-Aggregate Limits of Insurance (Per Location) or its equivalent as determined by Landlord (the "Endorsement"). The certificate of insurance evidencing the Commercial General Liability form of policies and the Endorsement shall specify on the face thereof that the limits of such policies apply separately to the Premises.

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

(iii) Tenant Leasehold Improvements and Property. Insurance covering all of the items included in Tenant's leasehold improvements, if any, all heating, ventilating and air conditioning equipment serving the Premises, together with Tenant's trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and alterations, additions or changes made by Tenant pursuant to Article 10, in an amount not less than one hundred percent (100%) of their full replacement cost from time to time during the Term, providing "all-risk" protection against perils, without limitation, included within the standard state form of fire and broad form extended coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief. Any policy proceeds from such insurance shall be held in trust by Tenant's insurance company for the repair, reconstruction and restoration or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 12.

(iv) Workers' Compensation And Employer's Liability. Workers' Compensation and Employer's Liability insurance affording statutory coverage and containing statutory limits with the Employer's Liability portion.

(b) All policies of insurance provided for in Section 11.01(a) shall be issued in form acceptable to Landlord by insurance companies with a financial size of not less than A+ as rated in the most current available "Best's Insurance Reports", and qualified to do business in the state in which the Buildings are located. Each and every such policy: (i) shall be issued in the name of Tenant and shall name as an additional insured each of Landlord and any other parties in interest from time to time designated in writing by notice from Landlord to Tenant; (ii) shall be for the mutual and joint benefit and protection of Landlord and Tenant and any such other parties in interest; (iii) shall (or a certificate thereof shall) be delivered to each of Landlord and any such other parties in interest within ten (10) days after delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of each such policy, and, as often as any such policy shall expire or terminate; renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent; (iv) shall contain a provision that the insurer will give to Landlord and such other parties in interest at least thirty (30) days notice in writing in advance of any material change, cancellation, termination or lapse, or the effective date of any reduction in the amounts of insurance; (v) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Landlord may carry; and (vi) shall contain a provision that Landlord and any such other parties in interest, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. Any insurance provided for in Section 11.01(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds, provided, however, that: (i) Landlord and any other parties in interest from time to time designated by Landlord to Tenant shall be named as an additional insured thereunder as its interest may appear; (ii) the coverage afforded Landlord and any such other parties in interest will not be reduced or diminished by reason of the use of such blanket policy of insurance; (iii) any such policy or policies [except any covering the risks referred to in Section 11.01(a)(i)] shall specify therein (or Tenant shall furnish Landlord with a written statement from the insurers under such policy

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

specifying) the amount of the total insurance allocated to the Tenant's improvements and property more specifically detailed in Section 11.01(a)(iii); and (iv) the requirements set forth in this Article 11 are otherwise satisfied.

### Section 11.02: LANDLORD'S INSURANCE.

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

(i) Public Liability and Property Damage. General Public Liability Insurance against claims for bodily injury or death and property damage occurring upon, in or about the Common Areas, such insurance to afford protection to the limit of not less than \$5,000,000 in respect to injury or death to any number of persons arising out of any one occurrence and such insurance against property damage to afford protection to the limit of not less than \$1,000,000 in respect of any instance of property damage.

(ii) Landlord's Real and Personal Property. Insurance covering the Buildings [excluding Tenant's improvements and property required to be insured by Tenant pursuant to Section 11.01(a)(iii)] in an amount not less than one hundred percent (100%) of full replacement cost (exclusive of the cost of excavations, foundations and footings), from time to time during the Term, providing protection against perils included within the standard state form of fire and extended coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief, and such other risks as Landlord may from time to time determine and with any such, deductibles as Landlord may from time to time determine, provided any such deductibles shall not be more than Fifty Thousand Dollars (\$50,000) per claim.

(iii) Rent Insurance. Rent insurance with respect to the premises of the tenants in the Shopping Center if available at a cost which Landlord in its sole judgment deems reasonable, against loss of rents for reasons set forth in Section 12.04 in an aggregate amount equal to not more than twenty-four (24) times the sum of (i) the monthly requirement of Minimum Rent of such tenants, plus (ii) the average monthly amount estimated from time to time by Landlord to be payable by such tenants as Percentage Rent and as Additional Rent pursuant to their leases.

(b) Any insurance provided for in Section 11.02(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds, provided that the requirements of Section 11.02(a) are otherwise satisfied. Tenant shall have no rights in any policy or policies maintained by Landlord and shall not be entitled to be named an insured thereunder, by reason of payment, as part of the CAM Sum, of its share of Landlord's premiums for the insurance provided for in this Section 11.02 or otherwise.

### Section 11.03: INDEMNIFICATION.

Tenant agrees that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the Term from any cause whatsoever (excepting only Landlord's gross negligence or willful misconduct), including without limitation bursting pipes and smoke, the construction, use, occupancy or enjoyment of the Premises by Tenant or any person therein or holding under Tenant, or the happening upon or about the Premises of any event; and Tenant for the purposes of this Section 11.03 shall be deemed to be in exclusive control of the Premises during the Term. Tenant does hereby agree to and shall defend, indemnify and save harmless Landlord and Agent (if any) from all claims, actions, demands, costs and expenses and liability whatsoever, including reasonable attorney's fees, on account of any such real or claimed event, damage or liability and from all liens, claims and demands arising from any occurrence or occurring in, or at the Premises, or arising out of the construction, use, occupancy or enjoyment of the Premises, or at any other location in the Shopping Center and occasioned in whole or in part by any act or omission of Tenant, its agents, contractors, servants, employees or invitees. Tenant shall not, however, be liable for, and the foregoing indemnification shall not extend to, any damage or injury occasioned by the gross negligence or willful misconduct of the Landlord unless Tenant is required by this Lease to insure against damage or injury.

Landlord shall indemnify, defend and hold the Tenant harmless from all claims, actions, demands, costs and expenses (including reasonable attorney's fees) arising out of or relating to any act or occurrence in the Common Areas, unless the same is caused by the negligence or willful misconduct of Tenant.

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

### Section 11.04: MUTUAL WAIVERS

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

### Section 11.05: COMPLIANCE WITH INSURANCE AND GOVERNMENTAL REQUIREMENTS

Subject to Landlord's obligations express obligations under Section 13.01, Tenant agrees at its own expense to comply with (and to make all alterations, improvements and changes required, with respect to the Premises, by) all governmental requirements (including without limitation the Americans with Disabilities Act and comparable legal requirements), as well as the recommendations and requirements, with respect to the Premises, or its use or occupancy, of the insurance underwriters or insurance rating bureau or any similar public or private body and any governmental authority having jurisdiction with respect to the use or occupancy of the Buildings, including, but not limited to, installation of fire extinguisher's or automatic detection and/or suppression systems, any changes, modifications or alterations in the detection and/or suppression systems or additional detectors and/or sprinkler heads or the location of partitions, trade fixtures, or other contents of the Premises.

### Section 11.06: EFFECT ON LANDLORD'S INSURANCE

Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, or which will prevent Landlord from procuring such policies in companies acceptable to Landlord at regular rates or which will in any way cause an increase in the insurance rates for any portion of Landlord's property. If Tenant violates any prohibition provided for in the first sentence of this Section 11.06, Landlord may, without notice to Tenant, correct the same at Tenant's expense. Tenant shall pay to Landlord as Additional Rent forthwith upon demand the amount of any increase in the premiums for insurance resulting from any violation of the first sentence in this Section 11.06, even if Landlord shall have consented to the doing of or the keeping of anything on the Premises which constituted such a violation (but payment of such Additional Rent shall not entitle Tenant to violate the provisions of the first sentence of this Section 11.06).

### Section 11.07: LIMIT OF LANDLORD'S RESPONSIBILITY

Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying space adjoining the Premises or any other part of the Shopping Center or the Buildings, or for any loss or damage resulting to the Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or other utility lines or for any damage or loss of property within the Premises from any cause whatsoever. Such limitation of responsibility and liability shall not, however, apply to Landlord's gross negligence or willful misconduct, except to the extent such gross negligence or willful misconduct is to be insured against by Tenant pursuant to this Lease.

## ARTICLE 12: DAMAGE OR DESTRUCTION

### Section 12.01: LANDLORD'S DUTY TO RECONSTRUCT

In the event the Buildings are damaged or destroyed by any of the risks referred to in Section 11.02(a)(ii) against which Landlord is obligated to procure insurance, Landlord shall (subject to being able to obtain all necessary permits and approvals therefor, including without limitation permits and approvals required from any agency or body administering environmental law, rules or regulations), within one hundred twenty (120) days after such damage or destruction (unless this Lease is terminated pursuant to Section 12.03), commence to: (a) repair or reconstruct the Buildings, and (b) repair or reconstruct the Premises to substantially the same condition as the Premises were originally delivered to Tenant. Landlord shall prosecute all such work diligently to completion. In no event shall Landlord be liable for interruption to Tenant's business or for damage to or repair or reconstruction of any of those things which Tenant is required to insure pursuant to Section 11.01 (a)(iii); nor shall Landlord be required to expend more for any repair or reconstruction pursuant to this Section than the net amount of

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

insurance proceeds received by Landlord in connection therewith plus the deductible amount under Landlord's policy.

### Section 12.02: TENANT'S DUTY TO RECONSTRUCT

If any item which Tenant is required to insure pursuant to Section 11.01(a) (iii) is damaged or destroyed by fire or any of the other risks referred to therein, Tenant shall (subject to being able to obtain all necessary permits and approvals therefor, including without limitation permits and approvals required from any agency or body administering environmental laws, rules and regulations), within fifteen (15) days after Landlord has substantially repaired or reconstructed the Buildings and the portion of the Premises Landlord is obligated to repair or reconstruct pursuant to Section 12.01 (unless this Lease is terminated pursuant to Section 12.03) commence to repair or reconstruct such damaged or destroyed items to at least substantially the same condition in which they were prior to such damage or destruction and prosecute the same diligently to completion, and promptly thereafter Tenant shall reopen the Premises for business to the public. In all events, Tenant and not Landlord shall be solely responsible for the reconstruction and rehabilitation and repair of Tenant's leasehold improvements and trade fixtures, furnishings, equipment and property.

### Section 12.03: RIGHT TO TERMINATE

(a) Landlord shall have the option to terminate this Lease upon giving written notice to Tenant of the exercise thereof within one hundred twenty (120) days after the Landlord's Building is damaged or destroyed if: (i) the Premises are rendered wholly unfit for carrying on the Tenant's business after damage to or destruction thereof from any cause; or (ii) the Buildings are damaged or destroyed as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other risk not covered by insurance which Landlord is obligated to procure pursuant to Section 11.02(a)(ii); or (iii) any damage to or destruction of the Buildings occurs within the last three (3) Years of the Term or in any Partial Year at the end of the Term; or (iv) fifty percent (50%) or more of the GLA in the Buildings immediately prior to the damage or destruction is rendered unfit for carrying on business therein; or (v) the lease entered into between Landlord and any Major shall be terminated as a result of such casualty, or (vi) the holder of any mortgage on the Landlord's Building shall not release to Landlord adequate proceeds of insurance for the payment of the costs of such restoration.

(b) If the Premises are rendered wholly unfit for carrying on the Tenant's business after damage to or destruction thereof from any cause within the last Rent Year of the Term, Tenant shall have the option to terminate this Lease upon giving written notice to Landlord of the exercise thereof within thirty (30) days after the Premises are damaged or destroyed. Unless so terminated, this Lease shall continue in full force and effect, and Landlord and Tenant shall perform their respective obligations under Sections 12.01 and 12.02. Upon any termination of this Lease under any of the provisions of this Section 12.03, the Rent shall be adjusted as of the date of such termination and the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Premises to the Landlord, except for items which have been theretofore accrued and are then unpaid.

### Section 12.04: ABATEMENT OF RENT

If this Lease is not terminated pursuant to Section 12.03 after damage or destruction of the Buildings, and if the Premises are rendered wholly or partially unfit for carrying on Tenant's business by such damage or destruction, then the Minimum Rent and the Additional Rent payable by Tenant under this Lease during the periods as the Premises are so rendered unfit shall be abated, and (if Percentage Rent is payable hereunder) the Gross Sales Break Point and Partial Year Break Point shall be reduced in direct proportion to the percentage of the GLA in the Premises which is rendered unfit for that period. In no event shall such abatement or reduction continue later than sixty (60) days following the date on which the earlier of the following occurs: (i) Landlord has substantially repaired or reconstructed the Buildings and the portion of the Premises Landlord is obligated to repair or reconstruct pursuant to Section 12.01, and Landlord has redelivered the Premises to Tenant, or (ii) Tenant opens the Premises for business to the public with a selling area, available for Tenant's use, of not less than 80% of the Selling area available to Tenant prior to the occurrence of such damage or destruction.

### Section 12.05: DEMOLITION OF THE BUILDINGS

For the purposes of this Article 12, if the Buildings (or any part thereof) are so substantially damaged that it is reasonably necessary, in Landlord's judgment, to demolish the same for the purpose of

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

reconstruction, Landlord may demolish the same, in which event Landlord may treat such demolition as if it had been caused by the same cause as caused the damage to the Buildings.

### ARTICLE 13: MAINTENANCE OF PREMISES

#### Section 13.01: LANDLORD'S DUTY TO MAINTAIN STRUCTURE.

Landlord will keep the roof, the exterior face of structural walls, foundation, load bearing beams, columns and structural floor or floors which enclose the Premises (excluding floor coverings, such as carpeting, terrazzo and other special flooring, walls installed at the request of Tenant, doors, windows and glass and window frames) in good repair subject to the provisions of Article 8. Landlord shall use reasonable efforts to not interfere with Tenant's business when making such repairs. Notwithstanding the foregoing provisions of this Section 13.01, Landlord shall not in any way be liable to Tenant unless Tenant shall have given Landlord written notice of the necessity for such repairs, and provided that any damage necessitating such repairs shall not have been caused by the omission, negligence or willful act of Tenant, its concessionaires, officers, employees, licensees or contractors or by the failure of Tenant to perform any of its obligations under this Lease (in either of which events Tenant shall be responsible therefor) or have been caused to any of the items Tenant is required to insure pursuant to Article 11. Landlord shall be under no liability for repair, maintenance, alteration, improvement, reconstruction, renewal or any other action with respect to the Premises or any part thereof, or any plumbing, electrical, heating, ventilating, air conditioning, or other mechanical installation therein, except as may be expressly set forth in this Lease. Landlord's obligations under this Lease shall not include: (i) any repair, maintenance or replacement of any defective workmanship or material performed or installed as a part of Tenant's Work, or subsequently performed by anyone other than Landlord, its employees, agents or contractors; (ii) any repair, maintenance or replacement required as a result of the negligence, misconduct or abuse of Tenant or any assignee, subtenant or other occupant of the Premises by, through or under Tenant, or their respective employees, agents or contractors; (iii) the maintenance, repair or replacement of windows, doors and glass or related frames or moldings, non-structural walls, the HVAC and electrical, plumbing, communications and other utility systems, equipment and fixtures or any components thereof, or of any other components of the Premises not specifically enumerated in this Section; (iv) patching and other maintenance of the roof(s) of the Buildings enclosing the Premises to the extent necessitated by the placement of any of Tenant's equipment of fixtures or by any other acts of Tenant; (v) any improvements, upgrades or modifications required to be made to any foundations, exterior and interior load-bearing walls, roofs and/or structural members of the building constructed on the Premises required or desirable in connection with any improvements or betterments which Tenant constructs or intends to construct on or to the Premises; or (vi) any work, maintenance, improvements or replacements otherwise expressly allocated to Tenant under any other provisions of this Lease.

