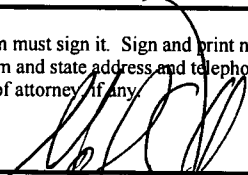



UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM
Name of Debtor: Jennifer Convertibles, Inc.		Case Number: 10-13779(ALG)
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Walnut Associates Limited Partnership		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: <u>343</u> (If known) Filed on: <u>10/29/2010</u>
Name and address where notices should be sent: c/o Nelson C. Chang, Esq. 47 Jackson Street Saugus, MA 01906 Telephone number: (781) 233-8200		
Name and address where payment should be sent (if different from above): Telephone number:		
1. Amount of Claim as of Date Case Filed: \$ <u>38,260.08</u> 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. <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.		5. 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. Specify the priority of the claim. <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)(). Amount entitled to priority: \$ _____ <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>
2. Basis for Claim: <u>rent due unexpired lease/the rent predates rejection</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 03/01/2011	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. <div style="text-align: center;">  Nelson C. Chang, Atty. for Walnut Associates LP </div>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		FOR COURT USE ONLY Jennifer Convertibles  00382

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**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

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).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

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. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

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.

4. Secured Claim:

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.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

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.

6. Credits:

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.

7. Documents:

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). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must 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.

DEFINITIONS**Debtor**

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

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose 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 proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the agent of the same bankruptcy court in which the bankruptcy case was filed.

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 Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority 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.

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.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may contact BMC Group (info@bmcgroup.com).

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.

WALNUT PLACE
SAUGUS, Mass

LEASE
Saugus Convertibles, Inc.
d/b/a Jennifer Convertibles
5/1/1997



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Exhibit A: Legal Description of the Shopping Center

Exhibit B: The Premises

Exhibit C: Workletter

Exhibit D: Rules and Regulations

Exhibit E: Sign Criteria

SHOPPING CENTER LEASE

THIS SHOPPING CENTER LEASE is entered into by Landlord and Tenant described in the following basic lease information on the date that is set forth for reference only in the following basic lease information.

Landlord and Tenant agree:

ARTICLE 1. BASIC LEASE INFORMATION

In addition to the terms which are defined elsewhere in this lease, the following defined terms are used in this lease:

- (a) **LEASE DATE:** , 1997
- (b) **TENANT:** Saugus Convertibles, Inc.
- (c) **TENANT'S TRADE NAME:** Jennifer Convertibles
- (d) **TENANT'S ADDRESS:** Saugus Convertibles, Inc.
c/o Jennifer Warehouse
245 Rogers Avenue
Inwood, NY 11696

with a copy to:

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

- (e) **LANDLORD:** Walnut Associates Limited Partnership
- (f) **LANDLORD'S ADDRESS:** C/O Hunneman Commercial Management
Corporation
70-80 Lincoln Street, Boston MA 02111
- (g) **SHOPPING CENTER ADDRESS:** Walnut Place, Route 1, Saugus MA
- (h) **COMMENCEMENT DATE:** May 1, 1997

- (i) **EXPIRATION DATE:** April 30, 2002
- (j) **SECURITY DEPOSIT:** not applicable
- (k) **FIRST MONTH'S MONTHLY BASE RENT:** \$5,301.69
- (l) **MONTHLY BASE RENT:** \$5,301.69 per month commencing on the commencement date, subject to adjustment annually in accordance with Section 4.2.
- (m) **LEASABLE AREA OF THE PREMISES:** 3,400 square feet.
- (n) **LEASABLE AREA OF THE SHOPPING CENTER:** 32,495 square feet for parking and 12,432 / 21,000 square feet for building.
- (o) **TENANT'S PRO RATA SHARE** (of (n) above): 16.33% for parking and 9.04 % for building (determined from time to time by Landlord, by dividing the leasable area of the premises by the leasable area of the shopping center and multiplying the resulting quotient (to the second decimal place) by one hundred). Landlord reserves the right to modify these percentages as additional leaseable areas are created in the shopping center.
- (p) **USE PERMITTED:** First class furniture store selling beds, bedding, sofas, sleep sofas, chairs, furniture and accessories, and for no other purpose without the prior written consent of Lessor. The term accessories does not include lighting fixtures or lamps the sale of which is specifically prohibited.
- (q) **MINIMUM BUSINESS HOURS:**
Monday-Friday 10:00 a.m. to 9:00 p.m.
Saturday 10:00 a.m. to 5:00 p.m.
Sunday 12:00 p.m. to 5:00 p.m.
- (r) **BROKER:** Hunneman Commercial Management Corporation
- (s) **GUARANTOR:** None
- (t) **ADDITIONAL RENT:** any amounts, including without limitation operating expenses that this lease requires Tenant to pay in addition to monthly base rent.
- (u) **LAND:** the land on which the shopping center is located and which is more particularly described on Exhibit A to this lease.

- (v) **PREMISES:** the premises shown on Exhibit B to this lease and known as Unit 186-188 Broadway, Saugus, MA, Walnut Place Shopping Center. The area of the premises and the shopping center will be determined by Landlord and will be conclusive in the absence of fraud or manifest error. The premises do not include, and Landlord reserves, the exterior walls and roof of the premises, the land beneath the premises, the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling or structural elements that serve the premises or the shopping center; however, Landlord has the right to enter the premises in order to install, inspect, maintain, use, repair, and replace those areas and items described in the preceding sentence.
- (w) **SHOPPING CENTER:** the shopping center consisting of the land and all improvements built on the land, including without limitation the parking lot, parking structure (if any), walkways, driveways, fences, and landscaping.
- (x) **RENT:** the monthly base rent and additional rent.

These exhibits are attached to this lease and are made parts of this lease:

EXHIBIT A--Legal Description of the Shopping Center

EXHIBIT B--The Premises

EXHIBIT C--Workletter

EXHIBIT D--Rules and Regulations

EXHIBIT E--Sign Criteria

ARTICLE 2. AGREEMENT

Landlord leases the premises to Tenant, and Tenant leases the premises from Landlord, according to this lease.

ARTICLE 3. TERM, DELIVERY, AND ACCEPTANCE OF PREMISES

- 3.1 **General.** The duration of this lease will be the "term." The term will commence on the Commencement Date and will expire on the Expiration Date.
- 3.2 **Acceptance of Premises.** Tenant is presently in possession of the premises and accepts the premises "AS IS," subject to Landlord's maintenance obligations described in Sections 12.1 and 12.2.

ARTICLE 4. MONTHLY BASE RENT

4.1 General. Throughout the term of this lease, Tenant will pay Monthly Base Rent to Landlord as rent for the Premises. Monthly Base Rent will be paid in advance on or before the first day of each calendar month of the term. If the term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then Monthly Base Rent will be appropriately prorated by Landlord for such month. If the term commences on a day other than the first day of a calendar month, then the prorated Monthly Base Rent for such month will be paid on or before the first day of the term. Monthly base rent will be paid to Landlord, without notice or demand, and without deduction or offset, in lawful money of the United States of America at Landlord's address, or to such other person or at such other place as Landlord may from time to time designate in writing.

4.2 Annual Monthly Base Rent Adjustment. The Monthly Base Rent will be increased on each January 1 during the term by the greater of (a) three percent (3%), or (b) the percentage increase in the price index.

In this Section 4.2,

- (a) "Base year" means the full calendar year during which the term of this lease commences.
- (b) "Lease year" means any full calendar year during the term after the base year.
- (c) "Price index" means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, Boston, Massachusetts, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982 - 84=100).
- (d) "Price index for a lease year" means the average of the price indices for the months of such year during which the price index is published.

If the price index published nearest to or in December in any lease year during the term of this lease is greater than the price index for the preceding lease year, then the Monthly Base Rent payable on January 1 of the succeeding lease year will be the sum of (1) the Monthly Base Rent effective in that December plus (2) the product of the percentage difference between the price index published nearest to or in December and the price index for the preceding lease year multiplied by the Monthly Base Rent for that December. The adjusted Monthly Base Rent will be payable until it is readjusted pursuant to the terms of this Section 4.2.

If a substantial change is made in the price index, then the price index will be adjusted to the figure that would have been used had the manner of computing the price index in effect at the date of this lease not been altered. If the price index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used

in determining the price index will be used. No adjustments will be made due to any revision that may be made in the price index for any month.

Statements of any adjustment on account of the price index, to be furnished by Landlord under this Section 4.2, will consist of data prepared by Landlord. The statements thus furnished to Tenant will constitute a final determination as between Landlord and Tenant of the relevant adjustment.

The Monthly Base Rent in Article 1(l) will not be reduced.

Landlord's delay or the failure of Landlord, beyond May of any year, in computing or billing for these adjustments will not impair the continuing obligation of Tenant to pay rent adjustments.

Tenant's obligation to pay rent as adjusted by this Section 4.2 will continue up to the expiration of this lease and will survive any earlier termination of this lease.

ARTICLE 5. COMMON AREA OPERATING EXPENSES

5.1 General. In addition to Monthly Base Rent, Tenant will pay Tenant's pro rata share of the operating expenses paid, payable, or incurred by Landlord according to an accrual method of accounting in each calendar year or partial calendar year during the term.

As used in this lease, the term "operating expenses" means:

- (a) all costs of management, operation, and maintenance of the shopping center (any of which may be furnished by an affiliate of Landlord), including, without limitation: cleaning, window washing, landscaping, lighting, heating, air conditioning, maintaining, painting, repairing, and replacing (except to the extent proceeds of insurance or condemnation awards are available) any common areas; maintaining, repairing, replacing, cleaning, lighting, removing snow and ice, painting, and landscaping of all vehicle parking areas and other outdoor common areas, including any shopping center pylon and sign; providing security; seasonal holiday decorations; removing trash from the common areas; providing public liability, property damage, fire, extended coverage, and such other insurance as Landlord deems appropriate; total compensation and benefits (including premiums for workmen's compensation and other insurance) paid to or on behalf of employees; personal property taxes; supplies; fire protection and fire hydrant charges; steam, water, and sewer charges; gas, electricity, and telephone utility charges; licenses and permit fees; supplying music to the common areas; depreciation of equipment used in operating and maintaining the common areas and rent paid for leasing such equipment; real property taxes (and any tax levied in whole or in part in lieu of real property taxes); that part of office rent or rental value of space in the shopping center used by Landlord to manage, operate, and

maintain the shopping center; and any other costs, charges, and expenses that under generally accepted accounting principles would be regarded as maintenance and operating expenses; and ten percent (10%) of all costs and expenses included within the preceding provisions of paragraph (a); and

- (b) the cost (amortized over such reasonable period as Landlord will determine) together with interest on the unamortized balance of any capital improvements (i) that are made to the shopping center by Landlord during the term and that are intended to reduce other operating expenses, or (ii) that are made to the shopping center by Landlord after the lease date and which are required under any governmental law or regulation that was not applicable to the shopping center at the time it was constructed and are not a result of Tenant's unique use of the Premises. The cost of any capital improvements which are required to be made to the shopping center after the lease date as a result of Tenant's unique use of the Premises will be made by Landlord at Tenant's sole cost and expense.

