

**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.

# **ATTACHMENT 1**

EM/ASHLEY STEWART  
062899

EASTPOINT PARTNERS, L.P.  
(doing business in the state of Maryland as  
"Eastpoint Partners Limited Partnership")

**LANDLORD**

TO

LARGE APPAREL OF MARYLAND, INC.

**TENANT**

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**L E A S E**

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Dated: *September 13*, 1999

Premises in EASTPOINT MALL SHOPPING CENTER  
Baltimore County, Maryland

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### EXHIBITS

- Exhibit A—Plot Plan of Shopping Center (or Plot Plans if the Shopping Center has two or more levels)
- Exhibit B—Legal Description of Shopping Center
- Exhibit C—Construction Agreement

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## LEASE

THIS LEASE, made as of September 13, 1999, between EASTPOINT PARTNERS, L.P. (doing business in the state of Maryland as "Eastpoint Partners Limited Partnership"), a New York limited partnership, having an office in care of Shopco Advisory Corp., 1250 Broadway, New York, New York 10001 (herein called "Landlord"), and LARGE APPAREL OF MARYLAND, INC., a Maryland corporation having an address at 100 Metro Way, Secaucus, New Jersey 07094 (herein called "Tenant");

### ARTICLE I DEFINITIONS

1.01. **SPECIAL DEFINITIONS.** As used in this Lease (including in all Exhibits and any Riders attached hereto, all of which shall be deemed to be part of this Lease) the following words and phrases shall have the meanings indicated:

A. Commencement Date: The earlier to occur of (i) the date Tenant opens any part of the Demised Premises to the public for business or (ii) 75 days after the date on which Landlord delivers possession of the Demised Premises to Tenant evidenced by a notice to Tenant.

B. Common Area Costs Cap: An amount equal to Tenant's proportionate share of the annualized rate of Common Area Costs for the Short Term; provided, however, commencing with the first calendar year of the Full Term, and for each calendar year thereafter, such amount shall be increased by 5% (five percent) of the Common Area Costs Cap for the previous calendar year.

C. Demised Premises: The one-story store (which shall not include a basement or mezzanine) on or to be built in the Shopping Center in the area shaded with parallel diagonal lines on Exhibit A, and containing 2,700 square feet of Floor Space, with a frontage of 27 feet.

D. Fixed Rent: An amount at the annual rate of (i) \$48,600.00 from the Commencement Date through July 31, 2002, (ii) \$54,000.00 from August 1, 2002 through July 31, 2006, and (iii) \$59,400 from August 1, 2006 through the end of the Term.

E. Full Term: The period commencing on the January 1st following the expiration of the Short Term and ending at midnight on January 31, 2010.

F. Guarantor: Ashley Stewart Ltd., a Maryland corporation having an address at 100 Metro Way, Secaucus, New Jersey 07094.

G. Initial Assessment: None.

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H. Mall HVAC Charge: An amount (subject to adjustment as provided in Section 3.06) at the annual rate of \$1.00 multiplied by the Floor Space of the Demised Premises.

I. Mall HVAC Charge Cap: An amount equal to the annualized rate of the Mall HVAC Charge for the Short Term; provided, however, commencing with the first full calendar year of the Full Term, and for each calendar year thereafter, such amount shall be increased by 5%, on a cumulative basis, of the Mall HVAC Charge Cap for the previous calendar year.

J. Managing Agent: Shopco Advisory Corp., a New York corporation having an office at 1250 Broadway, New York, New York 10001.

K. Marketing Charge: An amount (subject to adjustment as provided in Section 3.06) at the annual rate of \$.50 multiplied by the Floor Space of the Demised Premises.

L. Marketing Charge Cap: An amount equal to the annualized rate of the Marketing Charge for the Short Term; provided, however, commencing with the first full calendar year of the Full Term, and for each calendar year thereafter, such amount shall be increased by 5%, on a cumulative basis, of the Marketing Charge Cap for the previous calendar year.

M. Percentage Rent Rate: Five percent (5%).

N. Permitted Uses: As Tenant's principal business, the retail sale of female and large-size women's clothing, and as incidental thereto, the sale of children's, infants's, men's and women's apparel, furnishings and accessories, lingerie, perfume, health and beauty aids, handbags, shoes, scarves, cosmetics, wigs and costume jewelry (including precious metals), gifts and boutique items. Tenant may, as incidental to its principal business, perform alterations on apparel sold at the Demised Premises.

O. Premises HVAC Charge: Intentionally omitted.

P. Tenant's Trade Name: ASHLEY STEWART WOMAN SIZES 14-28, or such other trade name as is used by a majority of Tenant's other Ashley Stewart Woman Sizes 14-28 stores in the State of Maryland, including the names Kidspot, Marianne, 100% Girls and The Essence of Body & Soul.



1.02. **GENERAL DEFINITIONS.** As used in this Lease (including in all Exhibits and any Riders attached hereto, all of which shall be deemed to be part of this Lease) the following words and phrases shall have the meanings indicated:

A. **Additional Rent:** All amounts payable by Tenant to Landlord under this Lease other than Rent.

B. **Base Price Index:** The Price Index for the first month for which the Price Index is published of the calendar year in which the Commencement Date occurs.

C. The words "calendar year" shall mean any 12-month period commencing on a January 1, and the words "calendar quarter" shall mean any three-month period beginning on either a January 1, an April 1, a July 1 or an October 1.

D. **Central Utility Plant:** The facility or facilities in the Shopping Center, if any, for Landlord or its designee to furnish any one or more of the following to any tenants or occupants of the Shopping Center: electricity or water and/or air for heating and air conditioning.

E. **Common Areas:** All areas, spaces and improvements in the Shopping Center which Landlord makes available from time to time for the common use and benefit of the tenants and occupants of the Shopping Center, including, without limitation, parking areas, roads, walkways, sidewalks, open and covered courts and malls (including the Covered Mall), landscaped and planted areas, community rooms, if any, Shopping Center offices, if any, public rest rooms, if any, trash compactors, if any, but not including the Central Utility Plant, if any.

F. **Common Area Costs:** Landlord's cost and expense (whether or not within the contemplation of the parties) for the maintenance, policing, repair, replacement, equipping, insuring and operation of the Shopping Center and any part thereof (other than the Central Utility Plant), but not including any Real Estate Taxes, or costs and expenses for heating or air conditioning of the Covered Mall, plus 25% of such cost and expense for Landlord's home office administrative and overhead cost and expense.

G. **Common Area Ground Costs:** The Common Area Costs less the Covered Mall Costs.

H. **Covered Mall:** The enclosed and heated and air conditioned malls, courts and walkways in or serving the Shopping Center which Landlord makes available from time to time for the common use of tenants and occupants of the Shopping Center.

I. **Covered Mall Costs:** The Common Area Costs attributable to the Covered Mall.

J. **Event of Default:** Any of the events set forth in Section 13.01 as an Event of Default.

K. **Floor Space:** The floor area stated in square feet bounded by the exterior faces of the exterior walls, or the exterior or Common Areas face of any wall between the premises in question and any portion of the Common Areas, or the center line of any wall between space leased or intended to be leased to two occupants; and any reference to Floor Space of a building shall mean the aggregate floor area of all levels or stories of such building, including any mezzanine areas available for use by customers, but excluding (a) any roof, except such portion thereof (other than cooling towers, elevator penthouses, mechanical rooms, chimneys and staircases, entrances and exits) as is permanently enclosed, (b) any portion of any outdoor selling area which is not enclosed, (c) any mezzanine area not available for use by customers, (d) any basement level area, (e) any mechanical room, (f) any truck dock, (g) the Common Areas (whether or not bounded by walls or contained within a building), (h) the Central Utility Plant and (i) any area used by Landlord for storage, for housing meters and/or other equipment or for other purposes except such portions thereof as are occupied or used on a continuing or repetitive basis for the sale of goods, merchandise or services at retail or for the display or promotion of goods, merchandise or services. No reduction of Floor Space measurements shall be made for setbacks for store fronts, and the Floor Space of any premises with a setback for a store front shall be measured to the common areas face of such premises as if such premises had no setback. Any reference to the Floor Space is intended to refer to the Floor Space of the entire area in question, irrespective of the person(s) who may be the owner(s) of all or any part thereof.

L. **Gross Sales:** The dollar aggregate of: (a) the actual sales price of all goods and merchandise sold, leased or licensed and the charges for all services performed by Tenant or otherwise from all business conducted at or from the Demised Premises, whether made for cash, by check, credit or otherwise, without reserve or deduction for inability or failure to collect the same, including, without limitation, sales and services (i) where the orders therefor originate at or are accepted at or from the Demised Premises, whether delivery or performance thereof is made at or from the Demised Premises or any other place, it being understood that all sales made and orders received at or from the Demised Premises shall be deemed to have been made and completed therein even though the orders are fulfilled elsewhere or the payments of account are transferred to some other office

for collection, (ii) where the orders therefor result from solicitation off the Demised Premises but which are conducted by personnel operating from or reporting to or under the control or supervision of any person at the Demised Premises shall be deemed part of Gross Sales, (iii) pursuant to mail, telegraph, telephone or other similar orders received or billed at or from the Demised Premises, and (iv) by means of mechanical or other vending devices, and (b) all moneys or other things of value received by Tenant from its operations at the Demised Premises (which are not excluded from Gross Sales by the next succeeding sentence) including all finance charges, cost of gift or merchandise certificates and all deposits not refunded to customers. Gross Sales shall not include (x) the exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and neither for the purpose of depriving Landlord of the benefits of a sale which would otherwise be made at or from the Demised Premises nor for the purpose of consummating a sale which has been theretofore made at or from the Demised Premises, (y) sales of trade fixtures which are not part of Tenant's stock in trade and not sold in the regular course of Tenant's business, or (z) the amount of any city, county, state or federal sales tax, luxury tax or excise tax on sales if the tax is added to the selling price and separately stated and actually paid to the taxing authority by Tenant; provided, however, no franchise or capital stock tax and no income or similar tax based upon income, profits or Gross Sales shall be deducted from Gross Sales in any event whatsoever. Cash or credit refunds made upon transactions included within the Gross Sales, but not exceeding the selling price of merchandise returned by the purchaser and accepted by Tenant, shall be deducted from the Gross Sales for the period when such refunds are made. Each charge or sale upon installment or credit or layaway, so called, shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Tenant shall receive payment from its customer. Each lease or rental or license of merchandise to customers shall be treated as a sale in the month in which the lease, rental or license is made for a price equal to the total rent or license fee payable. For purposes of this paragraph the word "Tenant" shall include any of Tenant's subtenants, concessionaires and licensees. If the actual Gross Sales for any full calendar year are less than the Gross Sales (actual or deemed) for the preceding full calendar year, then for purposes of computing Percentage Rent the Gross Sales for the calendar year in question will be deemed to be equal to the Gross Sales (actual or deemed) for the preceding full calendar year.

M. *Hazardous Materials*: Any asbestos, polychlorinated biphenyls, petroleum products or any other hazardous or toxic materials, wastes or substances that are defined, determined or identified as such in any Legal and Insurance Requirements.

N. *Insolvency Laws*: The United States Bankruptcy Code or any federal, state or foreign law of like impact.

O. *Legal and Insurance Requirements*: All laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, and the appropriate agencies, officers, departments, boards and commissions thereof, and the board of fire underwriters and/or the fire insurance rating organization or similar organization performing the same or similar functions, whether now or hereafter in force, applicable to the Shopping Center or any part thereof and/or the Demised Premises.

P. *Major Occupant*: The tenant or occupant of any Major Premises.

Q. *Major Premises*: Any premises in the Shopping Center which has more than 10,000 square feet of Floor Space. If any Major Premises is divided into two or more parts by reason of leasing, subleasing, licensing or otherwise by any person other than Landlord, the original Major Premises will continue to be deemed a Major Premises and the division shall be deemed not to have occurred for the purpose of this definition.

R. The word "mortgage" shall mean any mortgage or deed of trust, and the word "mortgagee" shall mean the holder of any mortgage or the beneficiary of any deed of trust.

S. *Percentage Rent*: The amount for any period computed in accordance with the provisions of Section 3.02.

T. The word "person" shall mean a natural person, a partnership, a corporation and any other form of business or legal association or entity.

U. *Price Index*: The U.S. City Average Consumer Price Index for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor. If at any time said Consumer Price Index is no longer issued, then the term "Price Index" shall mean an index selected by Landlord comparable to said Consumer Price Index.

V. *Prime Rate*: The rate per annum announced from time to time by The Chase Manhattan Bank (National Association) as its prime rate (or, if said bank does not have an announced prime rate, the rate per annum of interest charged by said bank for unsecured loans of 90 days or less duration to said bank's most credit-worthy corporate customers).

W. **Real Estate Taxes:** All taxes, assessments, water and sewer rents, if any, and other charges, if any, special or otherwise, levied, assessed or imposed, upon or with respect to the ownership of and/or all other taxable interests in the property in question (land, buildings and other improvements), by any public or quasi-public authority having jurisdiction, and any expenses incurred by Landlord in contesting such taxes, assessments, water and sewer rents, or other charges and/or the assessed value of the Shopping Center or any part thereof, which expenses shall be allocated to the period of time to which such expenses relate. Except for taxes, fees, charges and impositions described in the next succeeding sentence, Real Estate Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax or capital levy. If at any time the methods of taxation shall be altered so that in addition to or in lieu of or as a substitute for the whole or any part of any Real Estate Taxes theretofore levied, assessed or imposed any other tax, fee, charge or other imposition shall be levied, assessed or imposed, then the same shall be included as Real Estate Taxes. Any reference to the Real Estate Taxes for all or any part of the Shopping Center is intended to refer to the Real Estate Taxes for such part or all of the Shopping Center irrespective of the person(s) who may be the owner(s) of such part or all thereof.