#### Section 13.02: TENANT'S DUTY TO MAINTAIN PREMISES.

Tenant will at all times, from and after delivery of possession of the Premises to Tenant, at its own cost and expense, maintain and make all needed repairs and replacements, and do all other work at, to or for the Premises and every part thereof to render and maintain the same at all times in good and tenable condition. Tenant's obligation under this Section 13.02 shall include, but not limited to, repairing, replacing and otherwise maintaining items as required by any governmental agency having jurisdiction thereof, ceilings, utility meters, pipes and conduits outside the Premises which are installed by Tenant or which exclusively serve the Premises, all fixtures, heating, ventilating and air conditioning equipment (whether such heating, ventilating and air conditioning equipment is located inside the Premises or on the roof of the Buildings), sprinkler equipment and other equipment within the Premises, the store front or store fronts, all of Tenant's signs, security grilles or similar enclosures, locks and closing devices, and all window sash, casement or frames, doors and door frames; provided that Tenant shall make no adjustment, alteration or repair of any part of any sprinkler, life safety or other detection or suppression system in or serving the Premises without Landlord's prior approval. Tenant shall permit no waste, damage or injury to the Premises and Tenant shall initiate and carry out a program of regular repair and maintenance of the Premises, including the painting or refinishing of all areas of the interior and the storefront as approved by Landlord, so as to impede, to the extent possible, deterioration by ordinary wear and tear and to keep the same in attractive condition. Tenant will not overload the electrical wiring or other systems serving the Premises or within the Premises, and will install at its expense, but only after obtaining Landlord's written approval, any additional electrical wiring or other items which may be required in connection with Tenant's apparatus. Tenant shall not install any exterior gates, barriers or other comparable exterior security device without Landlord's prior approval. Tenant agrees to maintain, with a reputable contractor, a regular service and maintenance contract on the HVAC equipment and systems servicing the buildings and improvements on the Premises, with routine inspections and servicing as recommended by the HVAC manufacturer. Landlord shall assign to Tenant

Landlord:  Tenant: \_\_\_\_\_

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any remaining warranties applicable to the HVAC system, and Tenant shall make all required repairs and replacements thereto.

### Section 13.03: RIGHT OF ACCESS TO THE PREMISES

Landlord and its authorized representative may enter the Premises at any and all times during usual business hours for the purpose of inspecting the same (and at all other times in the case of an emergency), and to perform such work therein (including work relating to the Common Areas and to facilities within easement areas accessible through the Premises), as may reasonably be required from time to time. Tenant further agrees that Landlord may from time to time go upon the Premises and make any additions, alterations or repairs and do other work to the Premises or to any utilities, systems or equipment located in, above or under the Premises which Landlord may deem necessary or desirable to comply with all governmental requirements and/or recommendations of an insurance rating bureau or of any similar public or private body or that Landlord may deem necessary or desirable to prevent waste or deterioration in connection with the Premises if the Tenant does not make or cause such additions, alterations, repairs or other work to be made or performed promptly after receipt of written demand from Landlord. In exercising the foregoing rights, Landlord shall plan and coordinate all of the same with Tenant's management at the Premises so as to minimize any adverse impact on Tenant's use of and the business operated within the Premises; and so as to give due consideration to the protection and preservation of Tenant's trade secrets and proprietary information. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which under any provision of this Lease that Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. In the event Landlord performs or causes any such work to be performed, Tenant shall pay the cost thereof to Landlord forthwith as Additional Rent upon receipt of a bill therefor. Landlord may install any and all materials, tools and equipment and pipes, ducts, conduits, wires and other mechanical equipment serving other portions, tenants and occupants of the Buildings in, through, under or above the Premises that Landlord deems desirable therefor, without the same constituting an actual or constructive eviction of Tenant. Landlord may also enter the Premises at all times during usual business hours for the purpose of showing the Premises to prospective purchasers, mortgagees and tenants. No exercise by Landlord of any rights provided in Section 13.01 or 13.03 shall entitle Tenant to any damage for any inconvenience, disturbance, loss of business or other damage to Tenant occasioned thereby nor to any abatement of Rent.

### Section 13.04: CONFLICTS

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

## ARTICLE 14: FIXTURES AND PERSONAL PROPERTY

### Section 14.01: TENANT'S PROPERTY: REMOVAL

Any trade fixtures, signs, counters, shelving, inventory, showcases, mirrors, and other personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant. Tenant shall have the right, at any time and from time to time during the Term, to alter or remove such trade fixtures and personal property from the Premises, provided that Tenant shall at all times Tenant maintain at the Premises adequate trade fixtures and equipment customary for the conduct of the retail use specified in the Fundamental Lease Provisions. Tenant at its expense shall immediately repair and otherwise make good any damage occasioned to the Premises by reason of installation or removal of any such personal property unless such damage is caused by Landlord, and if Tenant fails to remove such items from the Premises prior to such expiration or termination, or if this Lease is terminated and Tenant fails to remove such items from the Premises prior to the effective date of such termination, then in any such event all such personal property shall, at Landlord's option, thereupon become the property of Landlord, without further act by either party hereto, unless Landlord elects to require their removal, in which case Tenant shall promptly remove same and restore the Premises to its prior condition at Tenant's expense. Provided there exists no uncured Event of Default on the part of Tenant hereunder, and upon reasonable advance written request, Landlord agrees to execute such reasonable waivers of Landlord's liens or rights in Tenant's property, arising out of this Lease or the lease relationship between Landlord and Tenant, in favor of institutional lenders, equipment lessors or other institutional lenders, excepting only any interest which may hereafter be obtained pursuant to any valid and final judgment and attachment thereunder (which shall, however, be subject and subordinate to Lender's interest under any perfected security interest in the Collateral), and agrees not to distrain or levy upon any of the Collateral or to assert any claim against the Collateral for any reason excepting pursuant to such final judgment, if any is hereafter taken (subject and subordinate, as aforesaid). Such form of waiver shall provide that the

Landlord:  Tenant: \_\_\_\_\_



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beneficiary thereof shall not enter upon the Premises without first notifying Landlord (which notice may, after Lender's initial entry, be actual telephonic notice communicated in person to a representative of Landlord after Lender shall first have notified Landlord in writing prior to its initial entry), and that such beneficiary shall promptly repair, at its expense, any physical damage to the Premises actually caused by said removal by such beneficiary or its agents.

### Section 14.02 IMPROVEMENTS TO PREMISES

All improvements to the Premises by Tenant, including, but not limited to, the items furnished pursuant to Tenant's Work, alterations, changes and additions by Tenant, light fixtures, floor coverings and partitions, but excluding trade fixtures and signs and other personal property specified in Section 14.01, shall become the property of Landlord upon expiration or earlier termination of this Lease; provided, however, that Landlord may designate by written notice to Tenant those alterations, changes, and additions made in the Premises after the Rent Commencement Date which shall be removed by Tenant at the expiration or termination of this Lease, in which event Tenant shall at Tenant's sole cost and expense promptly remove the same and repair and otherwise make good the damage to the Premises caused by such removal or by the installation of such alterations, changes or additions.

## ARTICLE 15: ASSIGNMENT AND SUBLETTING

### Section 15.01: RESTRICTIONS UPON TRANSFERS AND REQUIREMENTS

(a) Except as expressly permitted hereunder, Tenant shall not permit anyone other than Tenant to occupy the Premises or any part thereof and shall not transfer, assign, sublet, enter into license or concession or other occupancy or use agreements or mortgage or hypothecate this Lease or the Tenant's interest in and to the Lease or the Premises or any part thereof (herein collectively referred to as "Transfer") without first obtaining in each and every instance the prior written consent of Landlord which Landlord may withhold in its sole discretion and the ensuing provisions of this Article 15 are subject hereto. Any attempted Transfer without such prior written consent shall be an Event of Default, shall not be binding upon Landlord, shall confer no rights upon any third person and shall not relieve Tenant of its obligations under this Lease. Any Transfer by merger, consolidation, liquidation or otherwise by operation of law, including, but not limited to, an assignment for the benefit of creditors, shall be included in the term "Transfer" for the purposes of this Lease and shall be a violation of this Section 15.01 and an Event of Default, except as otherwise specifically set forth in this Article 15. Consent by Landlord to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. If there is a Transfer after having obtained Landlord's prior written consent thereto, Tenant agrees nevertheless to and shall remain fully liable for the full performance of each and every obligation under this Lease to be performed by Tenant.

(b) If Tenant desires to make a Transfer not expressly permitted hereunder, Tenant shall deliver to Landlord written notice (the "Request Notice") requesting Landlord's consent to the such Transfer at least thirty (30) days prior to the date on which, with Landlord's prior written consent, the Transfer would be effective. The Request Notice shall contain, without limitation, at least: (i) the full identification of the prospective transferee; (ii) the most recent financial statements and other evidence of its financial responsibility and business performance; (iii) its proposed specific use and business proposed to be conducted at the Premises (which shall not be other than the use expressly permitted hereunder unless Landlord otherwise approves); (iv) the scope of any proposed alterations to the storefront or within the Premises; and (v) the monetary and non-monetary terms and conditions of the prospective Transfer.

(c) As to any proposed Transfer not expressly permitted hereunder, and in lieu of approving or disapproving such Transfer, Landlord shall have the right and option (the "Take-back Option"), exercisable by Landlord giving Tenant written notice within thirty (30) days after Landlord's receipt of the Request Notice, of terminating this Lease with respect to the Premises. Such election by Landlord to exercise its Take-back Option shall be effective unless, within ten (10) days following Landlord's written notice to Tenant exercising such Take-back Option Tenant notifies Landlord in writing of Tenant's election to withdraw Tenant's Request Notice. If Landlord elects to exercise such Take-back Option, this Lease shall terminate effective on the sixtieth (60th) day after the date of Landlord's written notice of Landlord's exercise thereof, whereupon the Rent shall be adjusted as of the date of such termination and the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Premises to the Landlord, except for items which have been theretofore accrued and are then unpaid. The Take-back Option shall not be exhausted any one exercise thereof by Landlord but shall be exercisable from time to time and as often as there is such Transfer. The Take-back Option may be exercised by any assignee of Landlord's right, title and interest in this Lease or any

Landlord:  Tenant: \_\_\_\_\_

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other person which at the time of the Request Notice is Landlord under this Lease. If after receipt of the Request Notice Landlord requests additional or further information which Landlord reasonably requires to consider a Transfer, Tenant shall deliver such information to Landlord upon Landlord's request therefor and the period for Landlord to exercise the Take-back Option shall be extended by the number of days between Landlord's request for Landlord's receipt of such additional or further information.

(d) If Landlord does not elect to exercise the Take-back Option and elects to give Landlord's written consent to such Transfer, Tenant shall pay to Landlord, as Additional Rent, the sum equal to (i) all sums and other economic consideration received by Tenant at any time whatsoever as a result of the Transfer whether denominated rentals or otherwise which exceed, in the aggregate, the total sums which Tenant is obligated to pay and does pay Landlord under this Lease (prorated to reflect obligations allocable to that portion of the Premises which is the subject of the Transfer) without affecting or reducing any other obligation of Tenant hereunder, over (ii) sums actually paid by Tenant to Landlord on account of Tenant's obligations under this Lease; all reasonable and actual third-party expenses incurred by Tenant in connection with such Transfer which are not otherwise reimbursed to Tenant (including brokerage commissions, leasehold improvement costs expended solely in connection with and at the time of such Transfer pursuant to a bona fide obligation undertaken with such transferee, reasonable attorney's fees and accounting expenses), the fair and reasonable market value of all leasehold improvements constructed by Tenant at the Premises and conveyed to the Transferee, and the fair and reasonable value of all inventory, trade fixtures and personal property conveyed to such transferee, together with an amount equal to ten (10%) of the foregoing sums on account of Tenant's business goodwill. If such transfer is made in connection with a transfer by Tenant (directly or indirectly) of Tenant's business(es) at multiple locations, the consideration received by Tenant shall be equitably apportioned among such locations. If the transferor is a corporation whose outstanding voting stock is listed on any national securities exchange (as defined in the Securities Act of 1934, as amended), or if the transferor is a business entity having a tangible net worth in excess of \$20,000,000, the provisions of this subsection shall not be applicable to (i) a transfer of or offer to transfer of any security in Tenant at any public exchange, or (ii) a Transfer which is an integral part of the sale of all or substantially all of the assets of such entity, or a sale of assets constituting a material part of the business operations in the market region in which the Premises are located (provided such sale shall include at least five (5) business locations), or (iii) a merger in which Tenant, its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation, so long as the liabilities of the parties participating in such merger or consolidation are assumed by the party surviving such merger or created by such consolidation.


(e) If Landlord gives Landlord's written consent to the delivery of possession by Tenant to and occupancy by the prospective transferee approved by Landlord, and such Transfer is not consummated by the parties thereto within ninety (90) days after the date Landlord gives its written consent to such Transfer (as evidenced by written notice to Landlord within such time confirming the occurrence of such Transfer), then Landlord's written consent and the Transfer shall be automatically null, void and of no force or effect whatsoever.

(f) In the event of any Transfer (whether or not otherwise expressly permitted hereunder) of this Lease by Tenant, or by any assignee or successor to Tenant, and as a condition to the effectiveness of such assignment, the Transferee shall execute and deliver to Landlord an assumption of all of Tenant's obligations under the Lease thereafter accruing.

(g) Payment of rentals due hereunder by any party other than the Tenant named herein, and Landlord's acceptance of such payment, shall not be deemed to act as a consent to the assignment of this Lease or to the subletting of the whole or any part of the Premises to such party, to the extent such consent may be required hereunder; nor shall such payment or acceptance relieve Tenant of its obligation to pay the rentals provided herein for the full term of this Lease.