Operating expenses will not include depreciation on the shopping center (other than depreciation on personal property, equipment, window coverings on exterior windows provided by Landlord, and carpeting in public corridors and common areas), costs of improvements made for other Tenants of the shopping center, real estate brokers' commissions, mortgage interest, and capital items other than those referred to in clause (b).

- 5.2 Estimated Payments. In addition to Monthly Base Rent, Tenant will pay to Landlord in advance on the first day of each month during the term one-twelfth (1/12) of Tenant's pro rata share of estimated operating expenses paid, payable, or incurred during the subject calendar year or partial calendar year (the "estimated operating expenses"). The estimated operating expenses are subject to revision according to the further provisions of this Section 5.2 and Section 5.3. During December of each calendar year or as soon after December as practicable, Landlord will give Tenant written notice of Landlord's reasonable estimate of the amounts payable under Section 5.1 for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord in advance one-twelfth (1/12) of such reasonable estimated amount; however, if such notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given; provided that in the month Tenant first pays Landlord's new estimate Tenant will pay to Landlord the difference between the new estimate and the amount payable under the prior year's estimate for each month which has elapsed since December. If at any time or times it reasonably appears to Landlord that the amount payable under Section 5.1 for the current calendar year will vary from Landlord's estimate, Landlord may, by written notice to Tenant, revise Landlord's estimate for such year, and subsequent payments by Tenant for such year will be based upon Landlord's reasonably revised estimate.

- 5.3 Annual Settlement. Within ninety (90) days after the close of each calendar year or as soon after such ninety (90) day period as practicable, Landlord will deliver to Tenant a

statement of amounts payable under Section 5.1 for such calendar year prepared and certified by Landlord. Such certified statement will be final and binding upon Landlord and Tenant unless Tenant objects to it in writing to Landlord within thirty (30) days after it is given to Tenant. If such statement shows an amount owing by Tenant that is less than the estimated payments previously made by Tenant for such calendar year, the excess will be held by Landlord and credited against the next payment of rent; however, if the term has ended and Tenant was not in default at its end, Landlord will refund the excess to Tenant. If such statement shows an amount owing by Tenant that is more than the estimated payments previously made by Tenant for such calendar year, Tenant will pay the deficiency to Landlord within thirty (30) days after the delivery of such statement.

- 5.4 **Proration Upon Termination.** If, for any reason other than the default of Tenant, this lease ends on a day other than the last day of a calendar year, the amount of increase (if any) in operating expenses payable by Tenant applicable to the calendar year in which this lease ends will be calculated on the basis of actual expenses for the period up to the lease termination date.
- 5.5 **Other Taxes.** Tenant will reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of Landlord and Tenant:
- (a) upon, measured by or reasonably attributable to the cost or value of Tenant's merchandise, equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is in Tenant or Landlord;
 - (b) upon or measured by rent, including without limitation any gross income tax or excise tax levied by the federal government or any other governmental body with respect to the receipt of rent;
 - (c) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises or any portion of the Premises;
 - (d) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

If it is not lawful for Tenant to reimburse Landlord, the rent payable to Landlord under this lease will be revised to yield to Landlord the same net rental after the imposition of any such tax upon Landlord as would have been payable to Landlord prior to the imposition of any such tax.

Tenant will pay promptly when due all sales, merchandise or personal property taxes on Tenant's personal property in the Premises and any other taxes payable by Tenant that if not paid might give rise to a lien on the Premises or the Tenant's interest in the Premises.

- 5.6 **Additional Rent.** Amounts payable by Tenant according to this Article 5 will be payable as rent, without deduction or off-set. If Tenant fails to pay any amounts due according to this Article 5, Landlord will have all the rights and remedies available to it on account of Tenant's failure to pay rent.

ARTICLE 6. INSURANCE

- 6.1 **Landlord's Insurance.** At all times during the term of this lease, Landlord will carry and maintain (a) fire and extended coverage insurance covering the shopping center, parking structure (if any), and the shopping center's equipment and common area furnishings, and (b) comprehensive general liability insurance in such amounts as Landlord determines from time to time in its reasonable discretion. Tenant will reimburse Landlord, as an operating expense, for the costs of all such insurance in accordance with Article 5.
- 6.2 **Tenant's Insurance.** At all times during the term of this lease, Tenant will carry and maintain, at Tenant's expense, the following insurance, in the amounts specified below or such other amounts as Landlord may from time to time reasonably request, with insurance companies and on forms satisfactory to Landlord:
- a) Comprehensive general liability insurance, with an aggregate limit of not less than \$3,000,000. All such insurance will specifically include, without limitation, contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in Article 21 of this lease.
 - (b) Fire and extended coverage insurance covering all leasehold improvements in the Premises and all of Tenant's merchandise, equipment, trade fixtures, appliances, furniture, furnishings, and personal property from time to time in, on, or upon the Premises, in an amount not less than the full replacement cost without deduction for depreciation from time to time during the term of this lease, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended peril (all risk), boiler, flood, glass breakage, and sprinkler leakage. All policy proceeds will be used for the repair or replacement of the property damaged or destroyed; however, if this lease terminates under the provisions of Article 18, Tenant will be entitled to any proceeds resulting from damage to Tenant's merchandise, equipment, trade fixtures, appliances, furniture, and personal property, and Landlord will be entitled to all other proceeds.
 - c) Workmen's compensation insurance insuring against and satisfying Tenant's

obligations and liabilities under the workmen's compensation laws of the Commonwealth of Massachusetts and any applicable federal laws.

- (d) Such other insurance (including, without limitation, plate glass insurance), in such amounts as Landlord or its lender may reasonably require of Tenant upon thirty (30) days' prior written notice.

6.3 **Forms of Policies.** All policies of liability insurance which Tenant is obligated to maintain according to this lease (other than any policy of workmen's compensation insurance) will name Landlord and such other persons or firms as Landlord specifies from time to time as additional insureds. Original or copies of original policies (together with copies of the endorsements naming Landlord and any others specified by Landlord as additional insureds) and evidence of the payment of all premiums of such policies will be delivered to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days prior to the expiration of the term of each such policy. All liability policies maintained by Tenant will contain a provision that Landlord and any other additional insureds, although named as an insured, will nevertheless be entitled to recover under such policies for any loss sustained by Landlord and such other additional insureds, its agents, and employees as a result of the acts or omissions of Tenant. All such policies maintained by Tenant will provide that they may not be terminated or amended except after thirty (30) days prior written notice to Landlord. All policies maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. No insurance required to be maintained by Tenant by this Article 6 will be subject to more than a \$250 deductible limit without Landlord's prior written consent.

6.4 **Waiver of Subrogation.** Landlord and Tenant each waive any and all rights to recover against the other or against any other tenant or occupant of the shopping center, or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of such other party or of such other tenant or occupant of the shopping center, for any loss or damage to such waiving party arising from any cause covered by any insurance required to be carried by such party pursuant to this Article 6 or any other insurance actually carried by such party. Landlord and Tenant from time to time will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the shopping center or the Premises or the contents of the shopping center or the Premises. Tenant agrees to cause all other occupants of the Premises claiming by, under, or through Tenant to execute and deliver to Landlord such a waiver of claims and to obtain such waiver of subrogation rights endorsements.

6.5 **Adequacy of Coverage.** Landlord, its agents and employees make no representation that the limits of liability specified to be carried by Tenant pursuant to this Article 6 are adequate to protect Tenant. If Tenant believes that any of such insurance coverage is inadequate, Tenant will obtain, at Tenant's sole expense, such additional insurance coverage as Tenant deems adequate.

ARTICLE 7. UTILITIES

Tenant will pay all initial utility deposits and fees and all monthly service charges for water, electricity, sewage, gas, telephone, and any other utility services furnished to the Premises and the improvements on the Premises during the term of this lease. If any such services are not separately metered or billed to Tenant but rather are billed to and paid by Landlord, Tenant will pay to Landlord Tenant's pro rata share of the cost of such services in accordance with Article 5.

ARTICLE 8. USE, OPERATION OF BUSINESS, FINANCIAL STATEMENTS

- 8.1 Use--General. The Premises will be used for the purposes described in Article 1(p) and for no other purpose. Tenant will not: do or permit to be done in or about the Premises, nor bring to, keep, or permit to be brought or kept in the Premises, anything that is prohibited by or will in any way conflict with any law statute, ordinance, or governmental rule or regulation that is now in force or that may be enacted or promulgated after the lease date; do or permit anything to be done in or about the Premises that will in any way obstruct or interfere with the rights of other tenants of the shopping center, or injure or annoy them; use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose; cause, maintain, or permit any nuisance in, on, or about the Premises. Landlord has not promised Tenant that Tenant will have the exclusive right in the shopping center to the use Tenant is allowed in Article 1(p).
- 8.2 Operation of Tenant's Business. Tenant will operate Tenant's business in the Premises so as to maximize the gross sales produced by such operation, and will carry in the Premises at all times a stock of merchandise of such size, character, quantity, and quality as is reasonably designed to produce the greatest gross sales. Tenant will carry on its business diligently and continuously at the Premises through the term of this lease and will keep the Premises open for business on all business days in accordance with the schedule of business hours specified in the basic lease information. If Landlord from time to time establishes a different schedule of business hours for the shopping center, Tenant will remain open during such revised business hours.
- 8.3 Manner of Conducting Business. Tenant's business in the Premises will be conducted only under the trade name specified in Article 1. Tenant will not use or permit the Premises to be used under any other trade name without Landlord's prior written consent. Tenant will maintain an adequate number of capable employees and sufficient inventory in order to achieve the greatest possible gross sales. Tenant's local advertising will refer to the business conducted at the Premises and will mention the name of the shopping center. Tenant acknowledges that the identity of Tenant, the specific character of Tenant's business, the anticipated use of the Premises, and the relationship between such

use and other uses within the shopping center have been material considerations to Landlord's entry into this lease. Any material change in the character of Tenant's business or use will constitute a default under this lease.

Tenant will not, without the prior consent of Landlord, use the name of the shopping center for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor will Tenant do or permit the doing of anything in connection with Tenant's business or advertising that in the judgment of Landlord may reflect unfavorably on Landlord or the shopping center or confuse or mislead the public as to any relationship between Landlord and Tenant.