X. **Rent:** The Fixed Rent plus the Percentage Rent.

Y. **Shopping Center:** That certain plot and parcel of land, together with the buildings and other improvements thereon and/or to be erected thereon, described in *Exhibit B*, as same may, from time to time, be reduced or increased by the deletion or addition by Landlord of lands and/or buildings and other improvements.

Z. **Short Term:** The period commencing on the Commencement Date and ending at midnight of the December 31st next following, except that if the Commencement Date occurs on a December 31st, the Short Term will end at midnight of the Commencement Date.

AA. **Term:** The Short Term, the Full Term and the extended term(s), if any, as to which Tenant shall have effectively exercised its right to extend, but in any event the Term shall end on any date when this Lease is sooner terminated.

BB. **Utility Service Charge:** An amount computed as provided in *Article V*.

## ARTICLE II DEMISE AND CONSTRUCTION

2.01. **DEMISE.** Upon and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Demised Premises, for the Term, except that Landlord reserves and Tenant shall have no right in and to (a) the use of the exterior faces of all perimeter walls, (b) the use of the roof, and (c) the use of the land, improvements and space below the lower surface of the lower floor of the Demised Premises and above the interior surface of the ceiling of the Demised Premises, except as to which Landlord may otherwise agree.

2.02. **CONSTRUCTION.** To the extent that the construction of the buildings and other improvements in the Shopping Center is not completed on the date hereof, it will be done in accordance with the provisions of *Exhibit C*, and the parties hereto agree to be bound by the provisions of said *Exhibit C*.

## ARTICLE III RENT, ADDITIONAL RENT AND SECURITY

3.01. **PAYMENT OF RENT AND ADDITIONAL RENT.** Tenant shall pay the Fixed Rent, the Utility Service Charge and the Marketing Charge in equal monthly installments in advance on the first day of each month during the Term, except that (a) if the Commencement Date is not the first day of a month, the Fixed Rent, the Utility Service Charge and the Marketing Charge for the period commencing on the Commencement Date and ending on the last day of the month in which the Commencement Date occurs shall be apportioned on the basis of the number of days in said month and paid on the Commencement Date, and (b) the Fixed Rent for the first full calendar month of the Term shall be paid upon execution of this Lease by Tenant. The Rent and Additional Rent shall be paid promptly when due, in lawful money of the United States, without notice or demand and without deduction, abatement, counterclaim or setoff of any amount or for any reason whatsoever, to Managing Agent at the address of Managing Agent set forth in *Section 1.01* or such other address as Landlord may designate or to such other person as Landlord may designate. If Tenant makes any payment by check, same shall be only by check of Tenant, and Landlord shall not be required to accept the check of any other person, and any check received by Landlord shall be deemed received subject to collection. If any check is mailed by Tenant, Tenant shall post such check in sufficient time prior to the date when payment is due so that such check will be received by Landlord on or before the date when payment is due. Tenant shall assume the risk

of lateness or failure of delivery of the mails, and no lateness or failure of the mails will excuse Tenant from its obligation to have made the payment in question when required under this Lease. The Rent and all Additional Rent shall in all events be deemed to be rents under this Lease.

**3.02. PERCENTAGE RENT.** Within 15 days after the end of each calendar month, Tenant shall submit to Landlord a statement certified by Tenant (by an authorized officer if Tenant is a corporation or by a partner if Tenant is a partnership) stating the Gross Sales (including an itemization of all claimed deductions therefrom) for such month. Within 15 days after the end of each calendar quarter, Tenant shall pay to Landlord as Percentage Rent (a) the amount, if any, by which the aggregate Gross Sales for the calendar year in which such calendar quarter occurs up to the end of such calendar quarter multiplied by the Percentage Rent Rate exceeds the aggregate amount of Fixed Rent (exclusive of additional Fixed Rent, if any, required pursuant to the provisions of Section 6.02 or Section 6.03) accruing for such period and actually paid and collected, less (b) the amount theretofore paid as Percentage Rent for the calendar year in which such calendar quarter occurs. Within 90 days after the end of the Short Term, after the end of each calendar year and after the end of the Term, Tenant shall submit to Landlord a statement certified by an independent certified public accountant stating the Gross Sales (including an itemization of all claimed deductions therefrom) and the Percentage Rent for the Short Term, such calendar year or partial calendar year in the event the Term shall end on a date other than a December 31st, as the case may be, and if the Percentage Rent so stated for such period is more or less than the Percentage Rent paid for such period, Tenant shall pay to Landlord the deficiency, or Landlord shall refund to Tenant the excess, within 20 days after submission of such statement of Gross Sales. For at least 36 months after the Short Term, after the expiration of each calendar year and after the end of the Term, Tenant shall keep and maintain (and shall cause all subtenants, concessionaires and licensees to keep and maintain) in the Demised Premises or the main office of Tenant full and accurate books of account and records of all purchases and receipts of any items included in Gross Sales from which the Gross Sales can be determined for the period in question. Landlord shall have the right from time to time during such 36-month period to inspect and audit all such books and records relating to Gross Sales, and Tenant, each subtenant, concessionaire and licensee will produce the same on request of Landlord. If any such inspection and audit discloses that the Gross Sales were understated, Tenant shall forthwith pay to Landlord any additional Percentage Rent shown to be payable, and if the Gross Sales for any calendar year or partial calendar year were understated by more than \$1,000, Tenant shall also pay the cost of Landlord's inspection and audit. ~~If Tenant fails to attain Gross Sales sufficient to incur Percentage Rent in any calendar year after the second full calendar year of the Full Term, then Landlord may terminate this Lease by notice to Tenant given within six months after the end of such calendar year and this Lease shall terminate 90 days after such notice.~~

**3.03. TAXES.** Tenant shall pay to Landlord, as hereinafter provided, Tenant's proportionate share of the Real Estate Taxes for the Shopping Center. Tenant's proportionate share of said Real Estate Taxes shall be the Real Estate Taxes for the portion of the Shopping Center owned by Landlord or ground leased to Landlord for the period in question (less the contribution to Landlord for Real Estate Taxes made by Major Occupants of Major Premises in such portion of the Shopping Center for the period in question), multiplied by a fraction the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the occupied Floor Space of all of the buildings in such portion of the Shopping Center exclusive of the Floor Space of any Major Premises in such portion of the Shopping Center. If any portion of the Shopping Center shall be exempt from all or any part of the Real Estate Taxes, then for the period of time when such exemption is in effect, the Floor Space of the building or buildings on such exempt portion shall be excluded when making the above computations in respect of the part of the Real Estate Taxes for which such portion shall be exempt. Landlord shall estimate Tenant's annual proportionate share of such Real Estate Taxes (which estimate may be changed by Landlord from time to time), and Tenant shall pay to Landlord 1/12th of the amount so estimated on the first day of each month in advance. Tenant shall also pay to Landlord on demand from time to time the amount which, together with said monthly installments, will be sufficient in Landlord's estimation to pay Tenant's proportionate share of any such Real Estate Taxes 30 days prior to the date when such Real Estate Taxes shall first become due. When the amount of any item comprising the Real Estate Taxes is finally determined for a real estate fiscal tax year, Landlord shall submit to Tenant a statement in reasonable detail of the same, and the figures used for computing Tenant's proportionate share of the same, and if Tenant's proportionate share so stated is more or less than the amount theretofore paid by Tenant for such item based on Landlord's estimate, Tenant shall pay to Landlord the deficiency, or Landlord shall refund to Tenant the excess, within 10 days after submission of such statement. Any Real Estate Taxes for a real estate fiscal tax year, a part of which is included within the Term and a part of which is not so included, shall be apportioned on the basis of the number of days in the real estate fiscal tax year included in the Term, and the real estate fiscal tax year for any improvement assessment will be deemed to be the one-year period commencing on the date when such assessment is due, except that if any improvement assessment is payable in installments the real estate fiscal tax year for each installment will be deemed to be the one-year period commencing on the date when such installment is due. The above computations shall be made by Landlord in accordance with generally accepted accounting principles, but the Floor Space referred to will be based upon the average of the occupied Floor Space on the first day of each month during the period in question.

**3.04. COMMON AREA CHARGE.** Tenant shall pay to Landlord, as hereinafter provided, Tenant's proportionate share of the Common Area Costs. Tenant's proportionate share of the Common Area Costs shall be (a) the Common Area Ground Costs

(less the contribution to Landlord for Common Area Ground Costs made by Major Occupants), multiplied by a fraction the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the occupied Floor Space of all of the buildings in the Shopping Center exclusive of the Floor Space of the Major Premises, plus (b) if any floor or floors of the Demised Premises has or have one or more direct entrances onto the Covered Mall, the Covered Mall Costs (less the contribution to Landlord for Covered Mall Costs made by Major Occupants), multiplied by a fraction the numerator of which shall be the Floor Space of such floor or floors of the Demised Premises as have one or more direct entrances onto the Covered Mall and the denominator of which shall be the occupied Floor Space of all of the premises having one or more direct entrances onto the Covered Mall (but only the floor space of the specific floor or floors having such direct entrance or entrances onto the Covered Mall) exclusive of the Floor Space of the Major Premises. Landlord shall estimate Tenant's annual proportionate share of the Common Area Costs (which estimate may be changed by Landlord from time to time), and Tenant shall pay to Landlord 1/12th of the amount so estimated on the first day of each month in advance. If at any time Landlord changes its estimate of Tenant's proportionate share of the Common Area Costs for the then current calendar year, Landlord shall give notice to Tenant of such change and within 10 days after such notice Landlord and Tenant shall adjust for any overpayment or underpayment during the prior months of the then current calendar year. After the end of the Short Term, after the end of each calendar year and after the end of the Term, Landlord shall submit to Tenant a statement in reasonable detail stating Tenant's proportionate share of the Common Area Costs for the Short Term, such calendar year or partial calendar year in the event the Term shall end on a date other than a December 31st, as the case may be, and stating the Common Area Costs for the period in question and the figures used for computing Tenant's proportionate share, and if Tenant's proportionate share so stated for such period is more or less than the amount paid for such period, Tenant shall pay to Landlord the deficiency, or Landlord shall refund to Tenant the excess, within 10 days after submission of such statement of Tenant's proportionate share. All computations shall be made in accordance with generally accepted accounting principles, and the Floor Space referred to will be based upon the average of the occupied Floor Space on the first day of each month during the period in question.

**3.05. INITIAL ASSESSMENT.** Tenant shall pay to Landlord the Initial Assessment within 10 days after notice from Landlord to Tenant that the Commencement Date shall occur within 60 days after such notice or within 10 days after notice from Landlord to Tenant that the Commencement Date occurred.

**3.06. ADJUSTMENT.** If the Price Index for the first month for which the Price Index is published of any calendar year or partial calendar year during the Full Term is higher than the Base Price Index, then the Fixed Rent, the Marketing Charge and the Utility Service Charge for the calendar year or partial calendar year in question shall each be that set forth in *Section 1.01* multiplied by the Price Index for the first month for which the Price Index is published of the calendar year or partial calendar year in question divided by the Base Price Index, except that in no event will either the Fixed Rent, the Marketing Charge or the Utility Service Charge for any calendar year or partial calendar year be reduced below that for the prior calendar year. Until Landlord gives notice to Tenant in any calendar year or partial calendar year that the Price Index for the first month for which the Price Index is published of such year has been determined, Tenant shall pay the Fixed Rent, the Marketing Charge and the Utility Service Charge at the same rate as that which Tenant was paying therefor during the prior calendar year and within 10 days after such notice to Tenant, Landlord and Tenant shall adjust for any underpayment during the prior months of the then current calendar year or partial calendar year.

**3.07. INTEREST.** If Tenant fails to make any payment of Fixed Rent or Additional Rent by the due date thereof, Tenant shall pay to Landlord a late charge of 6% of the amount of such payment and, in addition, such unpaid amount shall bear interest at the rate per annum which is four percentage points above the Prime Rate in effect on such due date but in no event at a rate higher than the maximum rate allowed by law and shall be payable on demand.

**3.08. ACCORD AND SATISFACTION AND ALLOCATIONS.** No payment by Tenant or receipt by Landlord of any lesser amount than the amount stipulated to be paid hereunder shall be deemed other than a payment on account of Rent or Additional Rent as allocated by Landlord; nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy available to Landlord. The allocation of any amounts received by Landlord to any item constituting Rent or Additional Rent shall be in Landlord's sole discretion and any statement or direction by Tenant in respect of an allocation shall have no force or effect and may be disregarded by Landlord.

#### ARTICLE IV COMMON AREAS

**4.01. MAINTENANCE OF AND CHANGES IN COMMON AREAS.** Subject to the provisions of *Section 7.04*, Landlord will operate, manage, equip, light, repair and maintain, or cause to be operated, managed, equipped, lighted, repaired and maintained, the Common Areas for their intended purposes. Landlord reserves the right, at any time and from time to time, to

construct and/or install within the Common Areas kiosks, directories, fountains, bird cages, aquariums, planters, pools, sculptures, displays, vending machines, telephone booths, benches and the like not shown on *Exhibit A*.