(h) Any transfer of this Lease from Tenant by merger, consolidation, liquidation or otherwise by operation of law, including, but not limited to, an assignment for the benefit of creditors, shall be included in the term "Transfer" for the purposes of this Lease, and shall be a violation of this Section unless the Tenant or other transferee shall comply with all applicable terms and conditions of this Article, if any. Consent by Landlord to any assignment, sublease or other transfer shall not constitute a waiver of the necessity for such consent to any subsequent assignment, sublease or other Transfer, to the extent such consent is required hereunder. Except as may otherwise be authorized under the express terms hereof, the following transactions shall also constitute a "assignment" for purposes of this Article:

(i) an assignment by operation of law;

Landlord:  Tenant: \_\_\_\_\_

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(ii) the imposition (whether or not consensual) of a lien, mortgage or encumbrance upon Tenant's interest in this Lease, except as may be specifically authorized under this Lease; provided that the foregoing shall not prevent Tenant from granting security interests in its personal property and trade fixtures;

(iii) an arrangement (including, without limitation, management agreements, concessions, and licenses) which allows the use and occupancy of all or any material part of the Premises by any one other than Tenant (excepting bona fide agreements for the maintenance, upkeep, repair and replacement of the Premises or parts thereof, or other contracts with other parties acting solely as bona fide agents of Tenant);

(iv) a transfer of more than fifty (50%) of the outstanding shares of stock in Tenant or any successor or assignee (if a corporation), excluding transfers at a public exchange or by reason of the death of the holder(s) thereof; and

(v) a transfer of more than fifty (50%) of the interest in the capital of Tenant or any successor or assignee (if a partnership or other non-incorporated entity), excluding transfers at a public exchange or by reason of the death of the holder(s) thereof.

(i) Any attempted assignment or sublease or other Transfer shall not be binding upon Landlord and shall confer no rights upon any third person, unless consented to as aforesaid. Consent by Landlord to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer.

(j) In each instance of any Transfer, regardless whether Landlord's consent is required or such Transfer otherwise is permitted hereunder, Tenant shall furnish to Landlord, at least thirty (30) days prior to such Transfer, the following: (i) the name and address of the proposed assignee or subtenant or other Transferee; (ii) a copy of the proposed assignment or sublease or other Transfer document; (iii) reasonably complete information about the nature, business and business history of the proposed assignee or subtenant or other Transferee, and its proposed use of the Premises; and (iv) if requested by Landlord, banking, financial, or other credit information, and references about the proposed assignee or subtenant or other Transferee reasonably sufficient to inform Landlord of the financial responsibility and character of the proposed assignee or subtenant, (v) its proposed specific use and business proposed to be conducted at the Premises (which shall not be other than the use expressly permitted hereunder unless Landlord otherwise approves); (vi) the scope of any proposed alterations to the storefront of within the Premises; and (vii) the monetary and nonmonetary terms and conditions of the prospective Transfer. Tenant shall pay to Landlord (at least 5 days before the effectiveness of such Transfer, and regardless whether such Transfer is approved by Landlord or otherwise becomes effective, the sum of \$500.00, to cover Landlord's costs of review and other administrative expenses incurred by Landlord in connection with such Transfer.

(k) Notwithstanding any assignment or subletting or re-assignment or re-subletting or other Transfer pursuant to this Article or otherwise, whether or not expressly permitted under this Lease or otherwise approved by Landlord, Tenant shall remain fully and primarily liable for the payment and performance of all the terms, conditions and obligations to be performed by Tenant under this Lease, including, but not limited to, the payment to Landlord of all payments due or to become due to Landlord under this Lease. Landlord may exercise all rights and remedies solely against the Tenant, or against Tenant and any one or more assignees or sublessees, as Landlord may determine in its sole discretion; and Tenant shall have no right to join any assignee or subtenant or other third party in any suit brought by Landlord against Tenant hereunder; provided that Tenant shall have the right to maintain such separate actions against any such assignee or sublessee as Tenant may desire, but Tenant shall not seek to consolidate the same with Landlord's action against Tenant. Notwithstanding any provision in any such assignment to the contrary, and notwithstanding any consent by Landlord to any Transfer (unless Landlord shall specifically consent to Tenant's right to resume or recover possession), thereafter, Landlord may exercise against any assignee or subtenant or other Transferee all the rights and remedies herein provided upon an Event of Default on the part of Tenant hereunder, without notice of any kind to Tenant except as may otherwise be required by any law or applicable rule of procedure, but Tenant shall remain liable, jointly and severally, with any assignee or subtenant or other Transferee for the performance of all of the covenants, conditions and agreements of this Lease, including, but not being limited to, the payment to Landlord of all payments due or to become due to Landlord under this Lease.

### Section 15.02: MERGER: CHANGE OF OWNERSHIP

Landlord:  Tenant: \_\_\_\_\_

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If Tenant is a corporation, Tenant may assign Tenant's interest in this Lease to a parent corporation owning one hundred percent (100%) of the stock of Tenant or to a subsidiary corporation one hundred percent (100%) of the stock of which is owned by Tenant or to a corporation into which Tenant is merged or consolidated or to a corporation acquiring all or substantially all of the assets of Tenant, provided that: (i) the net worth and net operating income of the assignee for at least the three (3) years preceding the assignment shall consistently not be less than the greater of Tenant's (and Tenant's Guarantor's, if any) net worth and net operating income when it executed this Lease or Tenant's (and Tenant's Guarantor's) net worth and net operating income on the date of the assignment; (ii) such assignee shall assume in writing all of Tenant's obligations hereunder and shall agree in writing to operate the business conducted in the Premises under the same trade name, for the same permitted use and in the same manner as Tenant; (iii) Tenant and Tenant's Guarantor, if any, shall continue to remain fully liable for the performance of all of the terms, conditions and obligations to be performed by Tenant under this Lease; (iv) Tenant shall have given Landlord fifteen (15) days prior written notice of such assignment, which notice contains all information and documentation Landlord reasonably requires to satisfy itself as to the above three (3) conditions; and (v) such assignment be at no cost or expense to Landlord or require a modification of this Lease. If Tenant is a corporation, an unincorporated association or partnership, it shall be an Event of Default if Tenant if Tenant shall transfer, assign or hypothecate (or permit the transfer, assignment or hypothecation of) any stock or interest in such corporation, association or partnership so as to result in a change in the control thereof. This Section 15.02 shall not be applicable to Tenant if: (i) it is a corporation whose outstanding voting stock is listed on any national securities exchange (as defined in the Securities Act of 1934, as amended), or (ii) such transaction is an assignment expressly permitted under the terms and conditions of Section 15.03.

### Section 15.03: PERMITTED TRANSFERS

Notwithstanding anything to the contrary contained herein, without requiring Landlord's consent but subject to the Qualifications (defined below), Tenant may undertake the following (each a "Permitted Transfer"): (i) a transfer of or offer to transfer any security in Tenant at any public exchange and (ii) an assignment of all or part of this Lease, or a sublease of all or a part of the Premises, to any of the following (each, a "Tenant Affiliate"):

- (1) any corporation or other person or entity ("Party") which has the power to direct Tenant's management and operation (a "Parent"), or any Party whose management and operation is controlled by Tenant; or
- (2) any Party a majority of whose voting stock or other voting interest is owned or controlled by a Parent;
- (3) any Party a majority of whose voting stock or other voting interest is owned or controlled by Tenant; or
- (4) any Party in which or with which Tenant, its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation, so long as the liabilities of the Parties participating in such merger or consolidation are assumed by the Party surviving such merger or created by such consolidation. For purposes hereof, "merger" shall include a sale or transfer of all or substantially all of the locations operated by (or the franchisor's interest in locations franchised by) Tenant, together with all or substantially all of the other assets of Tenant; or
- (5) if Tenant is actively engaged in the business of franchising its proprietary marks and products and has registered for the offering of franchise licenses under the laws of any one or more states of the United States, then Tenant may sublease the Premises to a bona fide franchisee using Tenant's tradename(s) and duly licensed pursuant to a written form of franchisee or license agreement substantially comparable to the agreement customarily used by Tenant.

In construing the foregoing clauses, "Tenant" shall mean the Tenant originally named in the caption of this Lease, or its successors pursuant to any transfer(s) otherwise permitted under this Lease.

The "Qualifications" means: (i) the net worth and net operating income of the assignee or transferee for at least the three (3) years preceding the assignment shall consistently not be less than the greater of Tenant's net worth and net operating income when it executed this Lease or Tenant's net worth and net operating income on the date of the assignment; (ii) such assignee or transferee shall possess, in the reasonable determination of Landlord, adequate business experience for a sufficient period of time (in

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

no event less than five (5) years) for the operation of a business enterprise of the nature intended to be operated at the Premises, (iii) such assignee or transferee (or its principals) or its parent corporation shall not have filed or have had filed against it a petition under the United States Bankruptcy Code within five (5) years prior to the effective date of such Transfer, and (iv) such assignee or transferee shall have a bona fide intent, and the financial ability, to fully stock and operate the Premises for the retail use permitted hereunder for the remaining Term of this Lease.

### ARTICLE 16: DEFAULTS BY TENANT

#### Section 16.01: EVENTS OF DEFAULT.

This Lease is made upon the condition that Tenant shall punctually and faithfully perform and fulfill all of the covenants, conditions and agreements to be performed by it as set forth in this Lease. In addition to events elsewhere stated in this Lease as Events of Default, each of the following shall constitute an "Event of Default": (a) the failure by the Tenant to pay Rent or any installment or year-end adjustment thereof, if such failure continues for ten (10) days after written notice thereof by Landlord to Tenant; or (b) the willful failure of Tenant (subject to the application of Section 23.06 hereof) to submit its Plans on or before the Plans Submission Date in accordance with Section 2.03 or to commence Tenant's Work on or before the Construction Commencement Date in accordance with the terms and conditions of Section 2.05; or (c) the willful failure of Tenant (subject to the application of Section 23.06 hereof) to open its business to the public in the Premises on or prior to twenty (20) days after the date on which Tenant is required to open its business to the public pursuant to the terms and conditions of Section 2.05, or the willful failure of Tenant (subject to the application of Section 23.06 hereof) to keep the Premises open on the days and hours and in the manner required by this Lease, or if Tenant vacates or abandons the Premises with the purpose of ceasing Tenant's business operations at the Premises other than by reason of any casualty, condemnation or taking (each in accordance with all other applicable terms of this Lease) or by reason of the application of Section 23.06 hereof; or (d) the failure of Tenant to observe or perform any of the restrictions, covenants, terms or conditions set forth in Article 15 (relating to assignment and subletting); or (e) the failure of Tenant to observe or perform any of the other covenants, terms or conditions set forth in this Lease where said failure continues for a period of twenty (20) days after written notice thereof from Landlord to Tenant (unless such failure cannot reasonably be cured within twenty (20) days and Tenant shall have commenced to cure said failure within twenty (20) days and continues diligently to pursue the curing of the same until completed); or (f) the commencement of levy, execution, or attachment proceedings against Tenant or a substantial portion of Tenant's assets; the commencement of levy, execution, attachment or other process of law upon, on or against the estate created in Tenant hereby; the application for or the appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer (and such appointment continues for a period of thirty (30) days); the insolvency of Tenant in the bankruptcy or equity sense; any assignment by Tenant for the benefit of creditors; or (g) the commencement of a case by or against Tenant or any guarantor, under any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal (the determination by the Tenant to request relief under any insolvency proceeding, including any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation laws, state or federal, terminating, at Landlord's option, the estate created in Tenant hereby and neither the Premises nor Tenant's interest in this Lease shall become an asset in any such proceedings), and in the case of any involuntary proceeding such event shall constitute a default only if such proceeding continues for in excess of sixty (60) days following the filing thereof; or (h) repetition or continuation of any failure to timely pay any Rent or other sums reserved hereunder or to timely report Gross Sales as provided in Section 4.06 hereof where such failure shall continue or be repeated for two (2) consecutive months, or for a total of four (4) months in any period of twelve consecutive months; or (i) repetition of any failure to observe or perform any of the other covenants, terms or conditions hereof more than six (6) times, in the aggregate, in any period of twelve (12) consecutive months; or (j) the failure of Tenant to pay when due all taxes, assessments, impositions, excises, fees and other governmental charges imposed upon it or which it is required to withhold or pay.

#### Section 16.02: LANDLORD'S REMEDIES.

(a) Landlord may treat any Event of Default as a material breach of this Lease. Landlord's failure to insist upon strict performance of any covenant, term or condition of this Lease or to exercise any right or remedy it has herein shall not be deemed a waiver or relinquishment for the future of such performance, right or remedy. Each remedy expressly set forth herein shall be concurrent and not exclusive, and shall be in addition to all other remedies which Landlord may have at law or in equity.

Landlord:  Tenant: \_\_\_\_\_

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(b) Upon or after the occurrence of any Event of Default, if the Rent Term shall not have commenced, Landlord may immediately cancel this Lease by written notice, or if the Rent Term shall have commenced, Landlord may serve upon Tenant a written notice that this Lease and the Term hereof will terminate on a date to be specified therein, which shall not be less than ten (10) days after the date of such notice and in either event, Tenant shall have no right to avoid cancellation or termination by payment of any sum due or by other performance of any condition, term or covenant broken. Upon the date specified in the aforesaid notice of termination, this Lease and the Term hereof shall terminate and come to an end as fully and completely as if such date were the day herein definitely fixed for the end and expiration of this Lease and such Term, and Tenant shall then quit and surrender the Premises to Landlord, but notwithstanding any statute, rule of law, or decision of any court to the contrary, Tenant shall remain liable as set forth hereinafter.

(c) Upon or after any Event of Default which remains uncured; or if this Lease shall be terminated; or if the Premises became vacant or abandoned; then, in all or any of such events, in addition to, and not in lieu of, all other remedies of Landlord, Landlord may without notice terminate all services and/or re-enter the Premises; by summary proceeding or otherwise, and dispossess Tenant and the legal representative of Tenant and all other occupants of the Premises, and remove their effects and repossess and enjoy the Premises, together with all alteration, additions and improvements, all without being liable to prosecution or damages therefor.

(d) In the event of any uncured Event of Default, re-entry, termination and/or dispossession by summary proceedings or otherwise, in addition to, and not in lieu of, all other remedies which Landlord has under this Lease, at law or in equity:

(1) the Minimum Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration; and

(2) Landlord may relet the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease, and may grant commercially reasonable concessions; and

(3) Tenant or the legal representative of Tenant shall also pay Landlord at Landlord's option and whether or not Landlord has terminated or canceled this Lease, for each month of the period which would otherwise have constituted the balance of the term, the excess, if any, of (i) the monthly installment of Minimum Rent, the monthly payment of Tenant's Tax Charge and CAM Charge that would have been payable for the period in question but for such re-entry or termination, over (ii) the net amount, if any, of the rents actually collected on account of the lease or leases of the Premises for such month.