Tenant will not (a) use or permit the use of any portion of the Premises for the conduct in or on the Premises of what is commonly known in the retail trade as an outlet store or second-hand store, or army, navy, or government surplus store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation or closing, or going out of business sale unless such advertisements are true and Landlord gives its prior written consent; (c) warehouse and stock within the Premises any goods, wares, or merchandise other than those Tenant intends to offer for sale in the Premises; or (d) use or permit the use on the Premises of any pinball machines, video games, or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, pay telephones, or other coin-operated devices.

- 8.4 **Financial Statements.** Within sixty (60) days of the end of each calendar year during the lease term, Tenant will deliver to Landlord (a) a financial statement (including balance sheet and statement of profits and losses) for Tenant's most recently completed fiscal year, certified by Tenant's chief financial officer, and (b) copies of the past year's sales tax returns filed by Tenant with respect to business conducted from the Premises.

ARTICLE 9. REQUIREMENTS OF LAW, FIRE INSURANCE

- 9.1 **General.** Tenant, at its expense, will comply with all applicable governmental laws, orders and regulations, and with any direction of any public officer or officers, according to law, that will impose any violation, order or duty upon Landlord or Tenant with respect to the Premises or their use or occupancy.
- 9.2 **Hazardous Waste.** Neither Tenant nor any employee, agent, contractor, licensees or invitees of Tenant shall generate, store or spill upon, dispose of, or transfer to or from the Premises or the shopping center any hazardous waste materials. Any violation by Tenant of any Hazardous Waste Laws shall constitute a breach of this lease.

Tenant agrees that if it, or anyone claiming by, through or under Tenant, or any employee, agent, contractor, licensee or invitee of Tenant, shall generate, store, or spill

upon, dispose of, or transfer to and from the Premises or the shopping center any hazardous waste materials, Tenant shall forthwith remove the same in the manner provided by applicable laws (federal, state and local) and the rules and regulations promulgated thereunder (hereinafter such laws, rules and regulations shall be referred to as "Laws"), regardless of when such hazardous waste materials shall be discovered. Furthermore, Tenant shall forthwith repair and restore any portion of the Premises and the shopping center which shall be disturbed or damaged in so removing said hazardous waste materials to the condition which existed prior to Tenant's disturbance thereof.

For purposes of this Section, "hazardous waste materials" shall be deemed to be any oil, hazardous materials, hazardous wastes and hazardous substances as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq., as amended, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et. seq., as, amended, and the regulations promulgated thereunder, and all applicable state and local laws, rules and regulations relating to hazardous substances, now existing or hereafter enacted, including, without limitation, Massachusetts General Laws, Chapters 21C and 21E. Tenant shall cure any default hereunder within the earlier of:

- (a) five days' written notice from Landlord of the existence of such default;
- (b) within the time periods specified by said laws; or
- (c) within the time period ordered by any governmental agency or official.

Tenant agrees to promptly deliver to Landlord any notices, orders or similar documents received from any governmental agency or official concerning hazardous materials affecting the Premises or the shopping center.

Tenant shall indemnify and hold Landlord and any mortgagees of the shopping center, or any other lender providing financing at any time to Landlord (including any successor to or assignee of Landlord) harmless from and against all loss, cost, liability, damage, and expense including reasonable attorneys' fees and the costs of litigation, arising from any hazardous waste materials in or on the Premises or the shopping center due to any act, omission or negligence of Tenant, or any of Tenant's employees, agents, contractors, licensees or invitees' or any breach or default by Tenant or any of the foregoing of any of Tenant's obligations or agreements under this Section 9.2.

Tenant acknowledges that its obligations and liabilities under this Section 9.2 survive the expiration or earlier termination of this lease.

- 9.3 Certain Insurance Risks. Tenant will not do or permit to be done any act or thing upon the Premises which would (a) jeopardize or be in conflict with fire insurance policies covering the shopping center and fixtures and property in the shopping center; (b) increase the rate of fire insurance applicable to the shopping center to an amount higher than it

otherwise would be for the general use as a shopping center; or (c) subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon the Premises; however, this Section 9.3 will not prevent Tenant's use of the Premises for the purposes stated in Article 8.

- 9.4 Tenant's Insurance Payments. If, as a result of any use, act or omission or violation of this lease by Tenant, the rate of any fire insurance applicable to the shopping center or any other insurance carried by Landlord is increased to an amount higher than it otherwise would have been, Tenant will reimburse Landlord for the increased cost of Landlord's insurance premiums. Such reimbursement will be rent payable upon the first day of the month following Landlord's delivery to Tenant of a statement showing payment by Landlord for such increased insurance premiums. In any action or proceeding in which Landlord and Tenant are parties, a schedule or "make up" of rates for the shopping center or Premises issued by the body making fire insurance rates for the Premises will be presumptive evidence of the facts stated and of the several items and charges in the fire insurance rate then applicable to the Premises.

ARTICLE 10. ASSIGNMENT AND SUBLETTING

- 10.1 General. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors, and assigns, covenants that it will not assign, mortgage, or encumber this lease, nor sublease, nor permit the Premises or any part of the Premises to be used or occupied by others, without the prior written consent of Landlord in each instance, which consent may be withheld for any reason. The transfer of control or of a majority of the issued and outstanding capital stock of any corporate tenant or subtenant of this lease or a majority interest in any partnership tenant or subtenant, however accomplished, and whether in a single transaction or in a series of transactions, will be an assignment of this lease or of such sublease requiring Landlord's prior written consent in each instance. The transfer of outstanding capital stock of any corporate tenant, for purposes of this Article 10, will not include any sale of such stock by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, so long as such sale is effected through the "over-the-counter market" or through any recognized stock exchange.

Any assignment or sublease in violation of this Section 10.1 will be void. If this lease is assigned, or if the Premises or any part of the Premises are subleased or occupied by anyone other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to rent. No assignment, sublease, occupancy, or collection will be deemed (a) a waiver of the provisions of this Section 10.1; (b) the acceptance of the assignee, subtenant, or occupant as tenant; or (c) release Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this lease. The consent by Landlord to an assignment or sublease will not be construed to relieve Tenant from obtaining Landlord's prior written

consent in writing to any further assignment or sublease. No permitted subtenant will assign or encumber its sublease or further sublease all or any portion of its subleased space, or otherwise permit the subleased space or any part of its subleased space to be used or occupied by others, without Landlord's prior written consent in each instance.

- 10.2 Limitation on Remedies. Tenant will not be entitled to make, nor will Tenant make, any claim, and Tenant by this Section 10.2 waives any claim, for money damages (nor will Tenant claim any money damages by way of set-off, counterclaim, or defense) based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed its consent or approval to a proposed assignment or subletting as provided for in this Article 10. Tenant's sole remedy will be an action or proceeding to enforce any such provision, or for specific performance, injunction, or declaratory judgment.

ARTICLE 11. COMMON AREAS

As used in this lease, the term "common areas" means, without limitation, any hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, trash facilities, and all other areas and facilities in the shopping center that are provided and designated from time to time by Landlord for the general nonexclusive use and convenience of Tenant with other tenants of the shopping center and their respective employees, customers, invitees, licensees, or other visitors. Landlord grants Tenant, its employees, invitees, licensees, and other visitors a nonexclusive license for the term to use the common areas in common with others entitled to use the common areas including, without limitation, Landlord and other tenants of the shopping center, and their respective employees, customers, invitees, licensees, and visitors, and other persons authorized by Landlord, subject to the terms and conditions of this lease. Without advance notice to Tenant, except with respect to matters covered by subsection (a) below, and without any liability to Tenant in any respect, Landlord will have the right to:

- (a) establish and enforce reasonable rules and regulations concerning the maintenance, management, use and operation of the common areas;
- (b) close off any of the common areas to whatever extent required in the opinion of Landlord and its counsel to prevent a dedication of any of the common areas or the accrual of any rights by any person or the public to the common areas, provided such closure does not deprive Tenant of the substantial benefit and enjoyment of the Premises;
- (c) temporarily close any of the common areas for maintenance, alteration, or improvement purposes;

- (d) select, appoint, or contract with any person for the purpose of operating and maintaining the common areas, subject to such terms and at such rates as Landlord deems reasonable and proper;
- (e) change the size, use, shape, or nature of any such common areas, provided such change does not deprive Tenant of the substantial benefit and enjoyment of the Premises. So long as Tenant is not thus deprived of the substantial use and benefit of the Premises, Landlord will also have the right at any time to change the arrangement or location of, or both, or to regulate or eliminate the use of, any concourse, parking spaces, garage, or any elevators, stairs, toilets, or other public conveniences in the shopping center, without incurring any liability to Tenant or entitling Tenant to any abatement of rent, and such action will not constitute an actual or constructive eviction of Tenant; and
- (f) erect one or more additional buildings on the common areas, expand one or more of the existing buildings at the shopping center, expand the existing shopping center to cover a portion of the common areas, convert common areas to a portion of the shopping center, or convert any portion of the shopping center to common areas. Upon erection or change of location of the buildings, the portion of the shopping center upon which buildings or structures have been erected will no longer be deemed to be a part of the common areas. In the event of any such changes in the size or use of the shopping center or common areas, Landlord will make an appropriate adjustment in the leasable area of the shopping center and in Tenant's pro rata share payable pursuant to Article 5 of this lease.

ARTICLE 12. LANDLORD'S SERVICES

- 12.1 Landlord's Repair and Maintenance, Landlord will maintain, repair, restore, repaint, and replace the common areas of the shopping center, including without limitation landscaping, asphalt, the corridors and restrooms, the windows in the common areas, and the mechanical, plumbing, and electrical equipment serving the common areas, in reasonably good order and condition, except for (a) any damage occasioned by the negligent or willful acts or omissions of Tenant, Tenant's agents, employees, or invitees; (b) any damage occasioned by the failure of Tenant to perform or comply with any terms, conditions, or covenants in this lease; (c) ordinary wear and tear; and (d) any structural alterations or improvements required by Tenant's use and occupancy of the Premises, which damage will be repaired by Landlord at Tenant's expense. As a condition precedent to all obligations of Landlord to repair, restore and maintain under this Section 12.1, Tenant must notify Landlord in writing of the need for such repairs, restoration, or maintenance.