**4.02. USE OF COMMON AREAS.** Tenant and its subtenants and concessionaires, and their respective officers, employees, agents, customers and invitees, shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has granted or may hereafter grant such rights, but subject to the rules and regulations referred to in *Section 14.01*, to use the Common Areas. Landlord reserves the right, at any time and from time to time, to close temporarily all or any portions of the Common Areas when in Landlord's reasonable judgment any such closing is necessary or desirable (a) to make repairs or changes or to effect construction within the Shopping Center, (b) to prevent the acquisition of public rights in such areas, (c) to discourage non-customer parking, or (d) to protect or preserve persons or property. Landlord may do such other acts in and to the Common Areas as in its judgment may be desirable to improve or maintain same. Landlord also reserves the right, at any time and from time to time, to impose parking charges.

## ARTICLE V UTILITIES AND SERVICES

**5.01. HEATING AND AIR CONDITIONING.** For so long as same shall not constitute a violation of the Legal and Insurance Requirements, Landlord shall, at its option, provide or cause to be provided, and Tenant shall accept, water and/or air, at Landlord's option, for heating and air conditioning in the Demised Premises (a) from 10:00 A.M. to 9:30 P.M. Monday through Saturday (i) whenever the outdoor temperature is for a period of two or more hours equal to or above 60 F. sufficient water and/or air, at Landlord's option, for air conditioning (based upon Tenant's connected load not exceeding 5.5 watts per square foot of Floor Space in the Demised Premises and based upon there being no more than one person in the Demised Premises for each 75 square feet of Floor Space in the Demised Premises) to maintain in Tenant's sales areas a temperature of 78 degrees F. Dry Bulb and 65 degrees F. Wet Bulb with 50% relative humidity when the outside temperature is 91 degrees F. Dry Bulb and 77 degrees F. Wet Bulb, and Tenant shall not draw water or air to maintain in its sales areas a temperature below 78 degrees F., and (ii) sufficient water and/or air, at Landlord's option, for Tenant to maintain a temperature of 65 degrees F. in Tenant's sales areas and a temperature of 62 degrees F. in Tenant's storage areas when the outside temperature is 12 degrees F. with a wind velocity up to 10 miles per hour, and (b) for other times sufficient water and/or air, at Landlord's option, for Tenant to maintain in the Demised Premises a temperature of 45 degrees F. when the outside temperature is 12 degrees F. with a wind velocity up to 10 miles per hour. Landlord shall not be liable to Tenant in damages or otherwise for any interruption, impairment or termination of any of said utilities or services, and Tenant shall not be released or excused from the performance of any of its obligations under this Lease for any such interruption, impairment or termination except as otherwise provided in *Section 5.02* and except that Landlord shall use reasonable efforts to restore same promptly. Tenant shall heat and air condition the Demised Premises, utilizing the water and/or air provided by Landlord in accordance with the provisions of this *Article V*. The criteria in (a) above are conditioned upon Tenant's use and occupancy of the Demised Premises in accordance with the provisions of this *Article V*. Tenant shall not install an air exhaust system or operate an air exhaust system which shall exhaust air at a rate which is greater than 10 percent of the rate at which air is provided to the Demised Premises by Landlord. Tenant shall use its best efforts to keep doors and other openings leading to spaces not heated or not air conditioned closed so as to prevent undue heat loss during the heating season and undue heat gain during the cooling season and to maintain the temperature and air pressure in the Demised Premises at such levels as shall prevent the robbing of heated or air conditioned air from the Covered Mall, and Tenant shall use its best efforts to prevent the waste of water and/or air provided by Landlord. Tenant shall not use, permit or suffer the use of the Demised Premises in any manner which would increase the heat load factor over that which shall be normal for the use of the Demised Premises for the Permitted Uses.

**5.02. PAYMENT FOR UTILITIES AND SERVICES.** The Utility Service Charge shall be an amount at the annual rate which is the sum of (a) the Premises HVAC Charge, plus (b) the Mall HVAC Charge. If Landlord is required to permanently lease providing or causing to be provided the water and/or air for the heating and air conditioning of the Demised Premises, Tenant shall not thereafter pay the Premises HVAC Charge. Tenant shall pay directly to the utility companies or governmental entities promptly as and when due all separately metered or assessed charges for utilities and services used or consumed in or in connection with the Demised Premises except those provided or caused to be provided by Landlord the charge for which is included in Real Estate Taxes as provided in *Paragraph W* of *Section 1.02*. If any utilities or services are not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants or occupants of the Shopping Center, other than any utilities or services provided or caused to be provided by Landlord the charge for which is included in the Utility Service Charge and other than utilities or services included in Real Estate Taxes as provided in *Paragraph W* of *Section 1.02*, Tenant shall pay to Landlord on demand Tenant's proportionate share of such charges for utilities and/or services, which shall be such charges multiplied by a fraction the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of all tenants and occupants of the Shopping Center using such utilities and/or services. If Landlord elects to keep the Shopping Center open at times other than 10:00 A.M. to 9:30 P.M. Monday through Saturday, Landlord shall provide or cause to be provided water and/or air, at Landlord's option, for heating or air

~~conditioning at such other times sufficient to maintain the criteria in Section 5.01, for which Tenant shall pay to Landlord promptly on demand an additional charge at the rate per hour of one half of one cent multiplied by the Floor Space of the Demised Premises, except that if the Price Index for the first month for which the Price Index is published of any calendar year or partial calendar year during the Full Term is higher than the Base Price Index, then said hourly rate for the calendar year or partial calendar year in question shall be one half of one cent multiplied by the Floor Space of the Demised Premises multiplied by the Price Index for the first month for which the Price Index is published of the calendar year or partial calendar year in question divided by the Base Price Index.~~

## ARTICLE VI USE AND ENJOYMENT OF DEMISED PREMISES AND BANKRUPTCY

6.01. **PERMITTED USES.** Tenant shall use the Demised Premises solely for the purpose of conducting the Permitted Uses under the Tenant's Trade Name, and Tenant shall not use or permit or suffer the use of the Demised Premises for any other purpose.

6.02. **OPERATION OF BUSINESS.** Except when and to the extent that the Demised Premises shall be untenable by reason of damage by fire or other casualty, Tenant shall (a) continuously and uninterruptedly keep the entire Demised Premises open for business, and keep Tenant's display windows and signs illuminated, during all business hours on all business days when the Shopping Center is open for business as determined by Landlord, and (b) use for office, storage or other non-selling purposes only such space as is reasonably required for the proper operation of Tenant's business in the Demised Premises. Because of the difficulty or impossibility of determining Landlord's damages by way of loss of anticipated Percentage Rent from Tenant or other tenants or occupants in the Shopping Center and by way of loss in value of Landlord's interest in the Shopping Center if Tenant fails to operate its business as provided in this Lease, then Landlord shall have, in addition to all other remedies available to Landlord, the right if permitted by law to additional Fixed Rent at the rate which is 25% of the then rate of Fixed Rent as elsewhere provided in this Lease for the period during which such failure of Tenant is continuing, but same shall not prevent Landlord from also treating such failure of Tenant as a material default under this Lease and Landlord shall nevertheless have all of the rights and remedies provided in this Lease in the case of a default by Tenant. No contention of Landlord that Tenant has vacated, abandoned or deserted the Demised Premises will be defeated merely by reason of Tenant having left all or any part of its trade fixtures or other personal property in the Demised Premises. Tenant shall display and sell only first-quality, current-season merchandise, and Tenant's sales practices shall be in accord with standards and practices generally acceptable in enclosed first-class regional shopping centers. Tenant shall not (i) (except to the extent permitted as one of the Permitted Uses) sell or fill any prescriptions, operate a drugstore or drug department, sell, display or distribute any food or any alcoholic liquors or alcoholic beverages in any part of the Demised Premises, or operate a catalogue or mail or telephone order operation at or from the Demised Premises, (ii) use the Common Areas or any other premises outside of the Demised Premises for the sale or display of any merchandise, for solicitations or demonstrations or for any other business, occupation, undertaking or activity, (iii) use or permit or suffer the use of any portion of the Demised Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for regional shopping centers, (iv) burn trash or, except as otherwise provided in this Lease or directed by Landlord, store any trash or garbage in any area other than inside the Demised Premises (and Tenant shall attend to the daily disposal of trash in the manner designated by Landlord), (v) park trucks or other delivery vehicles so as to unreasonably interfere with the use of any part of the Common Areas, (vi) suffer, permit or commit any waste or any nuisance or other act or thing in the Demised Premises which may disturb any other tenant or occupant in the Shopping Center, (vii) permit any coin or token operated vending or amusement machine or similar device or pay telephone in the Demised Premises, (viii) permit vibrations or music or any other sounds in the Demised Premises to be transmitted to or heard in any other premises in the Shopping Center or in any part of the Common Areas, (ix) conduct any "going-out-of-business" sales, or (x) suffer, permit, introduce or maintain in, on or about any portion of the Demised Premises any Hazardous Materials.

6.03. **COMPETITION.** If Tenant or Guarantor (and if Tenant or Guarantor is a corporation or partnership, any parent, subsidiary or affiliated or controlled company of Tenant or Guarantor, or partner in Tenant or Guarantor, as the case may be) shall, directly or indirectly, open, acquire, operate, manage or have any interest in any competing store or business, including, without limitation, a department or concession in another store, within 10 miles from the nearest outside boundary of the Shopping Center, Landlord shall have the right if permitted by law, during all periods when such competing store or business is open and operating, to additional Fixed Rent at the rate which is 50% of the then rate of Fixed Rent as elsewhere provided in this Lease. However, any such store of Tenant or Guarantor (and if Tenant or Guarantor is a corporation or partnership, any parent, subsidiary or affiliated or controlled company of Tenant or Guarantor, or partner in Tenant or Guarantor, as the case may be) existing and open for business as of the date of this Lease may continue to be operated, managed, conducted and owned in the same manner as on the date of execution of this Lease without any additional Fixed Rent. \*

\*Also excluded from the radius restriction are stores operated by Tenant or Guarantor that are operated under a different trade name and use than Tenant and stores acquired by Tenant or Guarantor that are part of a chain of three (3) or more stores.

6.04. **SIGNS.** Tenant shall provide a suitable identification sign or signs of such size, design and character as Landlord shall approve, and Tenant shall install same at a place or places designated by Landlord. Tenant shall maintain any such sign or signs in good condition and repair. Other than such permitted signs, Tenant shall not place or install, or permit or suffer to be placed or installed, or maintain, any sign upon or outside of the Demised Premises or in any part of the Shopping Center unless approved by Landlord. Tenant shall not place or install, or permit or suffer to be placed or installed, or maintained, on the exterior of the Demised Premises, any awning, canopy, banner, flag, pennant, aerial, antenna or the like; nor shall Tenant place or maintain on the glass of any window or door of the Demised Premises, or inside the Demised Premises, any sign, decoration, lettering, advertising matter, shade or blind or other thing of any kind other than neatly lettered signs of reasonable size placed on the floor of display windows identifying articles offered for sale.

6.05. **COMPLIANCE WITH LAWS.** Tenant shall comply with the certificate of occupancy relating to the Demised Premises and with the Legal and Insurance Requirements.

6.06. **ACCESS TO PREMISES AND EXCAVATION.** Landlord shall have the right to enter upon and in the Demised Premises at all reasonable times to examine the same and to make such repairs, replacements, alterations, improvements and additions in the Demised Premises and in the buildings in the Shopping Center (including, without limitation, the installation, repair and replacement of columns, pipes, duct work, conduits, utility lines and wires in the Demised Premises and beneath the lower floor slabs and above the ceiling of the Demised Premises) as Landlord may deem necessary, to take all materials into and upon the Demised Premises that may be required therefor, and to take any other action that is appropriate in Landlord's judgment, without the same constituting an eviction of Tenant, in whole or in part, and without any abatement of Rent or Additional Rent; provided, however, Landlord shall use reasonable efforts not to unreasonably interfere with or interrupt Tenant's business in the Demised Premises. If an excavation or other building operation shall be made upon land or premises above, below or adjacent to the Demised Premises, Tenant shall give to the person authorized to cause such work to be done permission and a license to enter upon and in the Demised Premises for the purpose of doing such work as such person deems necessary to preserve the building of which the Demised Premises is a part from damage and to support the same with proper foundations, without the same constituting an eviction of Tenant, in whole or in part, and without any abatement of Rent or Additional Rent; provided, however, Landlord shall use reasonable efforts not to unreasonably interfere with or interrupt Tenant's business in the Demised Premises. Nothing contained in this Lease shall be deemed or construed to require Landlord to incur any additional expense for work to be done during hours or days other than regular hours and days, and nothing contained in this Section shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Demised Premises. Landlord shall also have the right to enter upon the Demised Premises at reasonable times to show it to prospective purchasers, lessees (under ground or underlying leases) and mortgagees of all or any part of the Shopping Center. During the four months prior to the expiration of the Term, Landlord may show the Demised Premises to prospective tenants of the Demised Premises, and during said period Landlord may also place upon the Demised Premises a "To Let" or "For Rent" sign, which sign shall not be removed, obliterated or hidden by Tenant, provided that such sign shall not exceed in size 12 inches by six inches.