The reasonable refusal or failure of Landlord to rent the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such damages, there shall be added to the said deficiency such expenses as Landlord may incur in connection with reletting, such as court costs, attorney's fees and disbursements, brokerage, and management fees and commissions, cost of refurbishing and maintaining the Premises in good order and costs of preparing the Premises for reletting as hereinafter provided. Any such damages shall be paid in monthly installments by Tenant on the day specified in this Lease for the payment of Minimum Rent and any action brought to collect the amount of deficiency for any month shall not prejudice in any way either the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding. In addition to the damages provided in this Section, Landlord shall also be entitled to recover as damages from Tenant all non-recurring sums and charges remaining unpaid and which are due or becoming due from Tenant pursuant to this Lease including, but not limited to, late fees and interest, as provided elsewhere herein. Landlord, at Landlord's option, may make such alterations, repairs, replacements and/or decorations in the Premises as Landlord, in Landlord's sole judgement, considers advisable and necessary for the purpose of reletting the Premises; and the making of such alterations and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall, in no event, be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent thereof under such reletting.

(e) If this Lease is terminated pursuant to the provisions of this Article, and at Landlord's sole option and as an alternative to other damages on account of unrecovered rents owed by Tenant as a result of such termination, Landlord will be entitled to recover from Tenant (i) the worth at the time of award of the unpaid Rent earned at the time of termination; (ii) the worth at the time of award of the unpaid Rent which would have been earned (but for such termination) after termination until the time of

Landlord:                      Tenant:

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award to the extent the same exceeds the amount of such rent loss that Tenant proves could reasonably have been avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term of this Lease after the time of award exceeds the amount of such rent loss that Tenant proves could reasonably be avoided; and (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 from such failure. The "worth at the time of award" of the amount referred to in clauses (i) and (ii) is computed by allowing interest at the Default Rate (but in no event more than the highest rate permitted by law if any restriction upon the rate collectable by Landlord hereunder is applicable). The worth at the time of award of the amount referred to in clause (iii) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Philadelphia, PA at the time of award. The "Default Rate" means that rate of interest which is five percent (5%) over the announced prime rate of CoreStates Bank, N.A., Philadelphia, Pennsylvania or any successor thereto or other bank selected by Landlord. If Percentage Rent is payable hereunder, then for purposes of clause (iii) of this paragraph "Rent" for each Rent Year shall mean a sum equal to 125% of the Minimum Rent for each applicable period.

(f) In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedies under this Lease, now or hereafter existing at law or in equity or by statute.

(g) The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

(h) Landlord shall have no responsibility to mitigate damages under this Lease.

(i) Tenant expressly waives: (i) all rights under the Landlord and Tenant Act of 1951, and all supplements and amendments thereto; and (ii) the right to three (3) months' or fifteen (15) or thirty (30) days' notice required under certain circumstances by the Landlord and Tenant Act of 1951, Tenant hereby agreeing that the respective notice periods provided for in this Lease shall be sufficient in either or any such case.

(j) Landlord's failure to insist upon a strict performance of any covenants of this Lease or to exercise any option or right herein contained shall not be a waiver or relinquishment for the future of such covenant, right or option, but the same shall remain in full force and effect and Landlord shall not be required to give prior notice of its requirement of strict performance of the terms hereof.

(k) INTENTIONALLY OMITTED

(l) When this Lease and the Term or any extension or renewal thereof shall have expired, or terminated on account of any uncured Event of Default on the part of Tenant hereunder by Tenant hereunder, or upon an Event of Default, it shall be lawful for any attorney of any court of record to appear as attorney for Tenant as well as for all persons claiming by, through or under Tenant (and Tenant hereby appoints Landlord as the attorney-in-fact of Tenant, coupled with an interest in Tenant's name, place and stead as if signed and delivered by Tenant), and in any action or proceeding in any court of competent jurisdiction to confess judgment in ejectment (and otherwise enter judgment for possession of the Premises) against Tenant and against all persons claiming by, through or under Tenant, for the recovery by Landlord of possession of the Premises, for which this Lease and the appointments herein shall be sufficient warrant; thereupon, if Landlord so desires, an appropriate writ of possession may issue forthwith, without any prior writ or proceeding whatsoever; and provided that if for any reason after such action shall have been commenced it shall be determined that possession of the Premises should remain in or be restored to Tenant, Landlord shall have the right for the same default and upon any subsequent default or defaults, or upon the termination of this Lease or of Tenant's right of possession as hereinbefore set forth, to bring one or more further action or actions as hereinbefore set forth to recover possession of the Premises and to confess judgment (and otherwise agree on behalf of Tenant to the entry of judgment) for the recovery of possession of the Premises by Landlord as hereinbefore provided. The foregoing warrant shall not be exhausted any one exercise thereof but shall be exercisable from time to time and as often as there is any one or more Events of Default or whenever this Lease and the Term or any extension or renewal thereof shall have expired, or terminated on account of any uncured Event of Default by Tenant hereunder.

(m) In any action, a true copy of this Lease (and of the truth of the copy such affidavit or verified complaint shall be sufficient evidence) shall be sufficient warrant, and it shall not be necessary

Landlord:  Tenant: \_\_\_\_\_

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to file the original as a warrant of attorney, any rule of court, custom or practice to the contrary notwithstanding.

TENANT ACKNOWLEDGES AND AGREES THAT THIS LEASE CONTAINS PROVISIONS UNDER WHICH LANDLORD MAY ENTER JUDGMENT BY CONFESSION AGAINST TENANT. BEING FULLY AWARE OF TENANT'S RIGHTS TO PRIOR NOTICE AND A HEARING ON THE VALIDITY OF ANY JUDGMENT OR OTHER CLAIMS THAT MAY BE ASSERTED AGAINST HIM/HER BY LANDLORD HEREUNDER BEFORE JUDGMENT IS ENTERED, TENANT HEREBY FREELY, KNOWINGLY AND INTELLIGENTLY WAIVES THESE RIGHTS AND EXPRESSLY AGREES AND CONSENTS TO LANDLORD'S ENTERING JUDGMENT AGAINST TENANT BY CONFESSION PURSUANT TO THE TERMS OF THIS LEASE.

TENANT ALSO ACKNOWLEDGES AND AGREES THAT THIS LEASE CONTAINS PROVISION UNDER WHICH LANDLORD MAY, AFTER ENTRY OF JUDGMENT AND WITHOUT EITHER NOTICE OR A HEARING, FORECLOSE UPON, ATTACH, LEVY OR OTHERWISE SEIZE PROPERTY (REAL OR PERSONAL) OF THE UNDERSIGNED IN FULL OR PARTIAL PAYMENT OR OTHER SATISFACTION OF THE JUDGMENT. BEING FULLY AWARE OF TENANT'S RIGHTS AFTER JUDGMENT IS ENTERED (INCLUDING THE RIGHT TO MOVE OR PETITION TO OPEN OR STRIKE THE JUDGMENT), THE UNDERSIGNED HEREBY FREELY, KNOWINGLY AND INTELLIGENTLY WAIVES THESE RIGHTS AND EXPRESSLY AGREE AND CONSENTS TO LANDLORD'S TAKING SUCH ACTIONS AS MAY BE PERMITTED UNDER APPLICABLE STATE AND FEDERAL LAW WITHOUT PRIOR NOTICE TO TENANT. WITHOUT LIMITING THE FOREGOING, TENANT SPECIFICALLY WAIVES THE NOTICES AND NOTICE REQUIREMENTS OF RULES 2956.1, 2958.1, 2958.2, 2958.3, 2973.1, 2973.2, AND 2973.3.

TENANT'S INITIALS:

Section 16.03: LANDLORD'S OPTION TO PERFORM UNPERFORMED TENANT OBLIGATIONS.

In addition to Landlord's rights and remedies elsewhere in this Lease, if Tenant at any time fails to perform any of its obligations under this Lease in a manner reasonably satisfactory to Landlord, Landlord shall have the right, but not the obligation, upon giving Tenant at least ten (10) days prior written notice of its election to do so (in the event of any emergency no prior notice shall be required) to perform such obligations on behalf of and for the account of Tenant and to take all such action to perform such obligations. In such event, Landlord's reasonable costs and expenses incurred therein shall be paid for by Tenant as Additional Rent, upon demand therefor, with interest thereon from the date Landlord performs such work at the Default Rate. The performance by Landlord of any such obligation shall not constitute a release or waiver of Tenant therefrom.

Section 16.04: SECURITY DEPOSIT.

The sum set forth in Section (j) of the Fundamental Lease Provisions is herein called the "Security Deposit". The Security Deposit will be held by Landlord, without interest accruing in favor of Tenant, as security for Tenant's faithful performance of all of the terms and conditions of this Lease for and during the Term. Provided Tenant has not committed an Event of Default under this Lease, Landlord shall return the Security Deposit to Tenant at the expiration of the Term. In no instance shall the amount of the Security Deposit be considered a measure of liquidated or other damages. All or any part of the Security Deposit may be applied by Landlord in total or partial cure by Landlord of any breach or other Event of Default of Tenant. The application of all or any part of the Security Deposit to any obligation or Event of Default on the part of Tenant under this Lease shall not deprive Landlord of any other rights or remedies Landlord may have nor shall such application by Landlord constitute a waiver or assumption by Landlord. If all or any part of the Security Deposit is applied by Landlord to an obligation or Event of Default on the part of Tenant hereunder, Landlord shall have the right to call upon Tenant to restore the Security Deposit to its original amount by giving notice to Tenant and Tenant shall immediately restore the Security Deposit to its original amount by payment thereof to Landlord. Tenant shall not have the right to call upon Landlord to apply all or any part of the Security Deposit to cure any breach or other Event of Default or to fulfill any obligation of Tenant but such use shall be solely in the discretion of Landlord. It is distinctly understood and agreed that should Landlord transfer its interest in this Lease, the Security Deposit may be turned over by Landlord to Landlord's grantee or other transferee, and upon any such turnover of the Security Deposit, Tenant hereby releases Landlord herein named of any and all

Landlord:  Tenant: \_\_\_\_\_



## Hilltown Crossings Shopping Center

liability or other obligation with respect to the Security Deposit, its application and return, and Tenant agrees to look solely to such grantee or other transferee. It is further understood and agreed that these provisions shall also apply to subsequent grantees and other transferee. The Security Deposit shall be deemed the sole property of Landlord.

### ARTICLE 17: LIABILITY OF LANDLORD

#### Section 17.01: LANDLORD'S DEFAULT.

Except as otherwise provided in this Lease, Landlord shall not be in default under this Lease unless Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after written notice thereof from Tenant to Landlord (unless such failure cannot reasonably be cured within thirty (30) days and Landlord shall have commenced to cure said failure within said thirty (30) days and continues diligently to pursue the curing of the same). If Landlord shall be in default under this Lease and, if, as a consequence of such default, Tenant's right of enforcement and recovery on account of any money judgment shall be limited to and shall constitute a lien and charge only upon the right, title and interest of Landlord in the Shopping Center as the same may then be encumbered, and neither Landlord nor any partner, shareholder, officer, employee or agent of Landlord shall be liable for any deficiency or shall otherwise have any personal liability hereunder. In no event shall Tenant have the right to levy execution against any property of Landlord other than Landlord's right, title and interest in the Shopping Center as hereinbefore expressly provided, and the judgment index shall be so noted. No default by Landlord under this Lease shall give Tenant the right to terminate this Lease unless a court of competent jurisdiction shall have first determined, by final judgment, that such default shall so substantially impede the ability of Tenant to occupy the Premises for the conduct of the retail uses permitted under this Lease as to constitute the wrongful constructive eviction of Tenant in breach of Landlord's covenants contained in Article 20 hereof (including any judgment which may be entered for the enforcement of a determination resulting from arbitration pursuant to Section 17.03 hereof).

#### Section 17.02: TRANSFER OF LANDLORD'S INTEREST.

In the event of the sale or other transfer of Landlord's estate, right, title and interest in the Premises or the Shopping Center (except in the case of a sale-leaseback financing transaction in which Landlord is the lessee), Landlord shall transfer and assign to such purchaser or transferee any Security Deposit which may then be held by Landlord pursuant to this Lease, and Landlord thereupon and without further act by either party hereto shall be released from all liability and obligations hereunder derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or transfer.

#### Section 17.03: EXERCISE OF REMEDIES.

Notwithstanding anything to the contrary contained herein, or in any applicable law or rule of procedure, Tenant shall not terminate or attempt to terminate this Lease or abate or reduce (by off-set or otherwise) any payment of Rent or any other sum payable by Tenant under this Lease in the event of any alleged violation of the covenants of Landlord contained in this Lease (including without limitation any alleged violation of any exclusive rights or restrictive covenants contained herein, or for any alleged failure of Landlord to perform any repair or maintenance which Landlord may be obligated to perform if and as expressly provided in this Lease) and if Landlord disputes the occurrence of such failure or the right of Tenant to abate or reduce (by off-set or otherwise) any payment of rent, additional rent or other sum payable by Tenant under this Lease or the amount thereof, unless and until such alleged violation or violations of this Lease shall have been submitted to mandatory, binding arbitration by the parties as follows:

(i) Not later than ten (10) business days (being defined as days on which CoreStates Bank, N.A., Philadelphia, Pennsylvania (or its successor) is open for business to the public but not including Saturdays or Sundays) after written notice from Tenant to Landlord alleging a default on the part of Landlord or any alleged violation by Landlord of any exclusive rights or restrictive covenants contained herein, Landlord or Tenant shall file formal demand for arbitration with the office of the American Arbitration Association ("AAA") in either Philadelphia County or the county in which the Shopping Center is located. Each party shall thereafter conform with the schedule for the selection of arbitrators (who shall be three in number unless the parties otherwise agree) imposed by AAA; and thereafter the parties shall conform with such schedule and rules of procedure as shall be determined by AAA or such selected arbitrators, including without limitation such schedule as may be determined for any and all discovery, and for the presentation of the case by each. The scope of permitted discovery, and the rules

Landlord: 

Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

of discovery and procedure to be followed by the parties, shall be determined exclusively by the arbitrators, after consultation with the parties; and the judgment of such arbitrators concerning such rules and scope shall be final. Such arbitrators shall render their determination whether and to the extent this Lease has been violated by the Landlord, and the appropriate remedy for any violation found to have occurred (which may include any remedy otherwise available to Tenant at law or in equity which could be awarded to Tenant against Landlord by a court of competent jurisdiction), and all related issues, promptly following the close of the presentation of the parties' cases. Such determination shall be final, absolute and unappealable, and may be enforced with the force of a judgment rendered by a final court of competent jurisdiction, without further appeal. For that purpose, the parties shall have the right to have such determination enforced by a court of competent jurisdiction in the county in which the Shopping Center is located, or by the United States District Court for the Eastern District of Pennsylvania. In the event such determination by the arbitrators awards to Tenant any financial compensation, such compensation may be recovered by Tenant (in addition to Tenant's other remedies) by set-off against Minimum Rents (but not other sums) accruing thereafter under this Lease; provided, however, that such set-off shall not exceed for any month twenty-five percent (25%) of the monthly installment of Minimum Rent payable under this Lease.