Tenant will reimburse Landlord for Tenant's pro rata share of the costs Landlord incurs in performing its repair and maintenance obligations with respect to the shopping center. Reimbursement by Tenant to Landlord for Tenant's share of such costs will be made within thirty (30) days of receipt of a statement for such charges. If Landlord fails to commence the making of repairs within thirty (30) days after such notice, and the failure to repair has materially interfered with Tenant's use of the Premises, Tenant's sole right and remedy for such failure on the part of the Landlord will be to cause such repairs to be made and to charge Landlord the reasonable cost of such repairs. If the repair is necessary to end or avert an emergency, and if Landlord after receiving notice from Tenant of such necessity fails to commence repair as soon as reasonably possible, Tenant may do so at Landlord's cost, without waiting thirty (30) days. --

- 12.2 Landlord's Other Services. Landlord will keep the common areas (a) in a clean and orderly condition and free of snow, ice, and debris, and (b) properly lighted and landscaped. Landlord will not be in default under this lease or be liable for any damages directly or indirectly resulting from, nor will the rent be abated by reason of, (i) the installation, use, or interruption of use of any equipment in connection with the furnishing of any of such services; (ii) failure to furnish or delay in furnishing any such services, when such failure or delay is caused by accident or any condition beyond the reasonable control of Landlord or by the making of necessary repairs or improvements to the Premises or to the shopping center; or (iii) the limitation, curtailment, rationing, or restrictions on use of water, electricity, gas, or any other form of energy serving the Premises or the shopping center. Landlord will use reasonable efforts to remedy diligently any interruption in the furnishing of such services.

- 12.3 Limitation on Liability. Landlord will not be liable to Tenant or any other person for direct or consequential damage or otherwise for any failure to supply any heat, air conditioning, elevator, cleaning, lighting, security, or other service Landlord has agreed to supply during any period when Landlord uses reasonable diligence to supply such services. Landlord reserves the right to discontinue temporarily such services, or any of them, at such times as may be necessary by reason of accident; unavailability of employees; repairs, alterations, or improvements; strikes; lockouts; riots; acts of God; governmental preemption in connection with a national or local emergency; any rule, order, or regulation of any governmental agency; conditions of supply and demand that make any product unavailable; Landlord's compliance with any mandatory governmental energy conservation or environmental protection program, or any voluntary governmental energy conservation program at the request of or with consent or acquiescence of Tenant; or any other happening beyond the control of Landlord. Landlord will not be liable to Tenant or any other person or entity for direct or consequential damages resulting from the admission to or exclusion from the shopping center of any person. In the event of invasion, mob, riot, public excitement, or other circumstances rendering such action advisable in Landlord's sole opinion, Landlord will have the right to prevent access to or from the shopping center

during the continuance of the same by such means as Landlord, in its sole discretion, may deem appropriate, including without limitation locking doors and closing parking areas and other common areas. Landlord will not be liable for damages to person or property or for injury to, or interruption of, business for any discontinuance permitted under this Article 12, nor will such discontinuance in any way be construed as an eviction of Tenant or cause an abatement of rent or operate to release Tenant from any of Tenant's obligations under this lease.

ARTICLE 13. TENANT'S REPAIRS

- (a) Tenant will at all times during the term of this lease keep and maintain at its own cost and expense, in good order, condition, and repair, the Premises (including, without limitation, all improvements, fixtures, and equipment on the Premises), and will make all repairs and replacements, interior and exterior, above or below ground, and ordinary or extraordinary.
- (b) Tenant's obligation to keep and maintain the Premises in good order, condition, and repair includes without limitation all plumbing and sewage facilities in the Premises; floors (including floor coverings); doors, locks, and closing devices; window casements and frames; glass and plate glass; grilles; all electrical facilities and equipment; HVAC systems and equipment and all other appliances and equipment of every kind and nature; and all landscaping upon, within, or attached to the Premises. In addition, Tenant will at its sole cost and expense install or construct any improvements, equipment, or fixtures required by any governmental authority or agency as a consequence of Tenant's use and occupancy of the Premises. Tenant will replace any damaged plate glass within in forty-eight (48) hours of the occurrence of such damage. Tenant agrees to install a gas fired steam boiler within thirty (30) days of signing this lease and to maintain same during the term of the lease.
- (c) Landlord will assign to Tenant, and Tenant will have the benefit of, any guarantee or warranty to which Landlord is entitled under any purchase, construction, or installation contract relating to a component of the Premises that Tenant is obligated to repair and maintain. Tenant will have the right to call upon the contractor to make such adjustments, replacements, or repairs as are required to be made by the contractor under such contract.
- (d) Landlord may at Landlord's option employ and pay a firm satisfactory to Landlord, engaged in the business of maintaining systems, to perform periodic inspections of the HVAC systems serving the Premises, and to perform any necessary work, maintenance, or repair of them. In that event, Tenant will reimburse Landlord for all reasonable amounts paid by Landlord in connection with such employment.

- (e) Upon the expiration or termination of this lease, Tenant will surrender the Premises to Landlord in good order, condition, and repair, ordinary wear and tear excepted. To the extent allowed by law, Tenant waives the right to make repairs at Landlord's expense under the provisions of any laws permitting repairs by a Tenant at the expense of a Landlord.

ARTICLE 14. ALTERATIONS

Tenant will not make or cause to be made any alterations, additions, or improvements to or of the Premises or any part of the Premises, or attach any fixture or equipment to the Premises, without first obtaining Landlord's written consent. Any alterations, additions, or improvements to the Premises consented to by Landlord will be made by Tenant at Tenant's sole cost and expense according to plans and specifications approved by Landlord, and any contractor or person selected by Tenant to make them must first be approved by Landlord. Landlord may require, at its option, that Tenant provide Landlord at Tenant's sole cost and expense, a lien and completion bond, or payment and performance bond, in an amount equal to twice the estimated cost of any contemplated alterations, fixtures, and improvements, to insure Landlord against any liability for mechanics' or materialmen's liens and to ensure the completion of such work. All alterations, additions, fixtures, and improvements, whether temporary or permanent in character, made in or upon the Premises either by Tenant or Landlord (other than furnishings, trade fixtures, and equipment installed by Tenant), will be Landlord's property and, at the end of the term of this lease, will remain on the Premises without compensation to Tenant. If Landlord requests, Tenant will remove all such alterations, fixtures, and improvements from the Premises and return the Premises to the condition in which they were delivered to Tenant. Upon such removal Tenant will immediately and fully repair any damage to the Premises occasioned by the removal.

ARTICLE 15. MECHANICS' LIENS

Tenant will pay or cause to be paid all costs and charges for work done by it or caused to be done by it in or to the Premises and for all materials furnished for or in connection with such work. Tenant will indemnify Landlord against, and hold Landlord, the Premises, and the shopping center free, clear, and harmless of and from, all mechanics' liens and claims of liens, and all other liabilities, liens, claims, and demands, on account of such work. If any such lien, at any time, is filed against the Premises or any part of the shopping center, Tenant will cause such lien to be discharged of record within ten (10) days after the filing of such lien, except that if Tenant desires to contest such lien, it will furnish Landlord, within such ten (10) day period, security reasonably satisfactory to Landlord of at least one hundred fifty percent (150%) of the amount of the claim, plus estimated costs and interest. If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant will pay and satisfy the same at once. If Tenant fails to pay any charge for which a mechanics' lien has been filed, and has not given Landlord security as described

above, Landlord may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Tenant to Landlord. Nothing contained in this lease will be deemed the consent or agreement of Landlord to subject Landlord's interest in the shopping center to liability under any mechanics' or other lien law. If Tenant receives notice that a lien has been or is about to be filed against the Premises or the shopping center, or that any action affecting title to the shopping center has been commenced on account of work done by or for or materials furnished to or for Tenant, it will immediately give Landlord written notice of such notice. At least fifteen (15) days prior to the commencement of any work (including, but not limited to, any maintenance, repairs, alterations, additions, improvements, or installations) in or to the Premises, by or for Tenant, Tenant will give Landlord written notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Landlord will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against any such liens.

ARTICLE 16. END OF TERM

At the end of this lease, Tenant will promptly quit and surrender the Premises in good order, condition, and repair, ordinary wear and tear excepted. If Tenant is not then in default, Tenant may remove from the Premises any trade fixtures, equipment, and movable furniture placed in the Premises by Tenant, whether or not such trade fixtures or equipment are fastened to the Premises; Tenant will not remove any trade fixtures or equipment without Landlord's written consent if such fixtures or equipment are used in the operation of the shopping center or improvements or if the removal of such fixtures or equipment will result in impairing the structural strength of the shopping center or improvements. Whether or not Tenant is in default, Tenant will remove such alterations, additions, improvements, trade fixtures, equipment, and furniture as Landlord has requested in accordance with Article 14. Tenant will fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions, and improvements. All trade fixtures, equipment, furniture, inventory, effects, alterations, additions, and improvements not so removed will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account for them; and Tenant will pay Landlord for all expenses incurred in connection with such property, including but not limited to the cost of repairing any damage to the shopping center or Premises caused by the removal of such property. Tenant's obligation to observe and perform this covenant will survive the expiration or other termination of this lease.

ARTICLE 17. EMINENT DOMAIN

- (a) The term "total taking" means the taking of the fee title or Landlord's master leasehold estate by right of eminent domain or other authority of law, or a voluntary transfer under the threat of the exercise of the right of eminent domain or other authority, to so much of the Premises or a portion of the shopping center as is necessary for Tenant's occupancy that the Premises are not suitable for Tenant's intended use. The term "partial taking" means a taking of only a portion of the Premises or the shopping center that does not constitute a total taking.
- (b) If a total taking occurs during the term of this lease, this lease will terminate as of the date of the taking. The phrase "date of the taking" means the date of taking actual physical possession by the condemning authority or such earlier date as the condemning authority gives notice that it is deemed to have taken possession.
- (c) If a substantial portion of the Premises is taken in a partial taking, and the balance of the Premises after the taking (as proposed to be reconstructed by Landlord) is unsuitable for the purposes of Tenant in the reasonable opinion of Landlord, and Landlord determines not to relocate Tenant in accordance with the provisions of Section 28.25, either party shall be entitled to terminate this lease, provided that notice of termination is given not later than thirty (30) days after Tenant has been deprived of possession. If any part of the Premises is taken in partial taking, and this lease is not terminated as provided above, and Landlord determines not to relocate Tenant in accordance with the provisions of Section 28.25, Landlord covenants and agrees within a reasonable time after such taking, and the determination of Landlord's award therein, to expend so much as may be necessary of the net amount which may be awarded to Landlord in such taking proceedings in restoring the Premises to an architectural unit as nearly like their condition prior to the taking as shall be practicable. Should the net amount so awarded to Landlord be insufficient to cover the cost of restoring the Premises, as estimated by Landlord's architect, Landlord may, but shall not be obligated to, supply the amount of such insufficiency and restore the Premises as above provided, with all reasonable diligence, or terminate this lease. The Monthly Base Rent payable by Tenant for the balance of the term will be abated in the proportion that the leaseable area of the Premises taken bears to the leaseable area of the Premises immediately prior to such taking.
- (d) If more than forty percent (40%) of the common areas in the shopping center dedicated to customer parking are acquired or condemned under power of eminent domain or other authority of law, or a voluntary transfer under the threat of an exercise of the right of eminent domain or other authority, then the term of this lease will terminate as of the date of the taking unless Landlord takes reasonable steps to provide other parking facilities substantially equal to the previously

existing ratio between the common parking areas and the leasable area of the shopping center, and such parking facilities are provided by Landlord within ninety (90) days from the date of the taking. If Landlord provides such other parking facilities, then this lease will continue in full force .