6.07. **MECHANICS' LIENS.** Nothing contained in this Lease shall be deemed, construed or interpreted to imply any consent or agreement on the part of Landlord to subject Landlord's interest or estate to any liability under any mechanic's or other lien law. If any mechanic's or other lien or any notice of intention to file a lien or any petition to establish a lien is filed against the Shopping Center, or any part thereof, or the Demised Premises, or any part thereof, for any work, labor, services or materials claimed to have been performed or furnished for or on behalf of Tenant or anyone holding any part of the Demised Premises through or under Tenant, Tenant shall, in the case of any such lien, cause the same to be cancelled and discharged of record by payment, bond or order of a court of competent jurisdiction within five days after notice by Landlord to Tenant, and, in the case of any such notice or petition, shall take all necessary action to prevent the filing of a lien within five days after notice by Landlord to Tenant.

6.08. **BANKRUPTCY.** Tenant acknowledges that the continuous and uninterrupted operation of business in the Demised Premises as required in this Lease is of special importance to the commercial success of the Shopping Center. Accordingly, in the event of any proceeding under the Insolvency Laws in which this Lease is not rejected or disaffirmed, Tenant and the trustee in bankruptcy or other representative of Tenant or in the event of an assignment in connection with such a proceeding Tenant's assignee shall provide adequate assurance to Landlord that: (a) the source of Rent and Additional Rent payable under this Lease is reliable, (b) any Percentage Rent payable under this Lease shall not decline substantially, (c) the assumption or assignment of this Lease will not constitute a material breach of any other lease, financing agreement, or master agreement relating to the Shopping Center, (d) the Demised Premises will continue to be used in accordance with the Permitted Uses to assure Landlord that the tenant mix or balance in the Shopping Center will not be disrupted, (e) the quality of goods to be sold in the Demised Premises will not decline, (f) the operation of business in the Demised Premises shall be at a high standard compatible with that of other tenants in the Shopping Center, and (g) the source of funds necessary to pay for Tenant's merchandise and goods to be sold in the Demised Premises, all on a current basis, is reliable. The furnishing of assurances in accordance with the foregoing



or as may be directed by a court of competent jurisdiction shall not be deemed a waiver of any of the obligations of Tenant in this Lease. If any person assuming this Lease or taking the same by assignment shall desire to make alterations to the Demised Premises. Landlord may further require adequate assurance, by appropriate surety bond, cash deposit or such other means as Landlord may approve, of the source of payment for the estimated cost of any work to be performed in connection therewith, and Landlord may require the delivery prior to the commencement thereof of waivers of lien from all contractors or subcontractors engaged to perform such alterations. Notwithstanding the foregoing, such alterations shall be subject to the rights and obligations of Landlord and Tenant relating to such alterations set forth in *Article VII* and *Exhibit C*.

## ARTICLE VII ALTERATIONS, REPAIRS AND CHANGES

**7.01. ALTERATIONS BY TENANT.** Tenant shall not make any alterations or additions to the Demised Premises, or make any holes or cuts in the walls, ceilings, roofs, or floors thereof, or change the exterior color or architectural treatment of the Demised Premises, without on each occasion first obtaining the consent of Landlord and otherwise complying with the provisions of *Exhibit C*.

**7.02. REPAIRS BY LANDLORD.** Landlord shall make necessary structural repairs to the Demised Premises (but excluding windows and window frames, doors, plate glass, store fronts, showcases and signs) and shall keep in good condition and repair the foundations and roof of the Demised Premises. If the Central Utility Plant, if any, supplies water and/or air to the Demised Premises, then Landlord shall also (a) make necessary repairs and replacements to the heating, ventilating and air conditioning system within and/or above the ceiling of the Demised Premises, and (b) perform all preventive maintenance to, and make all repairs to and replacements of filters and belts, if any, in, the heating, ventilating and air conditioning system within and/or above the ceiling of the Demised Premises, and Tenant shall pay to Landlord within 10 days of demand an amount equal to the cost and expense for any repairs or replacements required by *subdivision (a)* of this sentence plus 10% for Landlord's administrative and overhead cost and expense. Landlord shall not be required to make any repairs or replacements where same were caused or occasioned by any act, omission or negligence of Tenant, any subtenant or concessionaire of Tenant, or any of their respective officers, employees, agents, customers, invitees or contractors. Landlord shall not be required to commence any such repair or replacement until notice shall be received from Tenant specifying the nature of the problem requiring such repair or replacement. The provisions of this Section shall not apply in the case of damage by fire or other casualty or by eminent domain, in which case the obligations of the parties shall be as provided in other Sections of this Lease.

**7.03. REPAIRS AND MAINTENANCE BY TENANT.** Except for repairs elsewhere in this Lease required to be performed by Landlord, Tenant shall make all repairs and replacements to, and shall keep clean, neat, safe, sanitary, in good order, repair and condition (including all painting and decorating necessary to maintain at all times a clean and slightly appearance) and free of vermin, (a) the Demised Premises, including both the inside and the outside, and any equipment, facilities and fixtures therein, and (b) any installations above the ceiling and/or below the floor of the Demised Premises and which serve the Demised Premises. In making repairs and replacements, Tenant shall use materials of first-class quality. In addition to any remodeling required under *Section 7.05*, Tenant shall repaint and refurbish the Demised Premises at reasonable periodic intervals to assure that the Demised Premises is kept in a first-class and attractive condition throughout the Term. The provisions of this Section shall not apply in the case of damage by fire or other casualty or by eminent domain, in which case the obligations of the parties shall be as provided in other Sections of this Lease.

**7.04. CHANGES BY LANDLORD.** Landlord reserves the right, at any time and from time to time, to increase, reduce or change the number, type, size, location, elevation, nature and use of any of the Common Areas and any of the buildings and other improvements in the Shopping Center, including, without limitation, the right to move and/or remove same.

**7.05. REMODELING DEMISED PREMISES.** Landlord shall have the right to cause Tenant to remodel the Demised Premises at any time after five years has elapsed from the Commencement Date or from the completion of the last remodeling of the Demised Premises. In addition, if at or before the date hereof the Demised Premises is or was previously occupied by [REDACTED], Landlord shall have the right to cause Tenant to remodel the Demised Premises promptly after the date hereof. Each remodeling shall be deemed an alteration, subject to all of the provisions of this *Article VII* and *Exhibit C*, including, without limitation, the requirement of obtaining Landlord's consent. Each remodeling shall include, without limitation, the furnishing and installing of all new wall, floor, storefront, and ceiling surfaces and finishes, and the replacement of all worn fixtures and furnishings with new fixtures and furnishings, so that the Demised Premises shall appear as new.

## ARTICLE VIII INSURANCE AND INDEMNITY

8.01. **INSURANCE BY LANDLORD.** Landlord shall maintain or cause to be maintained fire and extended coverage insurance in respect of the buildings and other improvements in the Shopping Center normally covered by such insurance (except for the property Tenant is required to cover with insurance under Section 8.02 and similar property of other tenants and occupants in the Shopping Center and except for buildings and other improvements covered by self-insurance or buildings and other improvements which are on land neither owned by nor leased to Landlord) for the benefit of Landlord, any mortgagee(s) and any other parties Landlord may from time to time designate, as their interests may appear, but not for the benefit of Tenant, and shall maintain liability insurance and rent insurance as required by any mortgagee(s). The fire and extended coverage insurance will be in the amounts required by any mortgagee(s) and not less than the amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies. Landlord may also maintain any other forms and types of insurance which Landlord shall deem reasonable in respect of the Shopping Center. Landlord shall have the right to provide any insurance maintained or caused to be maintained by it under blanket policies.

8.02. **INSURANCE BY TENANT.** Tenant shall maintain the following insurance: (a) comprehensive general public liability insurance in respect of the Demised Premises and the conduct and operation of business therein, with Landlord as an additional insured, and at Landlord's request with the lessor(s) of any ground or underlying lease(s) and the mortgagee(s) of any mortgage(s) covering the Shopping Center or any part thereof as additional insured(s), with limits of not less than \$3,000,000 combined single limit for bodily injury or death and property damage in any one occurrence, including water damage and sprinkler leakage legal liability, (b) steam boiler, air conditioning and machinery insurance, with Landlord as an additional insured, and at Landlord's request with such lessor(s) and mortgagee(s) as additional insureds, with limits of not less than \$500,000, if there is a boiler or pressure object or other similar equipment in the Demised Premises, (c) fire and extended coverage insurance in respect of Tenant's stock in trade, fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property of Tenant in the Demised Premises in any amounts required by any mortgagee(s) but not less than 80% of the full insurable value of the property covered and not less than the amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies, and (d) any other insurance required for compliance with the Legal and Insurance Requirements. Landlord may from time to time require that the limits for the comprehensive general public liability insurance in respect of the Demised Premises to be maintained by Tenant be increased to the limits that new tenants in the Shopping Center are required by Landlord to maintain. Tenant shall deliver to Landlord and any additional insured(s) certificates for such fully paid-for policies at least 10 days before the Commencement Date. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional insured(s) certificates therefor at least 30 days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in the state where the Shopping Center is located, and all such policies shall contain a provision whereby the same cannot be cancelled unless Landlord and any additional insured(s) are given at least 30 days' prior written notice of such cancellation. Tenant shall have the right to provide any insurance maintained by it under blanket policies.

8.03. **INCREASE IN PREMIUMS.** Tenant shall not do, permit or suffer to be done any act, matter, thing or failure to act in respect of the Demised Premises or use or occupy the Demised Premises or conduct or operate Tenant's business in any manner objectionable to any insurance company or companies whereby the fire insurance or any other insurance then in effect in respect of the Demised Premises or the Shopping Center or any part thereof shall become void or suspended or whereby any premiums in respect of insurance maintained by Landlord shall be higher than those which would normally have been in effect for the occupancy contemplated under the Permitted Uses. In case of a breach of this covenant, in addition to all other rights and remedies of Landlord hereunder, Tenant (a) shall defend and indemnify Landlord and the lessor(s) of any ground or underlying lease(s) and the mortgagee(s) of any mortgage(s) covering the Shopping Center or any part thereof and Tenant shall hold Landlord and such lessor(s) and mortgagee(s) harmless from and against any loss which would have been covered by insurance which shall have become void or suspended because of such breach by Tenant and (b) shall pay to Landlord all increases of premiums on any insurance, including, without limitation, rent insurance, resulting from any such breach.

8.04. **INDEMNIFICATION AND RELEASE.** Tenant shall defend and indemnify Landlord and the lessor(s) of any ground or underlying lease(s) and the mortgagee(s) of any mortgage(s) covering the Shopping Center or any part thereof and Tenant shall hold Landlord and such lessor(s) and mortgagee(s) harmless from and against any and all injuries, losses, claims, actions, damages, liabilities and expenses (including attorneys' fees and expenses) to persons or property arising from, related to or in connection with (a) the use or occupancy of the Demised Premises or the conduct or operation of business therein or any default in the performance of any obligation of Tenant under this Lease, or (b) any Hazardous Materials on, in, under or affecting all or any portion of the Demised Premises, including, without limitation (i) the cost of removal of any and all Hazardous Materials from all or any portion of the Demised Premises, (ii) additional costs required to take necessary precautions to protect against the release of such Hazardous Materials on, in, under or affecting the Demised Premises, into the air, any body of water, any other public domain or any surrounding areas, and (iii) any costs incurred to comply, in connection with all or any portion of the Demised Premises, with the Legal and Insurance Requirements in respect of such Hazardous Materials. Neither Landlord nor

any lessor(s) of any ground or underlying lease(s) nor any mortgagee(s) shall be liable or responsible for, and Tenant hereby releases Landlord and such lessor(s) and mortgagee(s) from, all liability or responsibility to Tenant or any person claiming by, through or under Tenant, by way of subrogation or otherwise, for any injury, loss or damage to any person or property in or around the Demised Premises or to Tenant's business irrespective of the cause of such injury, loss or damage, and Tenant shall require its insurer(s) to include in all of Tenant's insurance policies which could give rise to a right of subrogation against Landlord or such lessor(s) or mortgagee(s) a clause or endorsement whereby the insurer(s) shall waive any rights of subrogation against Landlord and such lessor(s) and mortgagee(s).

## ARTICLE IX SUBORDINATION AND ATTORNMEN

**9.01. SUBORDINATION TO LEASES.** This Lease and Tenant's interest herein (including, without limitation, Tenant's rights in respect of the Common Areas) are and shall be subject and subordinate to each and every ground or underlying lease now existing or hereafter made of the Shopping Center or any part thereof of which the Demised Premises is a part and to all renewals, modifications, replacements and extensions thereof. Upon request of Landlord, Tenant shall, within 10 days of receipt of same, execute, acknowledge and deliver any and all documents and instruments subordinating this Lease and Tenant's interest herein.