(iii) The party not substantially prevailing at such arbitration (as determined by the arbitrators) shall bear the costs, fees and expenses of AAA and the arbitrators. If the arbitrators determine that neither party shall have substantially prevailed, each party shall bear one-half of the costs, fees and expenses of AAA and the arbitrators. All other costs of arbitration, including expert witness fees and discovery costs shall be paid by the parties in such manner as shall be determined by the arbitrator, in their sole discretion. In the event any party prevailing in such arbitration shall resort to judicial proceedings after such determination is finally made by the arbitrator, and for the enforcement thereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys fees, court costs and other reasonable expenses incurred in connection with such enforcement proceedings.

### ARTICLE 18: SUBORDINATION AND ATTORNMENT

(a) Tenant agrees that, except as hereinafter provided, this Lease is, and shall be, subject and subordinate to any lease wherein Landlord is the lessee and to the lien of any or all mortgages or deeds of trust, regardless of whether such lease, mortgages or deeds of trust now exist or may hereafter be created with regard to all or any part of the Shopping Center, and to any and all advances to be made thereunder, and to the interest thereon, and all modifications, consolidations, renewals, replacements and extensions thereof. Such subordination shall be effective without the execution of any further instrument. Tenant also agrees that any lessor, mortgagee or trustee may elect to have this Lease prior to any lease or lien of its mortgage or deed of trust, and in the event of such election and upon notification by such lessor, mortgagee or trustee to Tenant to that effect, this Lease shall be deemed prior in lien to the said lease, mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said lease, mortgage or deed of trust. Tenant shall, in the event of the sale or assignment of Landlord's interest in the Premises (except in a sale-leaseback financing transaction), or in the event of any proceedings brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgage or deed of trust covering the Premises, or in the event of the termination of any lease in a sale-leaseback transaction wherein Landlord is the lessee, attorn to and recognize such purchaser or assignee or mortgagee as Landlord under this Lease. Tenant agrees that, upon the request of Landlord, or any such lessor, mortgagee or trustee, Tenant shall execute and deliver whatever instruments may be required for such purposes and to carry out the intent of this Article 18, and in the event Tenant fails to do so within twenty (20) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact, coupled with an interest, in its name, place and stead to sign and deliver such instructions as if the same had been signed and delivered by Tenant. Provided that Tenant is a Credit Tenant, as hereinafter defined, the foregoing covenant of subordination shall be conditioned upon delivery to Tenant of a writing confirming that such mortgagee or other party relying upon the covenants of Tenant under this Section agrees not to terminate or disturb Tenant's interest under this Lease unless and until there shall have occurred any Event of Default hereunder which remains uncured after the expiration of any applicable period of grace. A "Credit Tenant" means a business entity either (i) is a corporation or other business entity whose outstanding voting stock is listed on any national securities exchange (as defined in the Securities Act of 1934, as amended), or (ii) is a corporation or other business entity having a net worth in excess of \$20,000,000.

(b) If any institutional lender with which Landlord has negotiated or may negotiate interim or long term financing shall require change(s) in this Lease as a condition or one of the conditions of its approval of this Lease for such financing, and if within twenty (20) days after notice from Landlord if Tenant fails or refuses to execute with Landlord the amendment or amendments to this Lease accomplishing the change(s) which are stated by Landlord to be needed in connection with approval of

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

this Lease for purposes of such financing, Landlord shall have the right to cancel this Lease at any time prior to the delivery of the Premises to Tenant.

### ARTICLE 19: ESTOPPEL CERTIFICATES

From time to time within fifteen (15) days after request in writing therefor from either party to the other, the other party agrees to execute and deliver to the requesting party, or to such other addressee or addressees as the requesting party may reasonably designate (and the requesting party and any such addressee may rely thereon), a statement in writing in customary commercial form and substance (herein called an "Estoppel Certificate"), certifying as to such matters as may be reasonably requested by the requesting party. Tenant expressly agrees that Landlord may request the issuance by Tenant of an Estoppel Certificate to Landlord's lender(s) at any time, who may act in material reliance thereon.

### ARTICLE 20: QUIET ENJOYMENT

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

### ARTICLE 21: SURRENDER AND HOLDING OVER

#### Section 21.01: DELIVERY AFTER TERM

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

#### Section 21.02: EFFECT OF HOLDING OVER RENT

If Tenant or any party claiming under Tenant remains in possession of the Premises or any part thereof after any termination of this Lease, no tenancy or interest in the Premises shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate ouster and removal, and Tenant shall pay upon demand to Landlord during any period which Tenant shall hold the Premises after the Term has expired, as liquidated damages, a sum equal to all Percentage Rent and Additional Rent provided for in this Lease plus an amount computed at the rate of double the Minimum Rent for such period.

### ARTICLE 22: CONDEMNATION

#### Section 22.01: ALL OF PREMISES TAKEN

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

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

more on such restoration than an amount equal to the condemnation award received by Landlord (less all expenses, costs, legal fees and court costs incurred by Landlord in connection with such award) multiplied by the GLA Fraction as of immediately prior to the taking.

### Section 22.03: SHOPPING CENTER TAKEN

If any part of the Shopping Center is taken by Condemnation so as to render, in Landlord's judgment, the remainder unsuitable for use as a shopping center, Landlord shall have the right to terminate this Lease upon notice in writing to Tenant within one hundred twenty (120) days after possession is taken by such Condemnation. If Landlord so terminates this Lease, it shall terminate not later than the day possession is taken by the condemning authority, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to the termination date with a proportionate refund by Landlord of any Rent as may have been paid in advance for a period subsequent thereto.

### Section 22.04: OWNERSHIP OF AWARD

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

## ARTICLE 23: MISCELLANEOUS

### Section 23.01: INTERPRETATION

The captions, table of contents and index of defined terms appearing in this Lease are inserted only as a matter of convenience and in no way amplify, define, limit, construe, or describe the scope or intent of such Sections of this Lease nor in any way affect this Lease. Except where otherwise expressly provided, each reference in this Lease to a Section or Article shall mean the referenced Section or Article in this Lease. If more than one person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, or becomes Landlord or Tenant, then and in such event, the words "Landlord" or "Tenant" wherever used in this Lease are intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and other provisions of this Lease shall be joint and several. The neuter, feminine or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural. The parties hereto agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

### Section 23.02: RELATIONSHIP OF PARTIES

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

### Section 23.03: NOTICES

Any notice, demand, request, approval, consent or other instrument which may be or is required to be given under this Lease shall be in writing and, shall be deemed to have been given (i) when mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (ii) when sent by courier guarantying overnight delivery addressed to Landlord or Tenant at the respective addresses set

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

forth in the Fundamental Lease Provisions and/or such other address or addresses as either party may designate by notice to the other in accordance with this Section.

### Section 23.04: SUCCESSORS

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon (subject to Article 17) Landlord, its successors and assigns, and shall be binding upon Tenant, its heirs, successors and assigns and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant has been consented to by Landlord (unless such assignment is expressly permitted pursuant to Section 15.02). Nothing in this Section 23.04 shall be deemed to require Landlord to give any such consent.

### Section 23.05: BROKER'S COMMISSION

Each party warrants to the other that, other than Agent (if any is identified in the Fundamental Lease Provisions), it has dealt with no other broker, agent or other intermediary in connection with this Lease, and agrees to and shall defend, indemnify and save the other party harmless from all claims, actions, damages, costs and expenses and liability whatsoever, including reasonable attorneys' fees, that may arise from any claim by or through the indemnifying party for a commission, finder's or like fee in connection with this Lease. The fees and commissions of Agent (if any is identified) shall be paid by the party identified as the responsible party in the Fundamental Lease Provisions.

### Section 23.06: UNAVOIDABLE DELAYS

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. During Tenant's Construction Period the provisions of this Section 23.06 shall not operate to excuse Tenant from completing construction of the Premises within Tenant's Construction period unless Tenant gives written notice of the delaying event to Landlord within ten (10) days of the occurrence of such delaying event. Such written notice shall specify the nature of the delaying event and the number of days of delay claimed to be resulting therefrom. Tenant's Construction Period shall be extended for a period equivalent to the period of actual delay. After the Rent Commencement Date the provisions of this Section 23.06 shall not operate to excuse Tenant from prompt payment of Rent or any other sums required by the terms of this Lease and shall not extend the Term. Delays or failures to perform resulting from lack of funds or the unavailability of a particular contractor or personnel shall not be deemed delays beyond the reasonable control of a party.

### Section 23.07: SEVERABILITY


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

### Section 23.08: TIME OF ESSENCE

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

### Section 23.09: OTHER TENANTS

Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord shall determine in the exercise of its sole business judgment. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant, or occupant or number of tenants, shall during the Term occupy or conduct business at any space in any part of the Shopping Center. Notwithstanding the

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

foregoing, except with respect to the spaces occupied by any Major, including, without limitation, the space occupied by Wal-Mart Stores, Inc., no part of the Shopping Center shall be used for the primary purpose as a theater, auditorium, meeting hall, gymnasium, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, or adult book or video tape store (provided that chain-type video stores, such as Blockbuster and Hollywood Video, shall not be prohibited). The foregoing restriction shall not apply to any current tenants of the Shopping Center to the extent their leases do not prohibit any of the foregoing uses.

### Section 23.10: APPLICABLE LAW.

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

### Section 23.11: WAIVER.

The waiver by a party of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term, agreement or condition of this Lease shall be deemed to have been waived by a party, unless such waiver be in writing by such party. No waiver of any covenant, term, agreement or condition of this Lease or legal right or remedy shall be implied by the failure of a party to declare a forfeiture, or for any other reason. No waiver by Landlord in respect to one or more tenants or occupants of the Buildings or any other part of the Shopping Center shall constitute a waiver in favor of any other tenant. Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

### Section 23.12: ACCORD AND SATISFACTION.

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent nor shall any endorsement or statement, any check or any letter accompanying any such check or payment as Rent or the like be deemed in accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's rights and remedies to recover the balance of such Rent or pursue any other right and remedy provided for in this Lease or available at law or in equity.

### Section 23.13: CORPORATE TENANTS.

In the event the Tenant hereunder is a corporation, the persons executing this Lease on behalf of the Tenant hereby covenant and warrant that: the Tenant is a duly constituted corporation qualified to do business in the state in which the Buildings are located, all Tenant's franchise, corporate and other lienable taxes have been paid to date; all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws will be filed by Tenant when due; and such persons are duly authorized by the governing body of such corporation to execute and deliver this Lease (including the warrant and/or power of attorney provision contained in Articles 16 and 19) on behalf of the corporation.

### Section 23.14: LIQUIDATED DAMAGES: ATTORNEY'S FEES.

When liquidated damages are specified anywhere in this Lease, it is understood and agreed that said sum is to be paid to Landlord because Landlord's actual damages will be difficult or impossible to ascertain with accuracy. The obligation of Tenant set forth herein to pay Landlord's attorneys' fees in connection with Tenant's default shall include the obligation of Tenant to pay all reasonable attorneys' fees incurred by Landlord before, during and after trial and on appeal. In the event that Landlord or Tenant brings any legal action to enforce any of its rights or remedies hereunder, the party prevailing in such action shall be paid its reasonable attorney's fees and court costs in connection with such action by the non-prevailing party. It shall not be necessary for a judgment or verdict to be rendered in order to

Landlord: 

Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

qualify a party as the prevailing party, but the party substantially obtaining the relief or outcome sought in such action shall be the "prevailing party."

### Section 23.15: RECORDING

This Lease shall not be recorded; however Landlord shall have the right to record a short form or memorandum thereof, at Landlord's expense, at any time during the term hereof; provided that any memorandum shall not disclose the monetary business terms contained herein.

### Section 23.16: AGENT OF LANDLORD

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

### Section 23.17: HAZARDOUS MATERIAL

(a) As used herein the term "hazardous material" means any hazardous or toxic substance, material or waste (including, without limitation, petroleum and asbestos and derivatives therefrom) which has been or in the future is determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property and/or the use, storage and or disposal of which is regulated by any governmental authority. If the Premises or any other part of the Shopping Center, or any equipment, trade fixtures or other mechanical apparatus therein contains or is contaminated by any hazardous material as the result of any act or omission of Tenant, its assignee(s) or sublessee(s), or their respective employees, agents, contractors or invites ("Tenant Parties"), Landlord, at its election, shall have the right to (i) cause Tenant to remove and properly dispose of same, all at Tenant's sole cost and expense and in compliance with the provision hereof, or (ii) perform the removal and disposal thereof itself, in which event Tenant shall reimburse Landlord, on demand, for the cost incurred by Landlord in doing so and securing the certifications referred to below. Tenant shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invites to at any time handle, use, manufacture, release, store or dispose of in or about the Premises or the Shopping Center any hazardous materials, or to keep, use, release or dispose of hazardous materials, in violation of any laws, statutes or ordinances presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws, statutes or ordinances or any judicial or administrative rulings or orders construing the same (collectively, "Environmental Laws"), nor shall Tenant suffer or permit any hazardous materials to be used by Tenant, its agents, contractors, employees or invites in any manner not fully in compliance with all Environmental Laws, in the Premises or the Shopping Center and appurtenant land. Notwithstanding the foregoing, Tenant may handle, store, use or dispose of products containing small quantities of hazardous materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for Tenant's use or for retail sale in the ordinary course of Tenant's business provided such business shall not include as a principal part thereof the sale of such hazardous materials (e.g. the sale of gasoline); provided that Tenant shall always handle, store, use, and dispose of any such hazardous materials in a safe and lawful manner and never allow such hazardous materials to contaminate the Premises, Shopping Center and appurtenant land or the environment. Tenant shall not install any storage tanks on any part of the Premises without first obtaining Landlord's written consent. Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of Tenant's failure to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any hazardous materials (even though permissible under all applicable Environmental Laws or the provisions of this Lease), or by reason of Tenant's failure to keep, observe, or perform any provision of this Section.

(b) If Landlord requires Tenant to remove the hazardous material, Tenant shall retain the services of an environmental engineer and a contractor, both of whom must be previously approved in writing by Landlord. Tenant shall submit to Landlord for approval the insurance certificates of Tenant's environmental engineer and contractor, a written removal plan and detailed plans and specifications which shall disclose, without limitation, the dates on which such work is to be performed and the steps to be taken to protect the public, all public areas in the Shopping Center, and the HVAC, water, sanitary and storm systems from contamination during the removal and disposal process. No work disclosed in the removal plan shall be commenced until Landlord has approved all aspects of such removal and disposal process and Tenant shall only perform such work in strict accordance with the process as approved by

Landlord:  Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

Landlord. Tenant, if required by Landlord, shall close for business while such work is being performed. Landlord reserves the right to monitor the performance of such work from time to time and, if Landlord believes that such work is being done in a manner which permits hazardous material to escape from the Premises or otherwise constitutes an unsafe condition, at Landlord's direction Tenant shall immediately cease such work until such problem has been corrected to Landlord's satisfaction. Tenant shall replace any contaminated equipment or materials removed from the Premises with new equipment or material performing the same function. If asbestos is removed from the Premises, prior to replacing the asbestos with an approved fire retardant material, Tenant shall cause its consulting engineer to perform an air quality test in the Premises and to certify the results thereof in a letter directed from such engineer to Landlord and Agent. Tenant shall not install such fire retardant or reopen for business until the results of such air quality tests are accepted by Landlord. Tenant shall perform such further acts as may be required to make such results acceptable to Landlord. Upon Landlord's acceptance of the air quality test, Tenant shall install the fire retardant material and promptly reopen for business.