- (e) All compensation and damages awarded for the taking of the Premises, any portion of the Premises, or the whole or any portion of the common areas or shopping center will belong to Landlord. Tenant will not have any claim or be entitled to any award for diminution in value of its rights under this lease or for the value of any unexpired term of this lease; however, Tenant may make its own claim for any separate award that may be made by the condemnor for Tenant's loss of business or for the taking of or injury to Tenant's improvements, or on account of any cost or loss Tenant may sustain in the removal of Tenant's trade fixtures, equipment, and furnishing, or as a result of any alterations, modifications, or repairs that may be reasonably required by Tenant to put the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Tenant's occupancy.
- (f) If this lease is terminated pursuant to the provisions of this Article 17, then all rentals and other charges payable by Tenant to Landlord under this lease will be paid up to the date of the taking, and any rentals and other charges paid in advance and allocable to the period after the date of the taking will be repaid to Tenant by Landlord. Landlord and Tenant will then be released from all further liability under this lease.

ARTICLE 18. DAMAGE AND DESTRUCTION

- (a) If the Premises or the portion of the shopping center necessary for Tenant's occupancy is damaged or destroyed during the term of this lease by any casualty insurable under standard fire and extended coverage insurance policies, Landlord will repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction.
- (b) Landlord's obligation under this Article 18 will not exceed the lesser of (i) with respect to the Premises, the scope of building-standard improvements installed by Landlord in the original construction of the Premises or (ii) the extent of proceeds received by Landlord of any insurance policy maintained by Landlord.
- (c) The Monthly Base Rent will be abated proportionately during any period in which, by reason of any damage or destruction not occasioned by the negligence or willful misconduct of Tenant or Tenant's employees or invitees, there is a substantial interference with the operation of the business of Tenant. Such abatement will be proportional to the measure of business in the Premises that Tenant may be

required to discontinue. The abatement will continue for the period commencing with such destruction or damage and ending with the completion by the Landlord of such work, repair, or reconstruction as Landlord is obligated to do.

- (d) If the Premises, or the portion of the shopping center necessary for Tenant's occupancy, is damaged or destroyed (i) to the extent of ten percent (10%) or more of the then-replacement value of either, (ii) in the last three (3) years of the term of this lease, (iii) by a cause or casualty other than those covered by fire and extended coverage insurance, or (iv) to the extent that it would take, in Landlord's opinion, in excess of ninety (90) days to complete the requisite repairs, then Landlord may either terminate this lease or elect to repair or restore the damage or destruction. If this lease is not terminated pursuant to the preceding sentence, this lease will remain in full force and effect. Landlord and Tenant waive the provisions of any law that would dictate automatic termination or grant either of them an option to terminate in the event of damage or destruction. Landlord's election to terminate under this paragraph will be exercised by written notice to Tenant given within sixty (60) days after the damage or destruction. Such notice will set forth the effective date of the termination of this lease.
- (e) Upon the completion of any such work, repair, or restoration by Landlord, Tenant will repair and restore all other parts of the Premises, including without limitation non-building-standard leasehold improvements and all trade fixtures, equipment, furnishings, signs, and other improvements originally installed by Tenant. Tenant's work will be subject to the requirements of Article 14.
- (f) During any period of reconstruction or repair of the Premises, Tenant will continue the operation of its business in the Premises to the extent reasonably practicable.

ARTICLE 19. SUBORDINATION

- 19.1 **General.** This lease and Tenant's rights under this lease are subject and subordinate to any ground or underlying lease, first mortgage, indenture, first deed of trust, or other first lien encumbrance, together with any renewals, extensions, modifications, consolidations, and replacements of such first lien encumbrance, now or after the lease date, affecting or placed, charged, or enforced against the Landlord all or any portion of the shopping center or any interest of Landlord in them or Landlord's interest in this lease and the leasehold estate created by this lease (except to the extent any such instrument expressly provides that this lease is superior to such instrument). This provision will be self-operative and no further instrument of subordination will be required in order to effect it. Nevertheless, Tenant will execute, acknowledge and deliver to Landlord, at any time and from time to time, upon demand by Landlord, such documents as may be requested by Landlord, any ground or underlying lessor, or any mortgagee, to confirm or effect any such subordination. If Tenant fails or refuses to execute, acknowledge, and deliver any such

document within twenty (20) days after written demand, Landlord, its successors, and assigns will be entitled to execute, acknowledge, and deliver any and all such documents for and on behalf of Tenant as attorney-in-fact for Tenant. Tenant by this Section 19.1 constitutes and irrevocably appoints Landlord, its successors, and assigns as Tenant's attorney-in-fact to execute, acknowledge, and deliver any and all documents described in this Section 19.1 for and on behalf of Tenant, as provided in this Section 19.1.

- 19.2 **Attornment.** Tenant agrees that if any holder of any ground or underlying lease, mortgage, deed of trust, or other encumbrance encumbering any part of the shopping center succeeds to Landlord's interest in the Premises, Tenant will pay to such holder all rents subsequently payable under this lease. Further, Tenant agrees that in the event of the enforcement by the trustee or the beneficiary under or holder or owner of any such mortgage, deed of trust, or land or ground lease of the remedies provided for by law or by such mortgage, deed of trust, or land or ground lease, Tenant will, upon request of any person or party succeeding to the interest of Landlord as a result of such enforcement, automatically become the Tenant of and attorn to such successor in interest without change in the terms or provisions of this lease. Such successor in interest will not be bound by (a) any payment of Monthly Base Rent or rent for more than one month in advance, except prepayments in the nature of security for the performance by Tenant of its obligations under this lease, or (b) any amendment or modification of this lease made without the written consent of such trustee, beneficiary, holder, owner, or such successor in interest. Upon request by such successor in interest and without cost to Landlord or such successor in interest, Tenant will execute, acknowledge, and deliver an instrument or instruments confirming the attornment. If Tenant fails or refuses to execute, acknowledge, and deliver any such document within twenty (20) days after written demand, such successor in interest will be entitled to execute, acknowledge, and deliver any and all such documents for and on behalf of Tenant as attorney-in-fact for Tenant. Tenant by this Section 19.2 constitutes and irrevocably appoints such successor in interest as Tenant's attorney-in-fact to execute, acknowledge, and deliver any and all documents described in this Section 19.2 for and on behalf of Tenant, as provided in this Section 19.2.

ARTICLE 20. ENTRY BY LANDLORD

Landlord, its agents, employees, and contractors may enter the Premises at any time in response to an emergency and at reasonable hours to (a) inspect the same, (b) exhibit the same to prospective purchasers, lenders, or tenants, (c) determine whether Tenant is complying with all its obligations in this lease, (d) supply any service that this lease obligates Landlord to provide to Tenant, (e) post notices of non-responsibility or similar notices, or (f) make repairs required of Landlord under the terms of this lease or make repairs to any adjoining space or utility services or make repairs, alterations, or improvements to any other portion of the shopping center; however, all such work will be done as promptly as reasonably possible and so as to cause as little interference to Tenant as reasonably possible. Tenant by this Article 20 waives any claim against

Landlord, its agents, employees, or contractors for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. Landlord will at all times have and retain a key with which to unlock all of the doors in, on, or about the Premises (excluding Tenant's vaults, safes, and similar areas designated in writing by Tenant in advance). Landlord will have the right to use any and all means Landlord may deem proper to open doors in and to the Premises in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any means permitted under this article will not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion of the Premises, nor will any such entry entitle Tenant to damages or an abatement of Monthly Base Rent, additional rent, or other charges that this lease requires Tenant to pay.

ARTICLE 21. INDEMNIFICATION, WAIVER, AND RELEASE

- 21.1 **Indemnification.** Tenant will neither hold nor attempt to hold Landlord or its employees or agents liable for, and Tenant will indemnify and hold harmless Landlord, its employees, and agents from and against, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including without limitation attorneys' fees) incurred in connection with or arising from:
- (a) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any person claiming under Tenant;
 - (b) any activity, work, or thing done, permitted, or suffered by Tenant in or about the Premises or the shopping center;
 - (c) any acts, omissions, or negligence of Tenant or any person claiming under Tenant or the contractors, agents, employees, invitees, or visitors of Tenant or any such person;
 - (d) any breach, violation, or nonperformance by Tenant or any person claiming under Tenant or the employees, agents, contractors, invitees, or visitors of Tenant or any such person of any term, covenant, or provision of this lease or any law, ordinance, or governmental requirement of any kind;
 - (e) except for loss of use of all or any portion of the Premises or Tenant's property located within the Premises that is approximately caused by or results approximately from the negligence of Landlord, any injury or damage to the person, property, or business of Tenant or its employees, agents, contractors, invitees, visitors, or any other person entering upon the Premises or the shopping center under the express or implied invitation of Tenant.

If any action or proceeding is brought against Landlord or its employees by reason of any such claim, Tenant, upon notice from Landlord, will defend the same at Tenant's expense with counsel reasonably satisfactory to Landlord.

21.2 Waiver and Release. Tenant, as a material part of the consideration to Landlord for this lease, by this Section 21.2 waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this lease. Tenant agrees that Landlord, its agents, and its employees will not be liable for any loss, injury, death, or damage (including consequential damages) to persons, property, or Tenant's business occasioned by theft; act of God; public enemy; injunction; riot; strike; insurrection; war; court order; requisition; order of governmental body or authority; fire; explosion; falling objects; steam, water, rain or snow; leak or flow of water (including fluid from the elevator system), rain or snow from or into part of the shopping center or from the roof, street, subsurface, or from any other place, or by dampness, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the shopping center; or from construction, repair, or alteration of any other Premises in the shopping center or the Premises; or from any acts or omissions of any other Tenant, occupant, or visitor of the shopping center; or from any cause beyond Landlord's control.