**9.02. SUBORDINATION TO MORTGAGES.** This Lease shall have priority over any mortgage made subsequent to the date of delivery of this Lease, except that in the event that a mortgagee or a prospective mortgagee shall request that this Lease be subject and subordinate to its mortgage, and such mortgage covers or will cover the Shopping Center or any part thereof of which the Demised Premises is a part, and Landlord consents to such subordination, this Lease and Tenant's interest herein (including, without limitation, Tenant's rights in respect of the Common Areas) shall be subject and subordinate to such mortgage and to all renewals, modifications, replacements, consolidations and extensions thereof and to any and all advances made thereunder and the interest thereon, and Tenant shall, within 10 days of receipt of same, execute, acknowledge and deliver any and all documents and instruments subordinating this Lease and Tenant's interest herein. In the event that a mortgagee of a mortgage made prior to the delivery of this Lease shall request that this Lease have priority over such mortgage, and such mortgage covers the Shopping Center or any part thereof of which the Demised Premises is a part, and Landlord consents thereto, this Lease shall have priority over said mortgage and all renewals, modifications, replacements, consolidations and extensions thereof and all advances made thereunder and the interest thereon, and Tenant shall, within 10 days of receipt of same, execute, acknowledge and deliver any and all documents and instruments confirming the priority of this Lease. Any of the documents or instruments which Tenant shall be required to execute, acknowledge and deliver pursuant to the provisions of this Section may contain additional provisions required by such mortgagee. In any event, however, if this Lease shall have priority over the first mortgage covering the Shopping Center or any part thereof of which the Demised Premises is a part, this Lease shall not become subject or subordinate to any subordinate mortgage, and Tenant shall not execute any subordination documents or instruments for any subordinate mortgage, without the written consent of the first mortgagee.

**9.03. ATTORNMEN.** In the event of (a) a transfer of Landlord's interest in the Demised Premises, (b) the termination of any ground or underlying lease of premises which include the Demised Premises or (c) the purchase of the Demised Premises or Landlord's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or pursuant to a power of sale contained in any mortgage, then in any of such events Tenant shall, at Landlord's request, attorn to and recognize the transferee or purchaser of Landlord's interest or the lessor under the terminated ground or underlying lease, as the case may be, as "Landlord" under this Lease for the balance then remaining of the Term, and thereafter this Lease shall continue as a direct lease between such person, as "Landlord", and Tenant, as "Tenant", and such person shall not be liable for any act or omission of Landlord prior to such lease termination or prior to such person's succession to title, nor be subject to any offset, defense or counterclaim accruing prior to such lease termination or prior to such person's succession to title, nor be bound by any payment of Rent or Additional Rent prior to such lease termination or prior to such person's succession to title for more than one month in advance or by any modification of this Lease or any waiver, compromise, release or discharge of any obligation of Tenant hereunder unless such modification, waiver, compromise, release or discharge shall have been specifically consented to in writing by the lessor under such ground or underlying lease or the mortgagee under said mortgage, and such person and each person succeeding to such person's interest in the Demised Premises shall not be liable for any warranty or guaranty of Landlord under this Lease.

**9.04. NOTICES TO MORTGAGEES.** Tenant shall send to each mortgagee of any mortgage covering the Shopping Center or any part thereof (after notification of the identity of such mortgagee and the mailing address thereof) copies of all notices that Tenant sends to Landlord: such notices to said mortgagee shall be sent concurrently with the sending of the notices to Landlord and in the same manner as notices are required to be sent pursuant to Section 14.11. Tenant will accept performance of any provision of this Lease by such mortgagee as performance by, and with the same force and effect as though performed by,

Landlord. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right until (a) Tenant gives notice of such act or omission to Landlord and to each such mortgagee, and (b) a reasonable period of time for remedying such act or omission elapses following the time when such mortgagee becomes entitled under such mortgage to remedy same (which reasonable period shall in no event be less than the period to which Landlord is entitled under this Lease or otherwise, after similar notice, to effect such remedy and which reasonable period shall take into account such time as shall be required to institute and complete any foreclosure proceedings).

## ARTICLE X ASSIGNMENT AND SUBLETTING

**10.01. CONSENT REQUIRED.** Tenant shall not, by operation of law or otherwise, assign, sell, mortgage, pledge or in any manner transfer this Lease or any interest therein, or sublet the Demised Premises or any part or parts thereof, or grant any concession or license or otherwise permit occupancy of all or any part of the Demised Premises by any person, without the consent of Landlord, which consent shall be in Landlord's sole discretion to grant or withhold. Neither the consent of Landlord to an assignment, subletting, concession or license, nor the references in this Lease to assignees, subtenants, concessionaires or licensees, shall in any way be construed to relieve Tenant of the requirement of obtaining the consent of Landlord to any further assignment, subletting, concession or license. In the event Landlord consents to any assignment of this Lease, the assignee shall execute and deliver to Landlord an agreement in form and substance satisfactory to Landlord whereby the assignee shall assume all of Tenant's obligations under this Lease. Notwithstanding any assignment or subletting, including, without limitation, any assignment or subletting permitted or consented to, the original Tenant named herein, the then Tenant and any other person(s) who at any time was or were Tenant shall remain fully liable on this Lease, and if this Lease shall be amended, modified, extended or renewed, the original Tenant named herein, the then Tenant and any other person(s) who at any time was or were Tenant shall remain fully liable on this Lease as so amended, modified, extended or renewed. Any violation of any provision of this Lease by any assignee, subtenant or other occupant shall be deemed a violation by the original Tenant named herein, the then Tenant and any other person(s) who at any time was or were Tenant, it being the intention and meaning that the original Tenant named herein, the then Tenant and any other person(s) who at any time was or were Tenant shall all be liable to Landlord for any and all acts and omissions of any and all assignees, subtenants and other occupants of the Demised Premises. If this Lease shall be assigned or if the Demised Premises or any part thereof shall be sublet or occupied by any person or persons other than the original Tenant named herein, Landlord may collect rent from any assignee and/or any subtenants or occupants, and apply the net amounts collected to the Rent and Additional Rent, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of this Section, or the acceptance of the assignee, subtenant or occupant, or a release of any person from the further performance by such person of the obligations of Tenant under this Lease.

**10.02. CORPORATION OR PARTNERSHIP.** If at any time (a) the original Tenant named herein, (b) the then Tenant, (c) any Guarantor, or (d) any person owning a majority of the voting stock of, or directly or indirectly controlling, the then Tenant shall be a corporation or partnership, any transfer of voting stock or partnership interest resulting in the person(s) who shall have owned a majority of such corporation's shares of voting stock or the general partners' interest in such partnership, as the case may be, immediately before such transfer, ceasing to own a majority of such shares of voting stock or general partners' interest, as the case may be, except as the result of transfers by inheritance, shall be deemed to be an assignment of this Lease as to which Landlord's consent shall have been required, and in any such event Tenant shall so notify Landlord, except that the provisions of this Section shall not be applicable to any corporation all the outstanding voting stock of which is listed on a national securities exchange (as defined in the Securities Exchange Act of 1934, as amended) or is traded in the over-the-counter market with quotations reported by the National Association of Securities Dealers through its automated system for reporting quotations. For the purposes of this Section, the words "voting stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation. Landlord shall have the right from time to time during the Term to inspect the stock record books of the corporations to which the provisions of this Section apply, and Tenant will produce the same on request of Landlord.

**10.03. RECAPTURE.** If Tenant shall propose to assign or in any manner transfer this Lease or any interest therein, or sublet the Demised Premises or any part or parts thereof, or grant any concession or license or otherwise permit occupancy of all or any part of the Demised Premises by any person, Tenant shall give notice thereof to Landlord, together with a copy of the proposed instrument that is to accomplish same and such financial and other information pertaining to the proposed assignee, transferee, subtenant, concessionaire or licensee as Landlord shall require, and Landlord may, in addition to Landlord's right to give or withhold consent, but only if Landlord has obtained the consent of each mortgagee with a mortgage covering the Shopping Center or any part thereof which includes the Demised Premises, terminate this Lease by notice given to Tenant within 30 days after receipt of said proposed instrument and financial and other information, and upon the date specified in such notice, which date shall be not less than 30 days and not more than 60 days after the giving of said notice, this Lease shall terminate; provided, however, Landlord shall not have the right to terminate this Lease if the subject transaction is a subletting, concession or license of part of the Demised Premises and the aggregate of the Floor Space of the Demised Premises that is then subject to a sublease.

concession, license or other occupancy arrangement plus the Floor Space to be covered by the subject transaction is less than 25% of the Floor Space of the Demised Premises. If instead of terminating this Lease, Landlord gives the consent requested by Tenant and Tenant does not consummate the transaction consented to by Landlord within 60 days after such consent is given, Tenant shall again be required to comply with the provisions of this Section 10.03 in connection with such transaction as if the notice by Tenant referred to above in this Section 10.03 had not been given.

10.04. **PROFITS.** If Landlord gives its consent to any assignment of this Lease or to any sublease, Tenant shall in consideration therefor pay to Landlord: (a) in the case of an assignment, an amount equal to all sums and other consideration paid to Tenant by the assignee or any other person for or in connection with such assignment (including sums paid for the sale of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, less the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns), and (b) in the case of a sublease, any rents, additional charges or other consideration payable to Tenant, plus any sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns, to the extent that the aggregate sum of all of said amounts is in excess of Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space (at the rate per rentable square foot payable by Tenant hereunder). The deduction for the net unamortized or undepreciated cost in the case of such a sale shall be made in equal monthly installments over the term of the sublease. The sums payable under this Section 10.04 shall be paid to Landlord as and when paid by the assignee, subtenant or any other person to Tenant.

## ARTICLE XI DESTRUCTION

11.01. **TOTAL OR PARTIAL DESTRUCTION.** Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Demised Premises. If (a) the Demised Premises shall be damaged by fire or other casualty to the extent of more than 25% of the cost of replacement thereof, or (b) any buildings in the Shopping Center shall be damaged by fire or other casualty to the extent of more than 25% of the aggregate cost of replacement of all of the buildings in the Shopping Center, or (c) any buildings in the Shopping Center shall be damaged by fire or other casualty and either the loss shall not be covered by Landlord's insurance or the net insurance proceeds (after deducting all expenses in connection with obtaining same) shall, by reasonable anticipation, be insufficient to pay for the repair or restoration work to be done by Landlord, or (d) the Demised Premises shall be damaged by fire or other casualty to the extent of more than 10% of the cost of replacement thereof during the last two years of the Term, then in any such event Landlord may terminate this Lease by notice given within 90 days after such event, and upon the date specified in such notice, which shall be not less than 30 days nor more than 60 days after the giving of said notice, this Lease shall terminate. If the Demised Premises shall be damaged by fire or other casualty to the extent of more than 10% of the cost of replacement thereof during the last two years of the Term, Tenant may terminate this Lease by notice given before Landlord commences any repair or restoration work and in any event within 30 days after such damage, and this Lease shall terminate upon the giving of such notice. If any damage by fire or other casualty shall render the Demised Premises untenantable, in whole or in part, a proportionate abatement of the Fixed Rent and Additional Rent based upon the Floor Space rendered untenantable shall be allowed from the date when the damage occurred until substantial completion of the repair or restoration work to be done by Landlord in the Demised Premises, or, in the event Landlord or Tenant elects to terminate this Lease, until said date of termination. If this Lease shall not be terminated after damage by fire or other casualty, Landlord shall, promptly after receipt of the insurance proceeds for such damage or as soon as practicable in the event that insurance proceeds shall not be available, proceed with the restoration of the Demised Premises and the Shopping Center to substantially the condition in which the same existed prior to the damage with such changes as Landlord may desire to make, except for Tenant's stock in trade, trade fixtures, furniture, furnishings, removable floor coverings, equipment, signs and other property, and Tenant shall promptly proceed with the restoration or replacement of Tenant's stock in trade, trade fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property of Tenant and decorations in and around the Demised Premises.

## ARTICLE XII EMINENT DOMAIN

12.01. **TOTAL OR PARTIAL TAKING.** If the whole of the Demised Premises shall be taken by any public or quasi-public authority under the power of condemnation, eminent domain or expropriation, or in the event of conveyance of the whole of the Demised Premises in lieu thereof, this Lease shall terminate as of the day possession shall be taken by such authority. If any part of the Floor Space of the Demised Premises shall be so taken or conveyed, this Lease shall terminate only in respect of the part so taken or conveyed as of the day possession shall be taken by such authority, but either party shall have the right to terminate this Lease upon notice given to the other party within 30 days after such taking of possession. If more than 25% of the Floor Space of the Shopping Center shall be so taken or conveyed, or if so much of the parking facilities shall be so taken or conveyed that the number of parking spaces necessary, in Landlord's judgment, for the continued operation of the Shopping Center shall

not be available, then in any such event Landlord may, by notice to Tenant, terminate this Lease as of the day possession shall be taken. If this Lease shall continue in effect as to any portion of the Demised Premises not so taken or conveyed, the Fixed Rent and Additional Rent shall be computed as of the day possession shall be taken on the basis of the remaining Floor Space of the Demised Premises. Except as specifically provided herein, in the event of any such taking or conveyance there shall be no reduction in Fixed Rent or Additional Rent. If this Lease shall continue in effect, Landlord shall, at its expense but only to the extent of the net award or other compensation (after deducting all expenses in connection with obtaining same) available to Landlord for the improvements taken or conveyed (excluding any award or other compensation for land or for the unexpired portion of the term of any ground or underlying lease), make all necessary alterations so as to constitute the remaining Shopping Center a complete architectural and tenantable unit, except for tenants' stock in trade, trade fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property, and Tenant shall make all alterations or replacements to its stock in trade, trade fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property of Tenant and decorations in and around the Demised Premises. All awards and compensation for any taking or conveyance, whether for the whole or a part of the Shopping Center, the Demised Premises or otherwise, shall be the property of Landlord, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such awards and compensation, including, without limitation, any award or compensation for the value of the unexpired portion of the Term. Tenant shall be entitled to claim, prove and receive in the condemnation proceeding such award or compensation as may be allowed for its trade fixtures and for loss of business, good will, depreciation or injury to and cost of removal of stock in trade, but only if such award or compensation shall be made by the condemning authority in addition to, and shall not result in a reduction of, the award or compensation made by it to Landlord.