(c) If Landlord elects to perform the removal of the hazardous material from the Premises, Landlord shall so notify Tenant of Landlord's anticipated commencement date of such work and Tenant, if required by Tenant, shall close for business not later than such date and remain closed until notified by Landlord to reopen whereupon Tenant shall promptly reopen for business. If Landlord performs such work it shall do so in compliance with all governmental requirements. If directed to do so by Landlord, Tenant shall remove such of its merchandise, personal property and trade fixtures as shall be required by Landlord for the completion of such work or Landlord, its contractors and subcontractors, may relocate the same within the Premises or elsewhere in the Shopping Center during the performance of such work; neither Landlord, Agent, nor their contractors or subcontractors shall be liable to Tenant in any regard for any damage to or loss of such items or for any other acts occurring in the Premises during the performance of such work.

(d) Tenant shall be responsible for, and shall indemnify, defend and save harmless Landlord, its mortgagees, and their respective partners, employees and agents, from all fines, suits, judgments, procedures, claims, actions, damages and liabilities of any kind (including without limitation clean-up costs, reasonable attorneys' fees, court costs, expert and consultant fees and expenses) arising out of or in any way connected with the generation, use, storage or handling of hazardous materials by the Tenant or any of its assignees or sublessees, or their respective officers, employees, agents, contractors or invitees, or any spills, releases or discharges of hazardous materials by any of the Tenant Parties at the Premises or any other part of the Shopping Center. Tenant shall reasonably cooperate, in good faith, in connection with any litigation or administrative proceedings with any third parties arising out of any environmental condition of the Premises. Tenant's obligations and liabilities under this Section shall be in addition to and not in limitation of those contained elsewhere in this Lease, shall survive the expiration or termination of this Lease, and shall continue so long as the Landlord or its successors may remain responsible for any releases, spills or discharges of hazardous materials at or from the Premises which occur by reason of any action or omission by any of the Tenant Parties.

(e) If the Term expires or terminates before Tenant and each other Tenant Party has fully performed its remediation obligations (if any) under this Section and such unperformed obligations or the subsequent performance thereof requires occupancy of all or any part of the Premises or otherwise impairs the use and occupancy of the Premises or access thereto for customary retail purposes, then, at the Landlord's sole option, Tenant shall remain liable to Landlord for an amount, as damages for the diminished use and leasability of the Premises, equal to the greater of (i) the then-fair market rental value of the Premises (without deduction for any impairment resulting from contamination by Hazardous Materials for which any of the Tenant's Parties are responsible hereunder), or (ii) the Minimum Rent and all other payment obligations of Tenant under this Lease in effect as of the date of the expiration or termination of the Term, but in each case less any rentals actually received by Landlord acting in good faith in an effort to reasonably mitigate its damages, from the date of the termination or expiration of the Term and until such time as the Tenant has fully performed all of its obligations under this Section.

(f) Landlord hereby releases, indemnifies, holds harmless and agrees to defend Tenant, its affiliates, and their respective directors, officers, shareholders, employees, representatives and agents, from and against any and all claims, suits and actions, together with all fines, liens and penalties, arising on account of or in connection with: (i) the violation of any Environmental Laws by Landlord, its agents, employees or contractors; or (ii) the presence, use, generation, storage, or release of hazardous materials in, on, under, or above the Shopping Center if and to the extent caused by Landlord, its agents, employees or contractors (which shall not include any tenants or occupants of the Shopping Center or their employees, agents or contractors), unless the hazardous materials are released as a result of the acts or omissions of any of the Tenant Parties.

Landlord:  Tenant: \_\_\_\_\_



## Hilltown Crossings Shopping Center

Premises requires remediation, clean-up or any other action with respect to such release, Landlord shall, in the event of clause (i), prepare and implement a plan for the clean-up of the release or shall take such other action as is required by any such governmental entity, or in any other event endeavor diligently to cause the person(s) responsible for such condition to prepare and implement such a plan.

### Section 23.18: ENTIRE AGREEMENT.

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

### Section 23.19: TENANT'S LIABILITY

(a) Landlord acknowledges being informed of the following facts: (i) Tenant has been organized for the purpose of negotiating and signing the within Lease; (ii) Tenant is a thinly capitalized corporation with no assets other than the within Lease; and (iii) that the sole and exclusive person or entity against which Landlord may seek damages or any remedies under this or any other document in which Landlord and Tenant are parties, whether for unpaid rent and associated damages, claims of unjust enrichment, claims of unfair trade practices, or any other theory of recovery of any kind or nature, is Tenant (and any permitted assignees or sublessees of Tenant) and Guarantor.

(b) Landlord agrees that the liability of Tenant hereunder shall be limited to Tenant's assets, if any, and Tenant's stockholders (including, but not limited to its successors and assigns) shall not be liable directly or indirectly for any obligation of Tenant, and Landlord agrees not to commence any legal proceedings against Tenant's stockholders (other than stockholders who have expressly agreed to be bound to Landlord).

### Section 23.20: IMPUTATION

For purposes of this Lease, the negligence, affirmative act or violation of the provisions of this Lease by an employee or agent of Landlord or Tenant, or by a contractor, employed by Landlord or Tenant, shall be the negligence, affirmative act or violation of the provisions of this Lease of Landlord or Tenant, as the case may be.

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

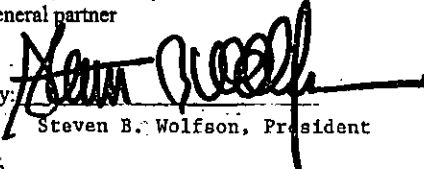
Hilltown Crossings Shopping Center

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

LANDLORD:

HILLTOWN CROSSINGS, L.P., a Pennsylvania  
limited partnership

By: HILLTOWN CROSSINGS CORPORATION,  
a Pennsylvania corporation, its sole  
general partner

By:   
Steven B. Wolfson, President

TENANT:

JENNIFER HILLTOWN CONVERTIBLES, INC.

By: 

  
Witness

Landlord:  Tenant: \_\_\_\_\_

**Hilltown Crossings Shopping Center**

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE SHOPPING CENTER AS PRESENTLY CONSTITUTED**

Landlord: 7 Tenant: \_\_\_\_\_

Legal Description

ALL THAT CERTAIN parcel of land situated in Hilltown Township, Bucks County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on the northeast side of Bethlehem Pike (100' wide) (Route 309), said point being the following three (3) courses from the intersection of the title line in the Bethlehem Pike with the title line in the Hilltown Pike, to wit, along the title line in Bethlehem Pike northwesterly 718.17 feet more or less; thence N 45°45'00" E, 50.00 feet; thence along the northeasterly right-of-way of Bethlehem Pike, N 44°15'49" W, 200.00 feet to the point of beginning; thence, from said point of beginning

1. Along the northeasterly right-of-way of the Bethlehem Pike, N 44°15'49" W, 402.45 feet; thence,
2. Along land now or formerly of N. J. and S. C. Doris, N 39°32'45" E, (passing a monument found at 0.43 feet), 153.99 feet to an iron pipe found; thence,
3. Along the same, N 43°59'12" W (passing a pipe found at 153.15 feet), 155.30 feet; thence,
4. Along the same, S 45°00'48" W, (passing a pipe at 153.13 feet) 153.84 feet to a point on the northeasterly right-of-way of the Bethlehem Pike; thence,
5. Along the right-of-way N 44°15'49" W, 405.65 feet; thence,
6. Along lands now or formerly of H. E. and R. C. Smith and E. J. Baum and S. Y. Ehrlich, Trustees, N 35°59'11" E (passing a pipe at 0.80 feet and 654.41 feet), 994.43 feet to a pin found; thence
7. Along land of Baum and Ehrlich, S 65°13'08" E, 475.90 feet to a pipe found; thence,
8. Along the same, N 29°45'38" E, 268.47 feet; thence,
9. Along the same, S 63°17'30" E, 711.13 feet to an axle found; thence,
10. Along the same, S 41°56'20" E, 253.02 feet; thence,
11. Along the same, S 34°40'30" W, 310.18 feet; thence,
12. Along land now or formerly of T. E. and R. W. Dalley, S 45°46'50" W, 396.16 feet to a pipe found; thence,
13. Along land now or formerly of G. L. and E. Celone, S 45°42'04" W, 642.23 feet to a pin found; thence,
14. Along land now or formerly of K. J. and D. Carney, N 45°00'00" W, 200.00 feet; thence,
15. Along the same, S 45°45'00" W, 287.57 feet to the POINT OF BEGINNING.

Containing 39.852 acres, more or less (1,735,931 square feet, more or less).

Hilltown Crossings Shopping Center

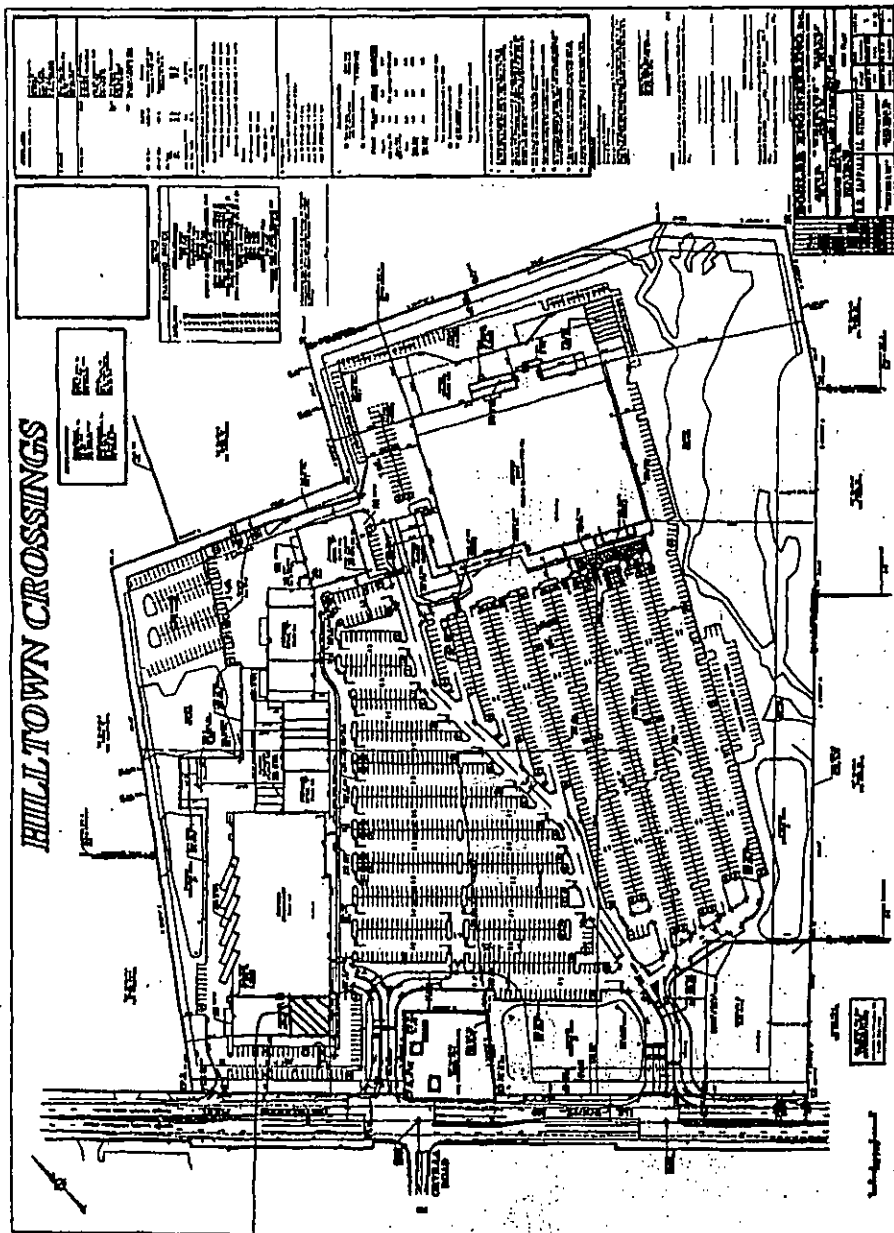
**EXHIBIT B**

**PLAN OF THE SHOPPING CENTER AS PRESENTLY CONSTITUTED**

Exhibit B to Lease  
Hilltown Crossings Shopping Center  
Page 1 of 1

Landlord:  Tenant: \_\_\_\_\_

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02/11/93

Hilltown Crossings Shopping Center

EXHIBIT C

Description of "Tenant's Work"

The following is a general description of the responsibilities of the Tenant restrictions to be followed for the construction of the shop interior. This information is intended to address those issues that are often questioned. Each Tenant should refer to their lease document for specific Tenant responsibilities.

**GENERALLY**

Tenant shall be responsible for all interior demolition necessary to commence installation of Tenant's fixtures.

Three sets of stamped architectural (and mechanical and electrical, if applicable) working drawings and specification shall be submitted by the Tenant showing all aspects of the Tenant construction if applicable, (including signage installation) for approval by the Landlord.

All work and materials shall be in accordance with standard building codes and with local, state and federal laws.

The Tenant's contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for the proper execution of the Tenant's work.

Any modification or addition to the HVAC system shall be approved in advance by the Landlord. If the existing system is to be utilized, no approval is needed.

No penetrations are to be made in the roof without Landlord approval. This includes vent stacks, ventilators, exhaust fans, antennas and/or satellite units.

All construction debris arising out of the Tenant's work shall be removed from the Premises regularly.

All contractors and subcontractors shall provide, upon completion of work, a Waiver of Liens which is to be submitted to the Landlord.

**INSURANCE**

Before commencement of work, the Tenant's general contractors or subcontractors shall furnish to the Landlord, Certificates of Workmen's Compensation Insurance, and Certification of Comprehensive Liability and Property Damage Insurance, which shall be kept on an occurrence basis during the programs of the work.

**HOLD HARMLESS**

Tenant shall submit an Agreement to hold harmless the Landlord from any claims, losses, judgements, costs, expenses (including reasonable attorney's fees) of any nature whatsoever for injury to persons or property whether or not caused by the contractor's negligence arising directly or indirectly, at any time out of the performance on the project unless caused by the negligence or willful misconduct of Landlord, its employees acting in the scope of their employment and its agents or contractors acting within the scope of their respective contracts.