ARTICLE 22 SECURITY DEPOSIT

DELETED

ARTICLE 23. QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that so long as Tenant pays the rent and observes and performs all the terms, covenants, and conditions of this lease on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises subject, nevertheless, to the terms and conditions of this lease, and Tenant's possession will not be disturbed by anyone claiming by, through, or under Landlord.

ARTICLE 24. EFFECT OF SALE

A sale, conveyance, or assignment of the shopping center will operate to release Landlord from liability from and after the effective date of such sale, conveyance, or assignment upon all of the covenants, terms, and conditions of this lease, express or implied, except those which arose prior to such effective date, and, after the effective date of such sale, conveyance, or assignment, Tenant will look solely to Landlord's successor in interest in and to this lease. This lease will not

be affected by any such sale, conveyance, or assignment, and Tenant will attorn to Landlord's successor in interest to this lease.

ARTICLE 25. DEFAULT

25.1 Events of Default. The following events are referred to collectively as "events of default" or individually as an "event of default":

- (a) Tenant defaults in the due and punctual payment of rent, and such default continues for five (5) days after notice from Landlord; however, Tenant will not be entitled to more than one (1) notice for monetary defaults during any twelve (12) month period, and if after such notice any rent is not paid when due, an event of default will be considered to have occurred without further notice;
- (b) Tenant vacates or abandons the Premises;
- (c) This lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not discharged or disposed of within fifteen (15) days after its levy;
- (d) Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;
- (e) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment;
- (f) Tenant fails to take possession of the Premises on the Commencement Date of the term; or,
- (g) Tenant breaches any of the other agreements, terms, covenants, or conditions that this lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after notice from Landlord to Tenant; or if such breach cannot be cured reasonably within such thirty

(30) day period and Tenant fails to commence and proceed diligently to cure such breach within a reasonable time period.

25.2 Landlord's Remedies. If any one or more events of default set forth in Section 25.1 occurs then Landlord has the right, at its election:

- (a) to give Tenant written notice of Landlord's intention to terminate this lease on the earliest date permitted by law or on any later date specified in such notice, in which case Tenant's right to possession of the Premises will cease and this lease will be terminated, except as to Tenant's liability, as if the expiration of the term fixed in such notice were the end of the term; or
- (b) without further demand or notice, to reenter and take possession of the Premises or any part of the Premises, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Monthly Base Rent or other amounts payable under this lease or as a result of any preceding breach of covenants or conditions; or
- (c) without further demand or notice, to cure any event of default and to charge Tenant for the cost of effecting such cure, including without limitation attorneys' fees and interest on the amount so advanced at the rate set forth in Section 26-22, provided that Landlord will have no obligation to cure any such event of default of Tenant.

Should Landlord elect to reenter as provided in subsection (b), or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this lease, relet the Premises or any part of the Premises in Landlord's or Tenant's name, but for the account of Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Premises) as Landlord, in its sole discretion, may determine, and Landlord may collect and receive the rent. Landlord will in no way be responsible or liable for any failure to relet the Premises or any part of the Premises, or for any failure to collect any rent due upon such reletting. No such reentry or taking possession of the Premises by Landlord will be construed as an election on Landlord's part to terminate this lease unless a written notice of such intention is given to Tenant. No notice from Landlord under this Section or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by Landlord to terminate this lease unless such notice specifically so states. Landlord reserves the right following any such reentry or reletting to exercise its right to terminate this lease by giving Tenant such written notice, in which event this lease will terminate as specified in such notice.

- 25.3 **Certain Damages.** If Landlord does not elect to terminate this lease as permitted in subsection (a) of Section 25.2, but on the contrary elects to take possession as provided in subsection (b) of Section 25.2, Tenant will pay to Landlord: Monthly Base Rent and other sums as provided in this lease that would be payable under this lease if such repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all Landlord's expenses in connection with such reletting, including without limitation all repossession costs, brokerage commissions, attorneys' fees, expenses of employees, alteration and repair costs, and expenses of preparation for such reletting. If, in connection with any reletting, the new lease term extends beyond the existing term, or the premises covered by such new lease include other premises not part of the Premises, a fair-apportionment of the rent received from such reletting and the expenses incurred in connection with such reletting as provided in this Section will be made in determining the net proceeds from such reletting, and any rent concessions will be equally apportioned over the term of the new lease. Tenant will pay such rent and other sums to Landlord monthly on the day on which the Monthly Base Rent would have been payable under this lease if possession had not been retaken, and Landlord will be entitled to receive such rent and other sums from Tenant on each such day.
- 25.4 **Continuing Liability After Termination.** If this lease is terminated on account of the occurrence of an event of default, Tenant will remain liable to Landlord for damages in an amount equal to Monthly Base Rent and other amounts that would have been owing by Tenant for the balance of the term, had this lease not been terminated, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to such termination, after deducting all Landlord's expenses in connection with such reletting, including without limitation the expenses enumerated in Section 25.3. Landlord will be entitled to collect such damages from Tenant monthly on the day on which Monthly Base Rent and other amounts would have been payable under this lease if this lease had not been terminated, and Landlord will be entitled to receive such Monthly Base Rent and other amounts from Tenant on each such day. Alternatively, at the option of Landlord, in the event this lease is so terminated, Landlord will be entitled to recover against Tenant, as damages for loss of the bargain and not as a penalty, an aggregate rent that, at the time of such termination of this lease, represents the excess of the aggregate of Monthly Base Rent and all other rent payable by Tenant that would have accrued for the balance of the term over the aggregate rental value of the Premises (such rental value to be computed on the basis of a tenant paying not only a rent to Landlord for the use and occupation of the Premises, but also such other charges as are required to be paid by Tenant under the terms of this lease) for the balance of such term, both discounted to present value at the lesser of eight percent (8%) or the discount rate of the Bank of Boston on the date of the event of default.
- 25.5 **Cumulative Remedies.** Any suit or suits for the recovery of the amounts and damages set forth in Sections 25.3 and 25.4 may be brought by Landlord, from time to time, at Landlord's election, and nothing in this lease will be deemed to require Landlord to await

the date upon which this lease or the term would have expired had there occurred no event of default. Each right and remedy provided for in this lease is cumulative and is in addition to every other right or remedy provided for in this lease or now or after the lease date existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this lease or now or after the lease date existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this lease or now or after the lease date existing at law or in equity or by statute or otherwise. All costs incurred by Landlord in collecting any amounts and damages owing by Tenant pursuant to the provisions of this lease or to enforce any provision of this lease, including reasonable attorneys' fees from the date any such matter is turned over to an attorney, whether or not one or more actions are commenced by Landlord, will also be recoverable by Landlord from Tenant.

ARTICLE 26. RULES AND REGULATIONS

Tenant and its employees, agents, licensees, and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations set forth on Exhibit D. Landlord may from time to time amend, delete, or modify existing rules and regulations, or adopt new rules and regulations, for the use, safety, cleanliness, and care of the Premises and the shopping center and the comfort, quiet, and convenience of occupants of the shopping center. Modifications or additions to the rules and regulations will be effective upon notice to Tenant from Landlord. In the event of any breach of any rules or regulations or any amendments or additions to such rules and regulations, Landlord will have all remedies that this lease provides for default by Tenant, and will, in addition, have any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. Landlord will not be liable to Tenant for violation of such rules and regulations by any other tenant, its employees, agents, visitors, licensees, or any other person. In the event of any conflict between the provisions of this lease and the rules and regulations, the provisions of this lease will govern.

ARTICLE 27. SIGNS

- (a) Tenant will purchase and install one sign in the sign box provided by Landlord on the front of the Premises. Installation will be made only by a licensed electrician approved in advance by Landlord and will be completed on the earlier of the date on which Tenant opens for business or within thirty (30) days after the date of commencement of this lease. The sign will conform to Landlord's sign criteria attached to this lease as Exhibit E. Tenant will maintain, repair, and replace the

sign as required by Landlord during this lease. At the end of this lease, the sign will immediately become the property of Landlord.

- (b) Tenant will keep the display windows and signs of the Premises well-lighted until 10:00 p.m. each night or such shorter period as may be prescribed by any applicable policies or regulations adopted by any utility or governmental agency, and will maintain adequate night lights within the Premises after that hour or period.
- (c) Without the prior written consent of Landlord, Tenant will not place or permit to be placed any sign, advertising material, or lettering upon the exterior of the Premises or any sign, advertising material, or lettering upon the exterior or interior surface of any door or show window or at any point inside the Premises from which it may be visible from outside the Premises. Upon request of Landlord, Tenant will immediately remove any sign, advertising material, or lettering at Tenant's expense. Tenant will comply with such regulations as may from time to time be promulgated by Landlord governing signs, advertising material, or lettering of all Tenants in the retail area; however, Tenant will not be required to change any sign or lettering that was in compliance with applicable regulations at the time it was installed or placed in, on, or about the Premises.
- (d) Tenant shall not install or display any sign, awning, canopies, banner or display which in the sole discretion of Landlord conflicts with the design, location or color schemes of any BlockBuster Video sign, awning, banner or display.

ARTICLE 28. MISCELLANEOUS

- 28.1 No Offer. This lease is submitted to Tenant on the understanding that it will not be considered an offer and will not bind Landlord in any way until (a) Tenant has duly executed and delivered duplicate originals to Landlord and (b) Landlord has executed and delivered one of such originals to Tenant.
- 28.2 Joint and Several Liability. If Tenant is composed of more than one signatory to this lease, each signatory will be jointly and severally liable with each other signatory for payment and performance according to this lease.
- 28.3 No Construction Against Drafting Party. Landlord and Tenant acknowledge that each of them and their counsel have had an opportunity to review this lease and that this lease will not be construed against Landlord merely because Landlord's counsel has prepared it.
- 28.4 Time of the Essence. Time is of the essence of each and every provision of this lease.

- 28.5 **No Recordation.** Tenant's recordation of this lease or any memorandum or short form of it will be void and a default under this lease.
- 28.6 **No Waiver.** The waiver by Landlord of any agreement, condition, or provision contained in this lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this lease, nor will any custom or practice that may grow up between the parties in the administration of the terms of this lease be construed to waive or lessen the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms of this lease. The subsequent acceptance of rent by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any agreement, condition, or provision 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.
- 28.7 **Limitation on Recourse.** Tenant specifically agrees to look solely to Landlord's interest in the shopping center for the recovery of any judgments from Landlord, it being agreed that Landlord (and its shareholders, venturers, and partners, and their shareholders, venturers, and partners, and all of their officers, directors, and employees) will never be personally liable for any such judgments. The provision contained in the preceding sentence is not intended to and will not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or to pursue any suit or action in connection with enforcement or collection of amounts that may become owing or payable under or on account of insurance maintained by Landlord.
- 28.8 **Estoppel Certificates.** At any time and from time to time but within ten (10) days after written request by Landlord, Tenant will execute, acknowledge, and deliver to Landlord a certificate certifying (a) that this lease is unmodified and in full force and effect or, if there have been modifications, that this lease is in full force and effect, as modified, and stating the date and nature of each modification; (b) the date, if any, to which rent and other sums payable under this lease have been paid; (c) that no notice has been received by Landlord of any default which has not been cured, except as to defaults specified in the certificate; and (d) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser or existing or prospective mortgagee or beneficiary under any deed of trust of the shopping center or any part of the shopping center.
- 28.9 **Waiver of Jury Trial.** Landlord and Tenant by this Section 28.9 waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this lease against the other on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any other claims (including without limitation claims for personal injury or property damage), and any emergency statutory or any other statutory remedy.