#### ARTICLE XIII DEFAULT

**13.01. DEFAULTS.** Each of the following shall be deemed to be an Event of Default by Tenant and a breach by Tenant hereunder: (a) the filing of any petition by or against the original Tenant named herein or the then Tenant or any Guarantor in any proceeding under the Insolvency Laws, (b) the passing of this Lease to or the devolution of this Lease upon any person(s) other than Tenant or a permitted assignee, whether by operation of law or otherwise, (c) the Demised Premises being abandoned during the Term, (d) the default in the payment of any Rent or Additional Rent or any part thereof when same is due, or in the making of any other payment herein provided for, or any default under *Section 6.01* or *Section 6.02*, and the continuance of any such default for five days after Landlord shall have given to Tenant a notice specifying the nature of such default, (e) Tenant's failure to cause any mechanic's or other lien or notice of intention to file a lien to be cancelled and discharged of record within the time period provided for under *Section 6.07*, or (f) the default in the performance of any other obligation of Tenant under this Lease, and the continuance of such default for 10 days after Landlord shall have given to Tenant a notice specifying the nature of such default, but if said default shall be of such a nature that it cannot reasonably be cured or remedied within said 10-day period, same shall not be deemed an Event of Default if Tenant shall have commenced in good faith the curing or remedying of such default within such 10-day period and shall thereafter continuously and diligently proceed therewith to completion.

**13.02. BANKRUPTCY DEFAULTS.** In the event of any Event of Default under *subdivision (a)* of *Section 13.01*, whether occurring before or after the termination of this Lease as provided in *Section 13.03* or by summary proceedings or otherwise, this Lease will terminate if not already terminated and Landlord shall immediately and *ipso facto*, without notice or other action by Landlord, become entitled to recover from Tenant, and Tenant shall pay to Landlord, as liquidated damages for such Event of Default, an amount equal to the difference, discounted to the date of such Event of Default at the rate of 4% per annum, between (a) the Rent and Additional Rent, computed on the basis of the then current annual rate of Fixed Rent and Additional Rent plus Percentage Rent at the rate therefor computed on the basis of the highest actual Percentage Rent for any calendar year during the Term for the period from the date of such Event of Default to the end of what would otherwise have constituted the balance of the Term, and (b) the then fair and reasonable rental value of the Demised Premises for the same period. If after such Event of Default but before presentation of proof of such liquidated damages the Demised Premises or any part thereof shall be relet by Landlord for a term of one year or more, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part of the Demised Premises so relet during the term of such reletting. Until such time as the above-mentioned full liquidated damages are paid to Landlord, the full amount of each installment of Rent and Additional Rent reserved under this Lease or the amounts due to Landlord under the next succeeding sentence shall be due and payable at the times specified in this Lease, and if by reason of the subsequent payment of such full liquidated damages Landlord shall have received a sum in excess of all amounts to which Landlord shall be entitled under this Lease, such excess shall be refunded upon the receipt of such full liquidated damages.

**13.03. LANDLORD'S RIGHTS TO TERMINATE, RE-ENTER AND RELET.** During the continuance of any Event of Default (whether occurring prior to the Commencement Date or during the Term), in addition to any other rights Landlord may have at law or in equity for Tenant's default, Landlord shall have the right, at its option, to serve upon Tenant a notice that this Lease will terminate on a date to be specified in such notice, which date shall not be less than three days after such notice, and

upon the date so specified this Lease shall terminate but Tenant shall remain liable as hereinafter set forth; provided, however, if Tenant shall commit the same type of default more than two times in any period of 12 consecutive months, then, notwithstanding that such defaults shall have each been cured within the period after notice as provided in *Section 13.01*, any further similar default shall be deemed to be deliberate and if any further similar default shall occur Landlord, without affording Tenant an opportunity to cure such further default, may thereafter serve upon Tenant a notice that this Lease will terminate on a date to be specified in such notice, which date shall be not less than three days after such notice, and upon the date so specified this Lease shall terminate but Tenant shall remain liable as hereinafter provided. If this Lease shall be terminated as provided above in this Section, or if this Lease shall be terminated by summary proceedings or otherwise, or if the Demised Premises shall be abandoned during the Term, or if an order is entered in any proceeding under the Insolvency Laws approving Tenant's rejection or disaffirmance of the Lease, (a) Landlord or its agents, servants or representatives may, immediately or at any time thereafter, re-enter and resume possession of the Demised Premises and remove all persons and property therefrom, either by summary dispossession proceedings or by a suitable action or proceeding at law, or by force or otherwise, without being liable for any damages therefor, and no such re-entry shall be deemed an acceptance or surrender of this Lease, (b) Landlord may, in its own name, but as agent for Tenant if this Lease is not terminated or in Landlord's own behalf if this Lease is terminated, relet the whole or any portion of the Demised Premises for any period equal to or greater or less than the period which would have constituted the balance of the Term, for any sum which Landlord may deem reasonable, to any tenant(s) which Landlord may deem suitable and satisfactory, and for any use and purpose which Landlord may deem appropriate, and Landlord may grant concessions or free rent, and (c) Landlord, at Landlord's option, may make such alterations, repairs, replacements and decorations in and to the Demised Premises as Landlord in its sole judgment considers advisable and necessary for the purpose of reletting the Demised Premises, and the making of such alterations, repairs, replacements and decorations shall not operate or be construed to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for its failure or refusal to relet the Demised Premises or any part thereof, or in the event that the Demised Premises is relet for its failure to collect the rent under such reletting, and no such refusal or failure to relet or failure to collect rent shall release or affect Tenant's liability for damages or otherwise under this Lease. Landlord shall not in any event be required to pay to Tenant any surplus of any sums received by Landlord on a reletting of all or any part of the Demised Premises in excess of the Rent and Additional Rent reserved in this Lease.

**13.04. ADDITIONAL REMEDIES OF LANDLORD AND WAIVER OF REDEMPTION.** Tenant shall pay to Landlord, on demand, such expenses as Landlord may incur, including, without limitation, court costs and attorneys' fees and disbursements, in enforcing Landlord's rights under this Lease, including, without limitation, the enforcement of the performance of any obligation of Tenant under this Lease. If this Lease shall be terminated as provided above in *Section 13.03*, or if this Lease shall be terminated by summary proceedings or otherwise, or if the Demised Premises shall be abandoned during the Term, or if an order is entered in any proceeding under the Insolvency Laws approving Tenant's rejection or disaffirmance of this Lease, whether the Demised Premises shall be relet or not, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, unless Landlord shall have received liquidated damages in full as above provided in *Section 13.02* for any Event of Default under *subdivision (a)* of *Section 13.01*, (a) the amounts equal to all of the expenses incurred by Landlord in connection with recovering possession of the Demised Premises, brokerage and other costs in connection with any reletting(s), court costs and attorneys' fees and disbursements, and any expenses for putting and keeping the Demised Premises in good order and for making alterations, repairs, replacements and decorations in and to the Demised Premises and otherwise preparing the same for reletting(s), which amounts shall be due and payable by Tenant to Landlord on demand after any such expenses are incurred by Landlord, and (b) for each month of the balance of the Term or the period which would otherwise have constituted the balance of the Term, the amount, if any, by which (i) the sum of one monthly installment of the Fixed Rent and Additional Rent which would have been payable for the month in question had there been no Event of Default, plus 1/12th of the highest Percentage Rent for any calendar year during the Term exceeds (ii) the net amount, if any, of the rents collected on account of the reletting(s) of the Demised Premises for the month in question, which amounts shall be due and payable by Tenant to Landlord in monthly installments on the last day of each month, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding. In the event of any breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity; mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of this Lease being terminated and/or Landlord obtaining possession of the Demised Premises pursuant to the provisions of this Article.

**13.05. CURING TENANT'S DEFAULTS AND COSTS OF ENFORCEMENT.** If Tenant defaults in the performance of any of Tenant's obligations under this Lease, Landlord, without thereby waiving such default, may (but shall not be obligated to) perform same for the account and at the expense of Tenant, without notice in case of emergency or in the case of any default under *Section 6.07*, and in any other case only if such default continues after the expiration of 10 days from the date Landlord gives Tenant notice of the default. Bills for any expenses incurred by Landlord in connection with any such performance by it for the account of Tenant, and bills for all costs, expenses and disbursements of every kind and nature, including reasonable



attorneys' fees and disbursements, involved in collecting or endeavoring to collect Rent or Additional Rent or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease or pursuant to law, including any such cost, expense and disbursement involved in instituting and prosecuting summary or other proceedings or in recovering possession of the Demised Premises after default by Tenant or upon the termination of this Lease, and interest on all sums advanced by Landlord under this Section at the rate per annum which is four percentage points above the Prime Rate in effect on said date but in no event at a rate higher than the maximum rate allowed by law, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and such amounts shall be due and payable immediately.

#### ARTICLE XIV MISCELLANEOUS

**14.01. RULES AND REGULATIONS.** Tenant shall comply with and observe all reasonable rules and regulations which Landlord shall from time to time promulgate and post in the office of Landlord in the Shopping Center for the management and use of the Shopping Center, and Tenant shall use its best efforts to cause its subtenants and concessionaires and their and Tenant's respective officers, employees, agents, customers and invitees to comply with and observe such rules and regulations after notice thereof shall be given to Tenant, and Tenant shall use its best efforts to cause all of the foregoing other than customers to use, for parking purposes, only the area or areas designated from time to time by Landlord as "employee parking" area. Landlord shall have the right from time to time to reasonably amend or supplement any rules and regulations theretofore promulgated.

**14.02. MARKETING.** Landlord shall provide, or cause to be provided, promotions and advertising for the Shopping Center the type, quantity, character and duration of which shall be at Landlord's sole discretion and the purpose of which shall be to assist the business of the tenants and occupants of the Shopping Center. The Marketing Charge shall be used by Landlord for such promotions and advertising, and the Initial Assessment shall be used by Landlord in connection with the so-called "grand opening" of the Shopping Center; provided, however, (a) if the date of said so-called "grand opening" of the Shopping Center shall precede the Commencement Date, then Landlord shall use the Initial Assessment for other Shopping Center promotions and advertising, and (b) if after the Commencement Date Landlord shall increase the amount of Floor Space in the Shopping Center by more than 50,000 square feet, or remodel all or a portion of the Shopping Center, and shall have a so-called "grand opening" in connection with either such event, then Tenant shall be required to pay to Landlord upon demand an amount equal to the Initial Assessment each time that any such event occurs. In connection with any promotions and advertising provided by Landlord, or caused to be provided by Landlord, Tenant hereby grants to Landlord a license to use the Tenant's Trade Name, together with a description of the nature of Tenant's business in the Demised Premises, and Tenant shall cooperate with Landlord in the carrying out of such promotions and advertising and shall loan, for reasonable periods of time, merchandise of Tenant to Landlord so as to permit Landlord to effect such promotions and advertising. Tenant shall pay for and utilize at least one-quarter page of advertising in each tabloid designated by Landlord, except that Tenant shall not be required to do so more frequently than six times in each calendar year.

**14.03. HOLDOVER.** In the event Tenant remains in possession of the Demised Premises after the expiration of the Term, Tenant shall be deemed to be occupying the Demised Premises as a tenant from month to month at the sufferance of Landlord subject to all of the provisions of this Lease, except that the Fixed Rent shall be at the monthly rate equal to three times the sum of (a) one monthly installment of Fixed Rent at the rate in effect during the last month of the Term, plus (b) 1/12th of the average annual Percentage Rent for the immediately preceding three full calendar years (or for the entire Term if less than three full calendar years).

**14.04. OWNERSHIP OF IMPROVEMENTS.** All installations, alterations, additions, betterments and improvements upon the Demised Premises, made by any party, including, without limitation, all pipes, ducts, conduits, wiring, paneling, partitions, railings, mezzanine floors, galleries and the like shall become the property of Landlord when installed and shall remain upon and be surrendered with the Demised Premises as a part thereof at the expiration or sooner termination of the Term. Movable trade fixtures and other personal property which Tenant installs at its own expense shall remain Tenant's property and may be removed at any time provided Tenant promptly repairs any damage caused by such removal.

**14.05. END OF TERM.** At the expiration or sooner termination of the Term, Tenant shall quit and surrender to Landlord the Demised Premises, broom clean and in good order and condition, ordinary wear and tear and damage by fire and any other casualty excepted. At such expiration or sooner termination Tenant shall remove all property of Tenant and of any persons claiming through or under Tenant, and Tenant shall repair all damage to the Demised Premises caused by such removal and restore the Demised Premises to the condition in which it was prior to the installation of the items so removed. Any property which remains in the Demised Premises after the expiration or sooner termination of the Term shall be deemed to have been abandoned and either may be retained by Landlord as its property or may be stored or disposed of as Landlord may see fit. If such property not so removed is sold, Landlord may receive and retain the proceeds of such sale and apply the same, at its option.



against the expenses of the sale, moving and storage, arrears of Rent and Additional Rent and any damages to which Landlord may be entitled. Any excess proceeds shall be the property of Landlord. Any expense incurred by Landlord in removing, storing or disposing of such property shall be reimbursed to Landlord out of the excess proceeds or, if not sufficient, by Tenant as Additional Rent on demand.