Exhibit C to Lease  
Hilltown Crossings Shopping Center  
Page 1 of 2

Landlord:  Tenant: \_\_\_\_\_

**Hilltown Crossings Shopping Center**

**RESTRICTIONS**

The Tenant's contractor shall at all times keep the premises free from the accumulation of waste materials or rubbish. At the completion of the work, all surplus materials, tools, and rubbish shall be removed and the premises shall be left in a "broom-clean" condition.

The Tenant's contractor shall arrange for parking or must confine his parking to the areas designated by the Landlord. All construction equipment, materials, trailers, temporary toilets, etc. shall be confined in the area designated by the Landlord.

**Exhibit C to Lease**

**Hilltown Crossings Shopping Center**

**Page 2 of 2**

Landlord:  Tenant: \_\_\_\_\_



Hilltown Crossings Shopping Center

**EXHIBIT D**  
**RULES AND REGULATIONS**

Tenant agrees as follows:

- (1) All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purposes by Landlord.
- (2) The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the judgement of Landlord are necessary for the proper operation of the leased premises or Shopping Center.
- (3) All garbage and refuse shall be kept in an enclosed container specified by Landlord, and shall be placed outside of the leased premises prepared for collection in the manner and at the times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost. Tenant shall pay the cost of removal of any of Tenant's refuse or rubbish.
- (4) No radio or television or other similar devise shall be installed without first obtaining in each instance Landlord's consent in writing. No antenna shall be erected on the roof or exterior walls of the leased premises, or on the grounds, without in each instance the written consent of Landlord. Any antenna so installed without such written consent shall be subject to removal without notice at any time.
- (5) No loud speakers, televisions, phonographs, radios or other devises shall be used in a manner so as to be heard or seen outside of the leased premises without the prior written consent of Landlord.
- (6) The leased premises shall not be heated with any other equipment (i.e. propane, kerosene, electric portable units) other than that provided to the facilities.
- (7) The outside areas immediately adjoining the leases premises shall be kept clean and free of rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.
- (8) The plumbing facilities shall not be used for any other purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invites shall have caused it.
- (9) Tenant shall use at Tenant's cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.
- (10) Tenant shall not burn any trash or garbage of any kind in or about the leased premises, the Shopping Center.

Exhibit D to Lease  
Hilltown Crossings Shopping Center  
Page 1 of 1

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

EXHIBIT E

COMPLETION CERTIFICATE

The undersigned, as Tenant under that certain Shopping Center Lease (hereinafter called the "Lease") dated as of \_\_\_\_\_, 19\_\_\_\_, made and entered into between \_\_\_\_\_, as Landlord, and the undersigned, as Tenant, hereby ratifies the Lease and certifies that:

1. the undersigned has accepted possession of and entered into occupancy of the Premises;
2. the GLA in the Premises is \_\_\_\_\_ square feet;
3. the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, subsequent to the lease execution date above, except \_\_\_\_\_;
4. the Lease represents the entire agreement between the parties as to such leasing;
5. the Rent Commencement Date of the Lease is \_\_\_\_\_;
6. the Tenant opened its business in the Premises to the public on \_\_\_\_\_;
7. the date of the expiration of the Rent Term pursuant to Article 3 of the Lease is \_\_\_\_\_;
8. all conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied except \_\_\_\_\_;
9. there are no defaults by either Landlord or Tenant under the Lease;
10. no rents have been, nor will be, paid or prepaid, other than as provided in the Lease;
11. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by Landlord; and
12. the Lease is subordinate to any mortgage on the Premises which Landlord has given or hereafter gives.

In addition to the above certifications, Tenant has forwarded to Landlord all of the following documents relating to work that has been performed by Tenant or Tenant's Contractor in the Premises:

1. An affidavit from Tenant's general contractor that all work in the Premises has been fully completed in accordance with the Plans as approved by Landlord and that all subcontractors, laborers and materialmen engaged in supplying materials for the work have been paid in full.

Exhibit E to Lease  
Hilltown Crossings Shopping Center  
Page 1 of 2

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

EXHIBIT E

COMPLETION CERTIFICATE

2. Properly executed and acknowledged Releases of Mechanic's Liens (satisfactory to Landlord as to form and substance) with respect to the Premises executed by Tenant's general contractor and by every subcontractor and supplier of labor and materials engaged in the work.
3. A set of approved "as-built" drawings and specifications for the work done by Tenant, prepared and sealed by Tenant's architect, together with a complete set of Tenant's "as built" sprinkler plans.
4. A copy of the Statement of Occupancy from the Township of Hilltown and County of Bucks, Pennsylvania.

All terms used herein are defined in the Lease and shall have the same meaning when used herein.

TENANT:

By: \_\_\_\_\_

Title: \_\_\_\_\_

(CORPORATE SEAL)

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit E to Lease  
Hilltown Crossings Shopping Center  
Page 2 of 2

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

EXHIBIT F

CONTRACTOR'S WAIVER OF LIENS

IN THE COURT OF COMMON PLEAS OF \_\_\_\_\_ COUNTY

[Contractor's Name and Address],

CONTRACTOR

vs.

[Landlord's Name and Address],

OWNER

\*\*\*\*\*

[Landlord's Name and Address],

OWNER

vs.

[Contractor's Name and Address],

CONTRACTOR

Contractor's Waiver of Liens

1. Affiant holds the position of \_\_\_\_\_ of \_\_\_\_\_, a contractor, subcontractor or materialman (herein called "Contractor" for purposes of convenience) and is authorized to give this Waiver of Liens on behalf of said entity.

2. This Waiver of Liens is given to \_\_\_\_\_ and the partners therein and their agents (individually and collectively herein the "Owner"), for the benefit of Owner and Owner's lenders and their respective title companies (herein sometimes called "Beneficiaries"), with the understanding that they rely on this Waiver of Liens.

3. Contractor has contracted with \_\_\_\_\_ ("Company") for certain services, materials, supplies, machinery and/or fixtures and/or for the alteration and improvement of a portion of certain real property (the "Premises") located in the Shopping Center (the "Shopping Center") which is more fully described in Exhibit "A" annexed hereto and incorporated herein by reference.

Exhibit F to Lease  
Hilltown Crossings Shopping Center  
Page 1 of 4

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

## Hilltown Crossings Shopping Center

4. Contractor has not entered into any other contract, written or oral, with Owner or any agent or contractor of Owner other than the Company for the improvement of the Premises. Contractor agrees that neither it nor any subcontractor or materialmen or any other person acting directly or indirectly through or under the Contractor shall file any lien or assert any right against the Owner, the Shopping Center and/or the Premises or any portion thereof including Owner's interest therein, and further Contractor for itself and each of them hereby waives any liens or assertion of any lien right which it has or may have against Owner, the Shopping Center and/or the Premises under the Mechanic's Lien Law of the Commonwealth of Pennsylvania, or at common law which may arise or which could be perfected or created by reason of any and services, materials, supplies, machinery and/or fixtures furnished by the Contractor in connection with work in or for the Premises. This Waiver shall be an independent covenant and shall also operate and be effective with respect to work done and materials furnished under any supplemental contract or arrangement for extra work in the erection, construction and completion of any building, buildings or improvements on the Premises or any portion thereof.

5. Prior to permitting any subcontractor to perform services or furnish material, Contractor will obtain and deliver to Owner an executed Waiver of Liens in this form from each subcontractor of Contractor and shall stipulate in each purchase order or like document that there shall be no lien by materialman.

6. Contractor agrees to defend, indemnify and hold harmless Owner, its lenders and their respective title companies from any and all claims, actions, demands, costs and expenses whatsoever including premiums on bond and reasonable attorney's fees at trial and on appeal arising out of or relating to any breach of this Waiver of Liens.

7. This Waiver of Liens shall be binding upon Contractor, its heirs, successors and assigns and shall inure to the benefit of Owner, each of the other Beneficiaries and their respective successors, heirs, assigns and grantees.

8. For the purpose of effecting the Waiver of Liens contained herein, such Waiver of Liens shall be deemed a part of the Contractor's contract as described in Paragraph 3 hereof but it is understood and agreed that Owner shall have no liability or other obligation to the undersigned with respect to said contract.

9. In the event of any mechanic's lien or claim is filed by Contractor, notwithstanding this Waiver of Liens, Contractor hereby irrevocably waives any right to a jury trial in any action to strike or discharge the lien.

10. If Contractor files a mechanic's lien, notwithstanding this Waiver of Liens, any one of the Beneficiaries or the representatives of any one of the Beneficiaries shall have the right to discharge the lien by appropriate legal proceedings and the right to be completely reimbursed and indemnified by Contractor against expenses and losses resulting from such lien. Such expenses and losses shall include any attorney's fees, surety bond, premiums and other costs incurred in attempting to discharge or remove such lien, and any damages or other losses resulting from such lien, all of which Contractor agrees to pay.

11. Contractor hereby warrants and represents that at the time of execution hereof no work of any kind have been done and no materials or supplies of any kind have been furnished in connection with work for, in and/or on the Premises on Contractor's part.

Exhibit F to Lease  
Hilltown Crossings Shopping Center  
Page 2 of 4

Landlord:  Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

12. This Waiver of Liens is made and intended to be filed with the Prothonotary of the County in which the Premises are located in accordance with the requirements of Section 402 of the Mechanic's Lien Law of 1963 of the Commonwealth of Pennsylvania (49 P.S. Section 1402) as amended.

IN WITNESS WHEREOF, the undersigned hereunto set its hand and seal as of \_\_\_\_\_  
19\_\_.

CONTRACTOR:

If Contractor is a corporation:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Title: \_\_\_\_\_

If Contractor is an individual  
or partnership:

By: \_\_\_\_\_

Signed, Sealed & Delivered  
in the Presence of:

My Commission Expires: \_\_\_\_\_

Exhibit F to Lease  
Hilltown Crossings Shopping Center  
Page 3 of 4

Landlord:  Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On the \_\_\_\_ day of \_\_\_\_\_, 199\_, before me, a Notary Public in and for the Commonwealth and County aforesaid, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, and that (s)he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by him/herself as such officer.

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

(NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

\*\*\*\*\*

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

ON THIS, the \_\_\_\_ day of \_\_\_\_\_, 199\_, before me, a Notary Public in and for the Commonwealth and County aforesaid, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that (s)he executed the same for the purposes therein contained.

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

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public

Exhibit F to Lease  
Hilltown Crossings Shopping Center  
Page 4 of 4

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

EXHIBIT G

Tenant Signage Requirements

Tenant Signage Criteria

The following criteria have been established with the intent of assuring visual consistency for the mutual benefit of all Tenants. Conformance with this criteria will be the responsibility of the Tenant. Any sign or raceway systems found to be in non-conformance will be brought into conformance at the expense of the Tenant.

General Requirements

Tenant shall submit, before fabrication, four copies of the proposed sign and raceway system to the Landlord for approval. These drawings shall include location, size and style of lettering; materials, type of illumination, installation details, color selections; and overall design. Tenant shall not proceed with installation until written approval is obtained from Landlord.

All permits for signs and their installations shall be obtained and paid for by the Tenant. Copies of these permits shall be submitted to the Landlord.

The Tenant shall be responsible for the fulfillment of all requirements and specifications.

The size, location, design, color, texture, lighting and materials of the signs or raceway system shall in no way detract from the overall design of the shopping center and the surrounding properties.

Canopy Face

Canopy face signs shall be made up of individual letters thirty (30") inches in height and internally illuminated.

The color the face of the sign must be in keeping with the overall color scheme of the shopping center and must be approved by the Landlord.

Signs with two lines of copy must not exceed thirty (30") inches in height for both lines.

The overall length of the sign shall not exceed eighty percent (80%) percent of the storefront width.

Total area of sign is to be centered both vertically and horizontally within the assigned Tenant fascia area.

Sign area is computed as the width of the Tenant name from the first letter to the last and from the bottom of the tallest letter to the top of that letter. All space within letters is to be counted as part of the sign square footage.

Each sign to be equipped with an automatic timer or electric, light-sensing switch.



Hilltown Crossings Shopping Center

EXHIBIT G

Tenant Signage Requirements

Restrictions

Vertical letter of signs projecting perpendicular to the building are not permitted.

Manufacturer's decals, hours of business, telephone numbers, etc., are limited to a total of 144 square inches per entrance module installed in accordance with criteria. "Sale" signs, Special Announcements, etc., are not permitted on exterior or interior glass unless approved in advance by the Landlord.

Advertising devices such as attraction boards, posters, banners, and flags are not permitted except as otherwise permitted by Landlord.

Signs that are painted, flashing, animated, audible, revolving, or otherwise create the illusion of animation are not permitted.

Exposed bulb signs are not permitted.

No exposed junction boxes, lamps, tubing conduits, raceways, or neon crossovers of any type are permitted.

Legal name of the Tenant will be permitted. Sign copy shall not include the product sold except as part of Tenant name or insignia. Advertising copy of any kind will not be permitted.

No labels will be permitted on the exposed surface of signs except those required by local ordinance, which shall be applied in an inconspicuous location.

Luminous vacuum-formed type plastic letters, panels, or logos and reverse channel-type letters with silhouette illumination will not be permitted.

Cabinets, ballast boxes, supports, transformers, and other equipment shall all be concealed inside the canopy.

Floodlighting of signs will not be permitted.

No advertising placards, pennants, banners, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the display windows and doors, the storefront wall or the exterior walls of the building.

Exterior restaurant menus of changeable letters or signs will be not permitted.

Tenant is responsible to repair any damage to in-place construction caused by signage installation or removal.

All penetrations of the building structure required for sign installation must be neatly sealed in a watertight condition and match the finish of the fascia.

Soffit signage may be allowed when installed in accordance with criteria and with the prior written approval of Landlord.

The Landlord reserves the right to modify this criteria for Tenant's having 5,000 square feet or more of gross leasable area.

Exhibit G to Lease  
Hilltown Crossings Shopping Center  
Page 2 of 3

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

EXHIBIT G

Tenant Signage Requirements

Fabrication Requirements

Letter faces to be fabricated from flat, smooth plexiglass.

Returns and backs to be fabricated from 20-gauge paintloc steel or .063 aluminum for structural integrity.

Retainers to be 1" trimcap, or equivalent, to match return color.

Illumination to be 60 milliamp or mercury and 30 milliamp on red neon.

Depth of letter shall not exceed 5" nor be less than 4 1/2".

Installation Requirements

Letters shall project 1/2" from raceway face.

All transformers and wiring to be concealed inside the canopy or in the metal raceway.

Electrical service to all signs will be off the Tenant's electric meter.

The Tenant's sign contractor must seal off and touch up all holes in the canopy to ensure that no moisture can penetrate the sign or the canopy.

All signs must bear the U.L. label and the installation must comply with all applicable building and electrical codes.

Electrical service of Tenant's sign shall be connected to the night lights of Tenant's premises.