- 28.10 **No Merger.** The voluntary or other surrender of this lease by Tenant or the cancellation of this lease by mutual agreement of Tenant and Landlord or the termination of this lease on account of Tenant's default will not work a merger, and will, at Landlord's option, (a) terminate all or any subleases and sub-tenancies, or (b) operate as an assignment to Landlord of all or any subleases or subtenancies. Landlord's option under this Section 28.10 will be exercised by notice to Tenant and all known sublessees or subtenants in the Premises or any part of the Premises.
- 28.11 **Holding Over.** Tenant will have no right to remain in possession of all or any part of the Premises after the expiration of the term. If Tenant remains in possession of all or any part of the Premises after the expiration of the term, with the express or implied consent of Landlord: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this lease for any further term; and (c) such tenancy may be terminated by Landlord upon the earlier of thirty (30) days prior written notice or the earliest date permitted by law. In such event, Monthly Base Rent will be increased to an amount equal to one hundred fifty percent (150%) of the Monthly Base Rent payable during the last month of the term, and any other sums due under this lease will be payable in the amount and at the times specified in this lease. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this lease.
- 28.12 **Notices.** Any notice, request, demand, consent, approval, or other communication required or permitted under this lease must be in writing and will be deemed to have been given when personally delivered or deposited in any depository regularly maintained by the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the party for whom it is intended at its address set forth in Article 1. Either Landlord or Tenant may add additional addresses or change its address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party in the manner prescribed in this Section 28.12.
- 28.13 **Severability.** If any provision of this lease proves to be illegal, invalid, or unenforceable, the remainder of this lease will not be affected by such finding, and in lieu of each provision of this lease that is illegal, invalid, or unenforceable a provision will be added as a part of this lease as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.
- 28.14 **Written Amendment Required.** No amendment, alteration, modification of or addition to the lease will be valid or binding unless expressed in writing and signed by the party or parties to be bound by such change. Tenant agrees to make any modifications of the terms and provisions of this lease required or requested by any lending institution providing financing for the shopping center, provided that no such modifications will materially adversely affect Tenant's rights and obligations under this lease.

- 28.15 **Entire Agreement.** This lease, the exhibits, and addenda, if any, contain the entire agreement between Landlord and Tenant and may be amended only by subsequent written agreement. No promises or representations, except as contained in this lease, have been made to Tenant respecting the condition of the Premises or the manner of operating the shopping center.
- 28.16 **Captions.** The captions of the various articles and sections of this lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.
- 28.17 **Notice of Landlord's Default.** In the event of any alleged default in the obligation of Landlord under this lease, Tenant will deliver to Landlord written notice and Landlord will have thirty (30) days following receipt of such notice to cure such alleged default or, in the event the alleged default cannot reasonably be cured within a thirty (30) day period, to commence action to cure such alleged default. A copy of such notice will be sent to any holder of a mortgage or other encumbrance on the shopping center or the Premises of which Tenant has been notified in writing, and such holder will also have the same time periods to cure such alleged default.
- 28.18 **Authority.** Tenant and the party executing this lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of the board of directors or partners, as the case may be, and agree upon request to deliver to Landlord a resolution or similar document to that effect.
- 28.19 **Brokers.** Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises except the broker named in Article I(r), if any. Each of them will indemnify the other against and hold the other harmless from any claims for fees or commissions from anyone with whom either of them has consulted or negotiated with regard to the Premises except the broker. Landlord will pay any fees or commissions due the broker.
- 28.20 **Governing Law.** This lease will be governed by and construed pursuant to the laws of the Commonwealth of Massachusetts.
- 28.21 **Force Majeure.** Landlord will have no liability to Tenant, nor will Tenant have any right to terminate this lease or abate rent or assert a claim of partial or total actual or constructive eviction, because of Landlord's failure to perform any of its obligations in the lease if the failure is due to reasons beyond Landlord's reasonable control, including without limitation strikes or other labor difficulties; inability to obtain necessary governmental permits and approvals (including building permits or certificates of occupancy); unavailability or scarcity of materials; war; riot; civil insurrection; accidents; acts of God; and governmental preemption in connection with a national emergency. If Landlord fails to perform its obligations because of any reasons beyond Landlord's reasonable control (including those enumerated above), the period for Tenant's

performance will be extended day for day for the duration of the cause of Landlord's failure.

- 28.22 **Late Payments.** Any payment of rent, including Monthly Base Rent, that is not received within ten (10) days after it is due will be subject to a late charge equal to five percent (5%) of the unpaid payment or \$100.00, whichever is greater. This amount is in compensation of Landlord's additional cost of processing late payments. In addition, any rent that is not paid when due, including Monthly Base Rent, will accrue interest at a late rate charge of one and one-half percent (1 1/2%) per month (but in no event in an amount in excess of the maximum rate allowed by applicable law) from the date on which it was due until the date on which it is paid in full with accrued interest.
- 28.23 **No Easements for Air or Light.** Any diminution or shutting off of light, air, or view by any structure that may be erected on lands adjacent to the shopping center will in no way affect this lease or impose any liability on Landlord.
- 28.24 **Tax Credits.** Landlord is entitled to all local, state, and federal income tax benefits (including without limitation investment tax credits, energy credits, and rehabilitation credits) available as a result of leasehold improvements for which Landlord has paid, or lent money, or guaranteed payment. Promptly after Landlord's demand, Tenant will give Landlord a detailed list of the leasehold improvements and fixtures and their respective costs for which Tenant has paid without a loan or guarantee by Landlord, and Tenant will be entitled to tax benefits attributable to such listed improvements. Landlord will be entitled to all other such tax benefits for all other leasehold improvements.
- 28.25 **Relocation of the Premises.** Landlord reserves the unrestricted and unconditional right to demolish or relocate the Premises to substantially comparable space within the shopping center. Landlord will give Tenant a written notice of its intention to relocate the Premises, and Tenant will complete such relocation within thirty (30) days after receipt of such written notice. If the furnishings of the space to which Landlord proposes to relocate Tenant are not substantially the same as those of the Premises, or if the monthly base rent of the new space is not substantially the same as the prior Monthly Base Rent, Tenant may so notify Landlord, and if Landlord fails to offer space satisfactory to Tenant, Tenant may terminate this lease effective as of the thirtieth (30th) day after Landlord's initial notice. Upon Tenant's peaceable vacation and abandonment of the Premises, Landlord will pay to Tenant a sum equal to one monthly installment of the Monthly Base Rent payable under this lease. If Tenant does relocate within the shopping center, then effective on the date of such relocation this lease will be amended by deleting the description of the original Premises and substituting for it a description of such comparable space. Landlord agrees to reimburse Tenant for its actual moving costs to such other space within the shopping center, to the extent such costs are reasonable.

Landlord's Fees. Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this lease, Tenant will reimburse Landlord for all of Landlord's costs incurred in reviewing the proposed action or consent, including without limitation reasonable attorneys', engineers', architects', accountants', and other professional fees, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

28.27 Binding Effect. The covenants, conditions, and agreements contained in this lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided in this lease, their assigns.

Landlord and Tenant have executed this lease as of the day and year first written above.

LANDLORD: WALNUT ASSOCIATES LIMITED PARTNERSHIP

By: Walnut Management
Corporate General Partner
By: Patricia A. Lavin
its Treasurer

TENANT: SAUGUS CONVERTIBLES, INC.

By: [Signature]

GA)
) SS.
COUNTY OF Cobb)

On this 9 day of Oct, 1997, before me, a Notary Public in and for the State of GA, personally appeared Patricia Lavoie of Walnut Associates, L.P., the partnership that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said partnership, for the use and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of the partnership.

Dina B. Shah
Notary Public

Patricia A. Lavoie

Commission expires:

Notary Public, Cobb County, Georgia
My Commission Expires July 22, 2000

STATE OF New York)
) SS.
COUNTY OF New York)

On this 10th day of Sept., 1997, before me, a Notary Public in and for the State of New York, personally appeared Harley Asensio to me known as President of SAUGUS CONVERTIBLES, INC., the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the use and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Jay Winegard
Notary Public

Commission expires: JAY WINEGARD
NOTARY PUBLIC, State of New York
No. 41-4636645
Qualified in Queens County
Commission Expires May 31, 1998

EXHIBIT A

Legal Description of the Shopping Center

EXHIBIT A

The land with buildings thereon located in Saugus, Massachusetts shown as Parcel 1 and Lot D on a plan entitled "Site Plan in Saugus, Mass. Walnut Place, owner: Walnut Associates, 214 Broadway, Saugus, MA 01906" dated June 16, 1995, revised June 19, 1995.

WESTERLY	by Route 1, Newburyport Turnpike as shown on said Plan twenty nine and 00/100 (29.00) feet and one hundred five and 31/100 (105.31) feet;
NORTHERLY	by Parcel II as shown on said Plan seventy and 01/100 (70.01) feet;
NORTHWESTERLY	by Parcel II as shown on said Plan on two courses one hundred twenty three and 99/100 (123.99) feet and one hundred thirty four and 82/100 feet (134.82) feet;
NORTHERLY	by Ramp to Walnut Street as shown on said Plan one hundred twenty seven and 12/100 (127.12) feet and, on a curb, one hundred eighty one and 49/100 (181.49) feet;
NORTHEASTERLY	by Walnut Street as shown on said Plan, on several courses, one hundred and 59/100 (100.59) feet, sixty seven and 84/100 (67.84) feet and thirty and 16/100 (30.16) feet;
SOUTHEASTERLY	by Parcel 4 as shown on said Plan two hundred ninety four and 72/100 (294.72) feet
SOUTHWESTERLY	by land of Louis R. DeSanctis two hundred thirty eight and 00/100 (238.00) feet;
SOUTHERLY	by land of Louis R. DeSanctis as shown on said Plan one hundred and 00/100 (100.00) feet;
SOUTHEASTERLY	by land of Louis R. DeSanctis and Merit Oil of Massachusetts as shown on said Plan one hundred ninety two and 96/100 (192.96) feet.