**14.06. WAIVER OF JURY TRIAL AND RIGHT TO COUNTERCLAIM.** Landlord and Tenant shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Demised Premises, and any emergency or other statutory remedy. Tenant further agrees that it shall not interpose any counterclaim(s) in a summary proceeding or in any action based on holdover or non-payment of Rent and/or Additional Rent.

**14.07. NO WAIVER.** No consent, approval or waiver, express or implied, by Landlord or Tenant to or of any breach of any covenant, agreement or obligation of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, agreement or obligation unless in each case so stated in a writing signed by Landlord or Tenant, whichever the case may be.

**14.08. QUIET ENJOYMENT.** Landlord covenants that Tenant, on paying the Rent and Additional Rent and performing Tenant's obligations under this Lease, shall peacefully and quietly have, hold and enjoy the Demised Premises and the Common Areas throughout the Term without hindrance, ejection or molestation by any person lawfully claiming under Landlord, subject to the terms and provisions of this Lease and to all mortgages and ground and underlying leases of record to which this Lease may be or become subject and subordinate.

**14.09. ESTOPPEL CERTIFICATES.** Landlord and Tenant shall, at any time and from time to time, within 10 business days following notice by the other party, execute, acknowledge and deliver to the party which gave such notice a statement in writing certifying that this Lease is unmodified and in full force and effect, or if there shall have been any modification(s) that the same is in full force and effect as modified and stating the modification(s), and the date to which the Rent and Additional Rent have been paid in advance, and stating whether or not to the best of knowledge of the signer of such certificate the other party is in default hereunder, and, if so, specifying each such default. Tenant shall also, at any time and from time to time, within 10 business days following notice by Landlord or any present or prospective mortgagee or prospective purchaser of the Shopping Center or Landlord's interest therein, execute, acknowledge and deliver to Landlord or any such mortgagee or prospective purchaser an estoppel certificate in form and content satisfactory to any such mortgagee or prospective purchaser.

**14.10. UNAVOIDABLE DELAYS.** The time of Landlord to perform any of its obligations hereunder shall be extended if and to the extent that the performance thereof shall be prevented due to any strikes, lockouts, civil commotions, warlike operations, invasions, rebellions, hostilities, military or usurped power, governmental regulations or controls, inability to obtain labor or materials despite due diligence, acts of God, or other causes beyond the control of Landlord.

**14.11. NOTICES.** Any notice, demand, waiver, approval or consent hereunder shall be in writing and shall be deemed duly served if mailed by registered or certified mail in any post office station or letter box in the continental United States, return receipt requested, (a) if to Tenant to Tenant at Tenant's address set forth herein or such other address as Tenant shall have last designated by notice to Landlord, and (b) if to Landlord to Landlord in duplicate, with one copy to Landlord and one copy to Managing Agent, each at the address of such person set forth herein or such other address as Landlord shall have last designated by notice to Tenant. Such notice, demand, waiver, approval or consent shall be deemed served when mailed.

**14.12. BROKERAGE.** Tenant represents that it has had no dealings with any broker or agent in connection with this Lease and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs, expenses and liabilities for any compensation, commissions and charges claimed by any broker or agent in respect of this Lease or the negotiation thereof with whom Tenant is claimed to have had dealings.

**14.13. RECORDING LEASE.** Tenant shall not record this Lease or any memorandum of lease or other instrument in connection with this Lease.

**14.14. WAIVER OF LANDLORD'S LIABILITY.** Notwithstanding any provision to the contrary, Tenant shall look solely to the equity of Landlord in and to the Shopping Center (or the proceeds received by Landlord on a sale of such estate and property but not the proceeds of any financing or refinancing thereof) in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Demised Premises, and Tenant agrees that the liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's

use of the Demised Premises, shall be limited to such estate and property of Landlord (or sale proceeds). No other properties or assets of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of, or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Demised Premises, and if Tenant shall acquire a lien on or interest in any other properties or assets by judgment or otherwise, Tenant shall promptly release such lien on or interest in such other properties and assets by executing, acknowledging and delivering to Landlord an instrument to that effect prepared by Landlord's attorneys. Tenant hereby waives the right of specific performance and any other remedy allowed in equity if specific performance or such other remedy could result in any liability of Landlord for the payment of money to Tenant or any court or governmental authority (by way of fines or otherwise) for Landlord's failure or refusal to perform or observe a judicial decree or determination.

**14.15. SUCCESSORS AND ASSIGNS.** The provisions of this Lease, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns. In the event of any sale or transfer of the fee of any premises which includes the Demised Premises (other than a sale with a leaseback to the grantor) or any assignment of any ground or underlying lease of any premises which includes the Demised Premises, the grantor, transferor or assignor, as the case may be, shall be and hereby is entirely relieved and freed of all obligations under this Lease.

**14.16. CONSENTS AND APPROVALS.** In the event that Tenant shall seek the consent of or approval by Landlord and Landlord shall fail or refuse to give such consent or approval in respect of any matter where Landlord is required, either by the provisions of this Lease or by law, not to unreasonably withhold its consent or approval, Tenant shall not be entitled to any damages for any withholding or delay of such consent or approval by Landlord, it being intended that Tenant's sole remedy shall be an action for injunction or specific performance to require such consent or approval.

**14.17. WHEN LEASE IS BINDING.** Submission by Landlord of this Lease for review and/or execution by Tenant shall not confer any rights or impose any obligations on either party unless and until both Landlord and Tenant execute this Lease and duplicate originals thereof are delivered to the respective parties.

**14.18. NO PARTNERSHIP.** Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any relationship between the parties other than that of a landlord and a tenant.

**14.19. INTERPRETATION.** Irrespective of the place of execution or performance, this Lease shall be governed by and construed in accordance with the laws of the state where the Shopping Center is located. If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. The table of contents, captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. If any words or phrases in this Lease shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Lease shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Lease and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. Each covenant, agreement, obligation or other provision of this Lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making same, not dependent on any other provision of this Lease unless otherwise expressly provided. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

**14.20. COMPLETE AGREEMENT.** No representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Lease have been made or given which are not fully expressed in this Lease. This Lease cannot be changed or terminated orally or in any manner other than by a written agreement executed by both parties.

**14.21. COUNTERPARTS.** This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute but one Lease.

**14.22. CORPORATE TENANT.** If Tenant is a corporation, the execution of this Lease by Tenant constitutes a certification by the officer executing on Tenant's behalf that (a) such officer is a duly appointed officer of Tenant and the incumbent in the office indicated under the officer's name, (b) Tenant is duly organized and validly existing and is in good standing under the laws of the state of its incorporation, (c) Tenant is qualified to do business and is in good standing in the state in which the Shopping

Center is located, and (d) Tenant has full power and authority to enter into this Lease and the officer is authorized to execute this Lease and bind Tenant.

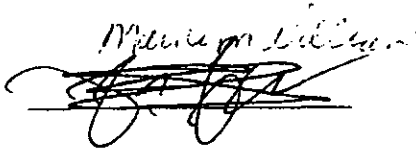
IN WITNESS WHEREOF, Landlord and Tenant have hereunto executed this Lease as of the day and year first above written.

EAST/ASHLEY STEWART  
031999

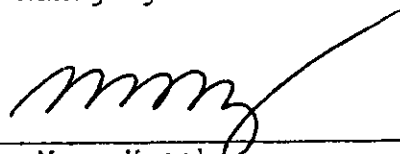
EASTPOINT PARTNERS, L.P.  
doing business in the state of Maryland  
as "Eastpoint Partners Limited  
Partnership")

By: Shopco 048 LLC,  
General partner  
By: EPM 048 Corp.,  
Managing Member

WITNESS:



By:

  
\_\_\_\_\_  
Marc Yassky  
President

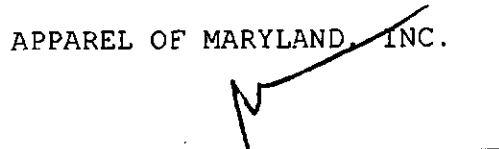
**LANDLORD**

WITNESS/ATTEST:

LARGE APPAREL OF MARYLAND, INC.

  
\_\_\_\_\_  
Jeffrey A. Klein, Secretary

By:

  
\_\_\_\_\_  
Joseph J. Sitt, President

**TENANT**

EM/ASHLEY STEWART  
062899

**CORPORATE TENANT**

STATE OF New Jersey )  
 ) to wit:  
COUNTY OF Hudson )

I HEREBY CERTIFY that on this 13<sup>th</sup> day of September, 1999 before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Joseph J. Sitt, who acknowledged him/herself to be President of LARGE APPAREL OF MARYLAND, INC., a Maryland corporation and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

IT WITNESS WHEREOF I hereunto set my hand and official seal.

Paula Losito  
Notary Public

**PAULA LOSITO**  
Notary Public, State of New Jersey  
I.D. #2228141  
Qualified in Passaic County  
My Commission Expires August 2, 2004

**LIMITED PARTNERSHIP LANDLORD**

STATE OF NEW YORK )  
 ) to wit:  
COUNTY OF NEW YORK )

I HEREBY CERTIFY that on this 19<sup>th</sup> day of October, 1999, before me, the subscriber, a Notary Public of the State of New York, personally appeared Marc Yassky, who acknowledged himself to be President of EPM 048 Corp., a New York corporation ("Corporation"), which Corporation is the Managing Member of Shopco 048 Corp., a Delaware limited liability company, which company is a General Partner of EASTPOINT PARTNERS, L.P., A New York limited partnership ("Limited Partnership"), and that he, as such President, being authorized so to do, executed the foregoing instrument to be the act and deed of said Limited Partnership, for the purposes therein contained, and that he executed the same in his capacity, and that by his signature on the instrument, said Limited a Partnership upon behalf of which Marc Yassky acted, executed the instrument.

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

**JOAN PINSKER**  
Notary Public, State of New York  
I.D. #144732256  
Qualified in Richmond County  
My Commission Expires MAY 31, 2000

Joan Pinsker  
Notary Public

**GUARANTY**

This Guaranty is an integral part of the lease (herein called "Lease") to which this Guaranty is attached, and the definitions of words and phrases in Section 1.01 and Section 1.02 of the Lease shall apply in this Guaranty. In order to induce Landlord to enter into the Lease, Guarantor agrees with Landlord as follows:

1. Guarantor unconditionally guarantees the due and punctual payment of all Rent, Additional Rent and damages (whether current damages or final damages as provided for in the Lease or otherwise allowed by law). Such guaranty is an absolute, unconditional, continuing guaranty of payment and not of collectibility, and is in no way conditioned or contingent upon any attempt to collect from Tenant or upon any other condition or contingency.
2. Guarantor further unconditionally guarantees the due and punctual performance of and compliance with all other covenants, agreements, terms and conditions of the Lease required to be performed or complied with by Tenant.
3. Guarantor will pay all costs and expenses (including, without limitation, attorneys' fees and expenses of employees) incurred by or on behalf of Landlord in enforcing the obligations of Guarantor under this Guaranty.
4. Guarantor will not directly or indirectly sell, lease or otherwise dispose of all or substantially all of its properties or assets, or consolidate with or merge into any other corporation, or permit any other corporation to consolidate with or merge into it, unless (a) the acquiring or surviving person shall be a corporation and (if other than Guarantor) shall expressly assume in writing all obligations of Guarantor under this Guaranty, and (b) immediately after giving effect to such transaction (and such assumption), no default shall exist under this Guaranty.
5. The obligations of Guarantor under this Guaranty shall be absolute and unconditional, shall not be subject to any counterclaim, set-off, deduction or defense based upon any claim Guarantor may have against Landlord and shall remain in full force and effect without regard to, and shall not be released, discharged or terminated or in any other way affected by, any circumstance or condition (whether or not Guarantor shall have any knowledge or notice thereof), including, without limitation: (a) any amendment, modification, extension or renewal of the Lease (except that the

EM/ASHLEY STEWART  
062899

liability of Guarantor hereunder shall be deemed to apply to the Lease as so amended, modified, extended or renewed); (b) any exercise or non-exercise by Landlord of any right, power or remedy under or in respect of the Lease, or any waiver, consent, indulgence or other action, inaction or omission under or in respect of the Lease; (c) any assignment, sale, sublease, surrender, forfeiture, re-entry, re-letting or other transfer in respect of the Lease or any or all of or any interest in the Shopping Center by Landlord or Tenant; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding involving or affecting Tenant or Landlord or their properties or creditors, or any action taken with respect to the Lease, including, without limitation, any rejection or disaffirmance of the Lease, by any trustee or receiver of Landlord or Tenant, or by any court, in any such proceeding; (e) any invalidity or unenforceability, in whole or part, of any term or provision of the Lease; or (f) any transfer by Guarantor of any or all of the capital stock of Tenant.