Exhibit G to Lease  
Hilltown Crossings Shopping Center  
Page 3 of 3

Landlord:  Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

EXHIBIT H

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_\_, 1999, by JENNIFER CONVERTIBLES, INC. ("Guarantor"), to and for the benefit of HILLTOWN CROSSINGS, L.P., a Pennsylvania limited partnership, and its successors and assigns (collectively, "Landlord").

RECITALS

A. Landlord and JENNIFER HILLTOWN CONVERTIBLES, INC., a Pennsylvania corporation ("Tenant") are parties to a certain Shopping Center Lease ("Lease") dated concurrently herewith.

B. As a condition to entering into the Lease, Landlord is requiring Guarantor to guaranty and become surety for the payment and performance of all of the covenants, representations, obligations and liabilities of Tenant's under the Lease.

NOW, THEREFORE, for and in consideration of the entering onto the Lease by Landlord on accordance with the terms thereof, and the covenants of Guarantor herein contained, and intending to be legally bound hereby, Guarantor hereby covenants as follows:

1. Subject to the limitations set forth in Section, Guarantor hereby irrevocably and unconditionally guarantees and becomes surety for the prompt and faithful payment and performance of all of the covenants, obligations and liabilities of Tenant, its successors and assigns, under the Lease, including, but not limited to, the payments of all installments of Rent (as defined in the Lease), all damages in the event of any uncured Event of Default (as defined in the Lease), and other sums due Landlord thereunder, and also for all representations of Tenant under the Lease. All of such obligations are incorporated herein (including without limitation the obligations and liabilities of Tenant under Section 23.17 of the Lease).

2. Guarantor expressly consents to any extension of time, leniency, amendment, modification, waiver, forbearance, or any changes which may be made in any terms and conditions of the Lease, and no such change, modification, extension, waiver or forbearance shall release Guarantor from any liability or obligation hereby incurred or assumed. Guarantor further expressly waives any notice of default in or under any of the terms of the Lease, as amended, and waives all setoffs and counterclaims; provided, however, that Guarantor shall be entitled to receive copies of any notices of default sent by Landlord to Tenant, if but only if the named Tenant shall have assigned its interest in the Lease to a person or entity not affiliated with Guarantor, and shall be given the same right concurrently to cure any default as that afforded Tenant under the Lease (excluding any defaults which, by their nature, are not susceptible of cure by Guarantor).

3. It is specifically understood and agreed that if an uncured Event of Default by Tenant occurs under the Lease, Landlord shall be entitled to commence any action or proceeding against Guarantor, or otherwise exercise any available remedies at law or in equity to enforce the provisions of this Guaranty without first commencing any action or otherwise proceeding against the Tenant or any other party, or otherwise exhausting all of its available remedies against the Tenant.

4. In the event that any action is commenced by Landlord to enforce the provisions of this Guaranty, Landlord shall, if it prevails in such action, be entitled to recover from Guarantor the reasonable costs of such action including reasonable attorneys' fees.

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

5. No payment by Guarantor shall entitle Guarantor, by subrogation or otherwise, to any payment from Tenant under or out of the property of Tenant, including but not limited to the revenues derived from the demised premises under the Lease, except after payment in full to Landlord of all amounts due and payable by Tenant to Landlord pursuant to the Lease.

6. The liability of the Guarantor shall not be deemed to be waived, released, discharged, impaired or affected by reason of the release or discharge of Tenant or any assignee in any condition, receivership, bankruptcy (including Chapter VII or Chapter XI bankruptcy proceedings or other reorganization proceedings under the Bankruptcy Code) or other insolvency proceeding, or the rejection or disaffirmation of the Tenant or any assignee in any such insolvency proceeding, and shall continue with respect to all obligations which would have accrued under the Lease absent such rejection or disaffirmation of the Lease.

7. Guarantor acknowledges that it is financially interested in the Tenant.

8. Following the termination of this Guaranty, Landlord will, at the request of Guarantor, execute such documents as Guarantor may reasonably request to acknowledge that this Guaranty is terminated and the Guarantor has no further liability or obligation hereunder.

9. **GUARANTOR HEREBY AUTHORIZES, IRREVOCABLY, THE PROTHONOTARY, THE CLERK OF COURT, OR ANY ATTORNEY IN ANY FEDERAL OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE, TO APPEAR FOR AND TO CONFESS JUDGMENT AGAINST GUARANTOR IN FAVOR OF LANDLORD, AS OF ANY TERM, PAST, PRESENT OR FUTURE, WITH THE FILING OF AN AVERMENT OF DEFAULT, WITH COSTS OF SUIT, RELEASE OF ERRORS, WITHOUT STAY OF EXECUTION, AND FOR SUCH AMOUNT AS MAY APPEAR TO BE UNPAID UNDER THIS GUARANTY, TOGETHER WITH ALL COSTS AND OTHER EXPENSES AND ATTORNEYS' FEES IN AN AMOUNT EQUAL TO FIVE PERCENT (5%) OF ALL AMOUNTS PAYABLE HEREUNDER BUT IN NO EVENT LESS THAN FIVE THOUSAND DOLLARS (\$5,000.00), TOGETHER WITH ALL COSTS AND EXPENSES INCURRED BY LANDLORD'S ATTORNEYS. GUARANTOR HEREBY WAIVES THE RIGHT OF ANY INQUISITION ON ANY REAL ESTATE THAT MAY BE LEVIED UPON AND HEREBY VOLUNTARILY CONDEMNNS THE SAME, AUTHORIZES THE PROTHONOTARY TO ENTER UNDER THE WRIT OF EXECUTION ITS SAID VOLUNTARY CONDEMNATION, AGREES THAT SAID REAL ESTATE MAY BE SOLD ON A WRIT OF EXECUTION, AND HEREBY WAIVES AND RELEASES ALL RELIEF FROM ANY AND ALL APPRAISEMENT, STAY OR EXEMPTION LAWS OF ANY STATE NOW IN FORCE OR HEREAFTER TO BE PASSED.**

10. This Guaranty shall inure to the benefit of Landlord, its heirs, personal representatives, successors and assigns and shall be binding upon the heirs, personal representatives, successors and assigns of the Guarantor.

11. This Guaranty shall be enforced in accordance with the laws of the Commonwealth of Pennsylvania.

12. This Guaranty shall be irrevocable and shall continue notwithstanding any assignment, sublease or other transfer of the Lease or the Premises (as defined in the Lease) or any interest therein.

13. So long as Tenant is not in default of any of its obligations under the Lease, Guarantor shall be released from liability hereunder after the date that is two (2) years after the date hereof (the "Release Date") for the remainder of the initial Term of the Lease. Notwithstanding the foregoing, if the initial Term of the Lease is extended as provided in the Lease, or as otherwise agreed by Landlord and Tenant, Guarantor shall be liable hereunder for the

Landlord:  Tenant: \_\_\_\_\_

**Hilltown Crossings Shopping Center**

first two (2) years of any such extension period. The foregoing release shall not apply to liability incurred or obligations accrued prior to the Release Date. Notwithstanding the foregoing, Guarantor shall nevertheless continue to be liable at all times during the Term (and any extension term) under the Lease after the Release Date up to an amount equal to six (6) months of Minimum Rent at the rate in effect at the time that Landlord elects to exercise its rights under this Guaranty.

Notwithstanding the foregoing, Guarantor shall at all times be liable to guaranty and be surety to Landlord, on the terms set forth herein, for the payment of the "Termination Payment" if and when due under the Lease, in addition to all other amounts due under the preceding paragraph.

Landlord: 

Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the day and year first above written.

JENNIFER CONVERTIBLES, INC.

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Landlord: 

Tenant: \_\_\_\_\_

Hilltown Crossings Shopping Center

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF

SS

ON THIS, the \_\_\_\_ day of \_\_\_\_\_, 1999, before me, a Notary Public in and for the State and County aforesaid, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged to me that he is the \_\_\_\_\_ of Jennifer Convertibles, Inc., a \_\_\_\_\_, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name.

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

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Landlord:                      Tenant:

Hilltown Crossings Shopping Center

EXHIBIT "T"

TITLE EXCEPTIONS AND EXCLUSIVES

1. For the term of the existing "Wal-Mart Stores, Inc." lease for the Shopping Center, as it may be renewed or extended, the operation of a theater, bowling alley, billiard parlor, night club or other place of recreation or amusement or any business serving alcoholic beverages for off premises consumption, except that (i) a party legally permitted to do so under applicable law shall have the right to sell beer, wine or liquor for off premises consumption and (ii) a restaurant or cafeteria shall have the right to serve alcoholic beverages as part of the food service operation of such restaurant or cafeteria provided such sales are an incidental part of such restaurant or cafeteria business. (For the purpose of the foregoing, the term "incidental" shall mean no more than fifty percent (50%) of the gross revenue from such restaurant or cafeteria shall be attributable to the sale of alcoholic beverages.) The operation of an auditorium, warehouse or storage facility, meeting hall, school or other place of public assembly, gymnasium, health club, exercise or dance studio, dance hall, bar (other than a bar ancillary to a restaurant), off-track betting business, billiard or pool hall, a site for bingo or similar games of chance, or as a massage parlor, video game arcade, skating rink, flea market, secondhand shop or thrift shop, car rental agency, or pornographic or adult shop or adult video tape store (which is defined as stores in which twenty percent (20%) or more of the inventory is not available for sale or rental to children under 18 years old because such inventory explicitly deals with or depicts human sexuality materials and/or such inventory is not located in a room separate from the remainder of the store's inventory).

2. For the term of the existing "Giant of Maryland, Inc." lease for the Shopping Center, as it may be renewed or extended, the operation of (i) a warehouse or storage facility; (ii) pornographic or "adult" shop; (iii) flea market, secondhand shop or thrift shop; (iv) massage parlor; (v) theater or bowling alley; (vi) billiard parlor; (vii) night club or other place of recreation or amusement, such as an amusement center containing coin-operated games, pin ball machines or similar devices (excepting coin-operated games, pinball machines and similar devices may be used as an incidental part of another use (e.g. as an incidental use in restaurant, in an area not larger than 10% of a user's leased space); (viii) any business serving alcoholic beverages, other than (1) a business selling beer, wine or liquor for off premises consumption that is legally permitted to make such sales under applicable law; or (2) a restaurant or cafeteria serving alcoholic beverages as part of its food service operation, so long as sales of alcoholic beverages do not account for more than 50% of the gross revenue of that restaurant or cafeteria; (ix) use which creates a nuisance or materially increases noise or emission of dust, odor or smoke; (x) use which is primarily the use, storage or marketing of hazardous substances or hazardous materials; (xi) a supermarket, supermarket-drugstore, drugstore, store that sells drugs that require prescriptions or the presence of a pharmacist, health and beauty aids store, or store with more than 10% of its selling space for retail sale for off-premises consumption of the following items (individually or in any combination): groceries, meat, seafood, poultry, dairy products, produce, flowers, bakery products, health and beauty aids; or (xii) carnivals.

3. For the term of the existing "Fashion Bug" lease for the Shopping Center, as it may be renewed or extended, the operation of (i) any retail store selling large or half-size women's clothing and/or apparel or (ii) any retail store selling popular to moderate priced (as said term is used in the trade, including any so-called "discount or budget" operation) junior, missy or women's clothing and/or apparel.

4. For the term of the existing "Holiday Hair" lease for the Shopping Center as it may be renewed or extended, hair cutting and/or hair styling for men and/or women.

5. For the term of the existing "Cosmetic Center" lease for the Shopping Center, as it may be renewed or extended, any deep discount drug store or any store or business where the

Landlord:  Tenant: \_\_\_\_\_



## Hilltown Crossings Shopping Center

sales floor area of such store is devoted to the sale of cosmetics and fragrances at retail or whose principal business is the operation of a beauty or hair salon.

6. For the term of the "General Nutrition Corporation" lease for the Shopping Center, now existing or hereafter in effect, as it may be renewed or extended, the retail sale of vitamins, mineral supplements, weight gain products, diet and weight loss products, sports nutrition supplements, health foods, natural source cosmetics and natural source beauty aids.

7. For the term of the existing "Main Line Federal Bank" lease for the Shopping Center, as it may be renewed or extended, for retail banking services as its primary business, having on-site retail service personnel, the sale and marketing of securities, and insurance products and other financial services and products.

8. For the term of the existing "McDonald's" lease for the Shopping Center, as it may be renewed or extended, the operation of a restaurant, food service establishment, drive-in walk-up eating facility, which serves hamburgers in any quantity; provided that any food service establishment which offers as the primary method of service for all meal times, food and drink orders taken by and served by a waiter or waitress at the customer's table is excluded from the term "restaurant". In addition, and not by way of example, the following restaurants operating under the listed trade names, or operating under any successor trade names, are prohibited within the areas and for the time period specified in this Article: Burger King, Hardee's, Rax, Carl's Jr., In and Out Burgers, Wendy's, Checkers, Jack-in-the Box, White Castle, Rally's, Dairy Queen/Brazier. This restriction shall not apply to the sale of hamburgers by any tenant in the Shopping Center to the extent it is permitted to do so under the terms of a lease for space in the Shopping Center in existence on the date entered in the caption of this Lease or which are permitted together with any expansion space added hereafter to the premises leased under any such Lease, provided that any such tenant shall be permitted to sell hamburgers only to the extent permitted by the terms of such lease and only for the balance of the term thereof and all renewal options exercisable unilaterally by such tenant as are specifically provided for therein and any additional extensions or renewals to which Landlord may consent.

9. For the term of the existing "Pizza Plaza" lease for the Shopping Center, as it may be renewed or extended, for an Italian style pizzeria restaurant, serving the items as set forth on their Exhibit H - Menu, for sit-down and take-out service.

10. All liens, easements and other matters currently of record.

Landlord:



Tenant:



## WOLFSON VERRICHIA GROUP, INC.

• Meetinghouse Business Center •

120 W. Germantown Pike • Suite 120 • Plymouth Meeting, PA 19462

Phone (610) 277-8899; Fax (610) 277-8880

**VIA UPS SECOND DAY**

October 4, 2010

BMC Group, Inc.

Attn: Jennifer Convertibles Claims Processing

18750 Lake Drive East

Chanhassen, MN 55317

Re: **Proof of Claim Form**  
**Jennifer Convertibles, Inc. – Case 10-13779**

To Whom it May Concern:

Enclosed is an original and copy of the Proof of Claim Forms with supporting documentation; one is an amended Claim Form and the other is the Post-Petition Claim Form. Please record the original and return the copy showing that it has been received in the postage paid envelope provided. If you have any questions, please contact me.

Best regards,

Wolfson Verrichia Group, Inc.  
Agent for Hiltown Crossings, LP

By: 

Kandria James

Real Estate Paralegal and Lease Administrator

cc (via email: w/Proof of Claim.): Ed Moyer  
Dan Utain, Esquire