Containing 174,699 square feet according to said Plan.

EXHIBIT B

The Premises

WALNUT S.

RAMP TO WALNUT STREET

ROUTE 1
NORTH BOUND

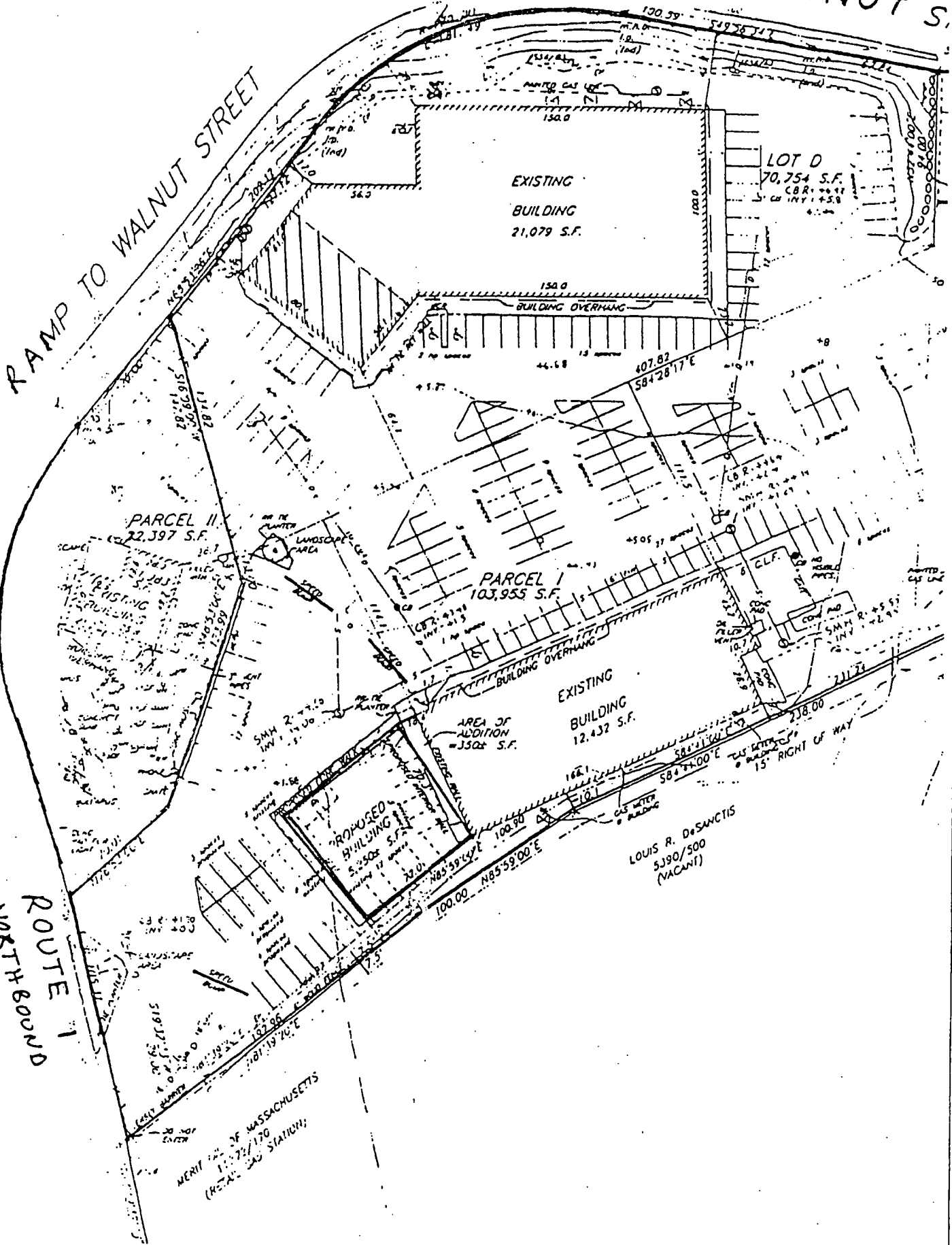


EXHIBIT C

Workletter

EXHIBIT D

RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, stairways, and elevators (if any) of the shopping center will not be obstructed by tenant or used by tenant for any purpose other than ingress to and egress from the Premises. The halls, passages, exits, entrances, elevators, and stairways are not for the general public, and Landlord will in all cases retain the right to control and prevent access to them by all persons whose presence, in the judgment of Landlord, would be prejudicial to the safety, character, reputation, and interests of the shopping center and its tenants; however, such access will be permitted to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any tenant will go upon the roof of the shopping center.
2. No sign, placard, picture, name, advertisement, or notice visible from the exterior of the Premises will be inscribed, painted, affixed, or otherwise displayed by tenant on any part of the shopping center without the prior written consent of Landlord. Landlord will adopt and furnish to tenant general guidelines relating to signs inside the shopping center and the sales floor. Tenant agrees to comply with those guidelines. All approved signs or lettering on doors will be printed, painted, affixed, or inscribed at the expense of the tenant by a person approved in writing by Landlord. Material visible outside the shopping center will not be permitted.
3. The Premises will not be used for lodging, and unless ancillary to a restaurant or other food service use specifically authorized in the lease of a particular tenant, no cooking will be done or permitted by tenant on the Premises. The preparation of coffee, tea, hot chocolate, and similar items for tenants and their employees and invitees will be permitted.
4. Landlord will furnish tenant with two keys free of charge. Landlord may make reasonable charge for any additional keys. Tenant will not have any keys made. Tenant will not alter any lock or install a new or additional lock or any bolt on any door of the Premises without the prior written consent of Landlord; tenant will furnish Landlord with a key for each of those locks. Tenant, upon the termination of its tenancy, will deliver to Landlord all keys to doors in the shopping center that have been furnished to tenant.

5. Tenant will not use or keep in the Premises or the shopping center any kerosene, gasoline, or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord. Tenant will not use, keep, or permit to be used or kept any foreign or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the shopping center by reason of noise, odors, or vibrations, or interfere in any way with other tenants or those having business in the shopping center.
6. In the case of invasion, mob, riot, public excitement, or other circumstances rendering such action advisable in Landlord's opinion, Landlord may prevent access to the shopping center by such action as Landlord may deem appropriate, including closing entrances to the shopping center.
7. The toilet rooms, toilets, urinals, wash bowls, and other apparatus will not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever will be thrown in them. The expense of any breakage, stoppage, or damage resulting from the violation of this rule will be borne by the tenant who, or whose employees or invitees, caused it.
8. Except with prior written consent of Landlord, tenant will not sell, or permit the sale in the Premises, or use or permit the use of any common area for the sale of newspapers, magazines, periodicals, or theater tickets. Tenant will not carry on, or permit or allow any employee or other person to carry on the business of stenography, typewriting, or any similar business in or from the Premises for the service or accommodation of occupants of any other portion of the shopping center. The Premises will not be used for manufacturing of any kind or for any business or activity other than that specifically provided in the lease.
9. Tenant will not use any advertising media within the shopping center that may be heard outside of the Premises and tenant will not place or permit the placement of any radio or television antenna, loudspeaker, sound amplifier, phonograph, searchlight, flashing light, or other device of any nature on the roof or outside of the boundaries of the Premises (except for tenant's approved identification sign or signs) or at any place within the shopping center where they may be seen or heard outside of the Premises.
10. All loading and unloading of merchandise, supplies, materials, garbage, and refuse will be made only through such entryways and elevators (if any) and at such times as Landlord may designate. In its use of the loading areas, tenant will not obstruct or permit the obstruction of the loading area and at no time will park or allow its officers, agents, or employees to park vehicles in the loading areas except for loading and unloading.

11. Landlord will have the right, exercisable without notice and without liability to any tenant, to change the name and street address of the shopping center.
12. The freight elevator, if any, will be available for use by all tenants in the shopping center, subject to reasonable scheduling that Landlord in its discretion may deem appropriate. The persons employed to move such equipment in or out of the shopping center must be acceptable to Landlord. Landlord will have the right to prescribe the weight, size, and position of all equipment, materials, furniture, or other property brought into the shopping center. Heavy objects will, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary to distribute the weight properly. Landlord will not be responsible for loss of or damage to that property from any cause, and all damage done to the shopping center by moving or maintaining that property will be repaired at the expense of tenant.
13. The directory of the shopping center, if any, will provide for the display of the name and location of tenants, and Landlord reserves the right to exclude any other names from the directory. Any additional name that tenant desires to place upon the directory must first be approved by Landlord, and, if so approved, a charge will be made for the additional name.
14. No curtains, draperies, blinds, shutters, shades, screens, or other coverings, hangings, or decorations will be attached to, hung, or placed in, or used in connection with any window of the shopping center without the prior written consent of Landlord.
15. Tenant will assure that the doors of the Premises are closed and locked and that all water faucets, water apparatus, and utilities are shut off before tenant or tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard tenant will pay for all injuries sustained by other tenants or occupants of the shopping center or Landlord.
16. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no waiver by Landlord will be construed as a waiver of those rules and regulations in favor of any other tenant or tenants, nor prevent Landlord from enforcing any of those rules and regulations against any or all of the tenants of the shopping center.
17. These rules and regulations are in addition to and will not be construed to modify, alter, or amend the lease, in whole or in part.

18. **Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care, and cleanliness of the shopping center, and for the preservation of good order in it.**

EXHIBIT E

WALNUT PLACE SIGN GUIDELINES

These specifications are written to provide tenants with the guidelines and allowances for signage at Walnut Place. It is each tenant's responsibility to conform with these specifications and to receive written approval from the Landlord and a sign permit from the Town of Saugus prior to erecting any signage. Each tenant will be allowed the following signage:

A. BUILDING SIGN

One 3' by 16' building sign will be allowed for each tenant. The sign will be fabricated from extruded aluminum components, painted a dark bronze and centered on the mansard roof over the tenant's space. The sign face will be 3/16" lexan with copy reverse sprayed. Graphics and colors will be up to the tenant with Landlord approval. Signs must be serviced and maintained in good repair at all times.

B. WINDOW SIGNS

Temporary signs may be placed in the windows to announce a special event or sale. All such signs, however, should be limited to a maximum of 20% of the overall window area and cannot remain up for more than thirty (30) days.

C. FREE STANDING DIRECTORY SIGNS

Selected tenants will be allowed to install a sign on the main directory sign on Route 1. These double-faced signs shall be 1' by 10' and built to the same specifications as the building sign. It is the tenant's responsibility to maintain the illumination and good appearance of the sign at all times.