6. Guarantor unconditionally waives (a) notice of any of the matters referred to in Paragraph 5 hereof, (b) all notices which may be required by statute, rule of law or otherwise to preserve intact any right against Guarantor, including, without limitation, any demand, proof or notice of non-payment of any Rent, Additional Rent, or damages under the Lease, and notice of any failure on the part of Tenant to perform and comply with any covenant, agreement, term or condition of the Lease, (c) any right to the enforcement, assertion or exercise of any right, power or remedy conferred in the Lease or otherwise, (d) any requirement of diligence, and (e) any requirement to mitigate, by eviction of Tenant or otherwise, the damages resulting from a default of Tenant under the Lease.

7. Guarantor at its expense will execute, acknowledge and deliver all such instruments and take all such action as Landlord from time to time may reasonably request for the assuring to Landlord the full benefits intended to be created by this Guaranty.

8. Guarantor represents that the execution and delivery of this Guaranty has been duly approved by Guarantor's Board of Directors, that it has the legal right and capacity to do so and that the making of this Guaranty and the making of the Lease is in furtherance of the business purposes and is to the benefit of Guarantor.

9. This Guaranty shall continue in full force and effect throughout the term of the Lease and any extension thereof and thereafter so long as any obligation or liability of Tenant provided for in the Lease shall remain unperformed or unsatisfied (whether or not the Lease shall have terminated).

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062899

10. So long as this Guaranty shall continue in full force and effect, Guarantor (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor hereunder, (b) waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any payments or acts of performance in compliance with the obligations of Guarantor hereunder, and (c) subordinates any liability or indebtedness of tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.

11. If Guarantor consists of more than one person, the liability of said persons hereunder shall be joint and several.

12. Any notice or other communication hereunder shall be in writing and shall be deemed duly served if mailed by registered or certified mail in any post office station or letter box in the continental United States, return receipt requested, addressed if to Guarantor to it at the address of Guarantor set forth herein or such other address as Guarantor shall have last designated by notice to Landlord, and addressed if to Landlord to it at the address of Landlord set forth herein or such other address as Landlord shall have last designated by notice to Guarantor.

13. Guarantor shall and hereby does waive trial by jury in any action, proceeding or counterclaim brought by either it or Landlord against the other on any matters arising out of or in any way connected with this Guaranty.

14. This Guaranty shall inure to the benefit of and may be enforced by Landlord, its successors and assigns, and, in particular, shall inure to the benefit of and may be enforced by the then Landlord under the Lease; and this Guaranty shall be binding upon and be enforceable against Guarantor and its personal representatives, heirs and successors.

15. Irrespective of the place of execution or performance, this Guaranty shall be governed by and construed in accordance with the laws of the state where the Shopping Center is located. If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Guaranty and the application of this provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. This Guaranty shall be construed without regard to any presumption or other rule requiring construction against the party causing this Guaranty to be drafted. If any words or phrases in this Guaranty


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shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Guaranty shall be construed as if the words or phrases as stricken out or otherwise eliminated were never included in this Guaranty and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this Guaranty, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

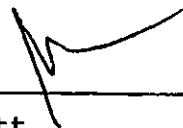
16. This Guaranty cannot be changed or terminated orally or in any manner other than by a written agreement executed by both parties.

ATTEST:

ASHLEY STEWART LTD.

  
Jeffrey A. Klein

By:

  
Joseph J. Sitt  
President

GUARANTOR

CORPORATE GUARANTOR

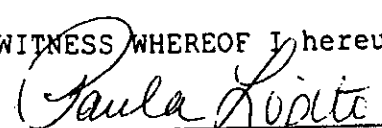
STATE OF

COUNTY OF

*New Jersey*,  
*Hudson* ) to wit:

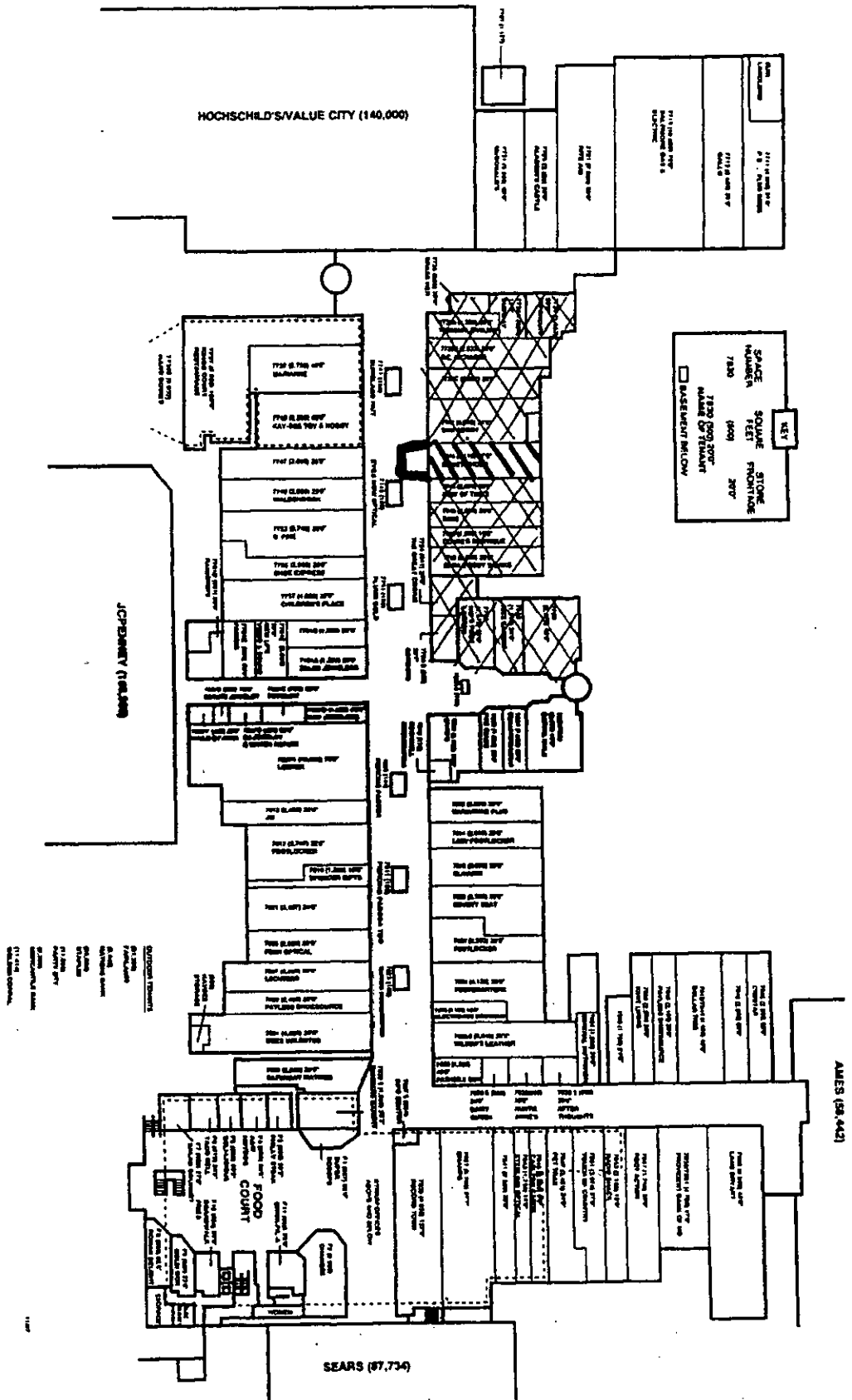
I HEREBY CERTIFY that on this *13<sup>th</sup>* day of *September*, 1999 before me, the subscriber, a Notary Public of the State of *New Jersey*, personally appeared *Joseph J. Sitt*, who acknowledged ~~her~~/himself to be ~~Vice~~ President of ASHLEY STEWART LTD., a Delaware corporation and that s/he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by her/himself as President.

IT WITNESS WHEREOF I hereunto set my hand and official seal.

  
Notary Public  
PAULA LOSITO  
Notary Public, State of New Jersey  
I.D. #2220141  
Qualified in Passaic County  
My Commission Expires August 2, 2004



# EASTPOINT MALL



LEGAL DESCRIPTION

Being all the tracts or parcels of land lying and being in the 15th District of Baltimore County, Maryland, more particularly described as follows:

TRACT 1

BEGINNING for the same at a point on the southeast side of Eastern Avenue (65 feet - 4 inches wide) where it is intersected by the west side of The Baltimore Gas and Electric Company Right of Way (205 feet wide), said point of beginning being identified by the coordinates (South 400.41 feet and East 30,952.63 feet) as referred to the Baltimore County Coordinate System and running thence binding on said Right of Way

- (1) South 00 degrees 20 minutes 25 seconds East 249.70 feet, thence at a right angle
- (2) North 19 degrees 39 minutes 35 seconds East 15.00 feet, thence
- (3) South 00 degrees, 20 minutes 25 seconds East 414.60 feet to the northmost side of the Baltimore City Sanitary Sewer Outfall Right of Way, thence binding thereon
- (4) by a line curving to the right with a radius of 913.00 feet the distance of 162.65 feet and a chord bearing North 71 degrees 26 minutes 58 seconds West 162.44 feet and
- (5) North 66 degrees 22 minutes 25 seconds West 182.00 feet to the west side of other land of The Baltimore Gas and Electric Company, thence binding on said land
- (6) South 00 degrees 20 minutes 25 seconds East 813.59 feet and
- (7) South 49 degrees 11 minutes 08 seconds East 464.89 feet to intersect the west side of The Baltimore Gas and Electric Company Right of Way (160 feet wide) thence binding thereon
- (8) South 00 degrees 20 minutes 25 seconds East 458.46 feet to the northeast side of North Point Boulevard as recently widened at its intersection with Merritt Boulevard, thence binding thereon
- (9) North 86 degrees 47 minutes 19 seconds West 39.56 feet to the northeast side of North Point Boulevard (130 feet wide), thence binding thereon
- (10) North 70 degrees 12 minutes 57 seconds West 103.55 feet

- North 19 degrees 47 minutes 03 seconds East 23.00 feet
- (12) North 70 degrees 12 minutes 57 seconds West 43.00 feet
- (13) South 19 degrees 47 minutes 03 seconds West 23.00 feet  
and
- (14) North 70 degrees 12 minutes 57 seconds West 2303.94 feet  
to the Eastern Avenue Interchange, thence binding thereon
- (15) North 00 degrees 46 minutes 11 seconds West 329.46 feet
- (16) North 37 degrees 01 minutes 19 seconds East 137.41 feet
- (17) North 66 degrees 07 minutes 10 seconds East 291.82 feet  
and
- (18) North 13 degrees 59 minutes 41 seconds West 16.45 feet  
to the southeast side of Eastern Avenue as widened to a  
varying width, thence binding thereon
- (19) North 67 degrees 00 minutes 36 seconds East  
181.89 feet
- (20) North 74 degrees 23 minutes 46 seconds East 157.60 feet
- (21) North 71 degrees 39 minutes 29 seconds East 160.07 feet
- (22) North 68 degrees 52 minutes 06 seconds East 163.20 feet
- (23) North 73 degrees 56 minutes 31 seconds East 163.16 feet
- (24) North 70 degrees 13 minutes 34 seconds East 160.00 feet
- (25) North 67 degrees 03 minutes 42 seconds East 217.39 feet
- (26) North 70 degrees 13 minutes 34 seconds East 316.40 feet
- (27) North 67 degrees 47 minutes 56 seconds East 141.68 feet
- (28) South 29 degrees 32 minutes 43 seconds East 26.00 feet  
and
- (29) North 60 degrees 27 minutes 17 seconds East 186.33 feet  
to the southeast side of Eastern Avenue (65 feet - 4  
inches wide) thence binding thereon
- (30) North 70 degrees 13 minutes 34 seconds East 199.03 feet  
to the place of beginning.

TRACT 2

BEGINNING for the same at a point on the north side of the off ramp leading from Merritt Boulevard to the west-bound lane of North Point Boulevard where said ramp is intersected by the east side of a 160 foot wide Baltimore Gas and Electric Company right of way, and running thence binding on the east side of said right of way,

- (1) North 00 degrees 20 minutes 25 seconds West 318.69 feet, thence leaving said right of way,
- (2) South 49 degrees 11 minutes 08 seconds East 16.50 feet,
- (3) South 68 degrees 28 minutes 34 seconds East 47.85 feet,
- (4) South 79 degrees 56 minutes 34 seconds East 90.50 feet,
- (5) North 80 degrees 41 minutes 26 seconds East 48.73 feet to said off-ramp of Merritt Boulevard, thence binding thereon,
- (6) South 05 degrees 03 minutes 40 seconds East 24.43 feet,
- (7) South 75 degrees 03 minutes 12 seconds East 55.00 feet,
- (8) South 11 degrees, 51 minutes 03 seconds West 80.83 feet,
- (9) South 12 degrees, 09 minutes 34 seconds West 43.25 feet,
- (10) South 19 degrees, 18 minutes 45 seconds West 111.09 feet,
- (11) by a line curving to the right with a radius of 180.00 feet the distance of 100.57 feet and a chord bearing South 76 degrees 50 minutes 54 seconds West 99.26 feet and
- (12) North 86 degrees 47 minutes 19 seconds West 88.65 feet to the place of beginning.

Containing 1.43 acres of land more or less.

## CONSTRUCTION AGREEMENT

1. The provisions contained in this Exhibit are an integral part of this Lease, and the definitions of words and phrases in Section 1.01 and Section 1.02 of this Lease shall apply in this Exhibit. Only the following Sections of this Lease shall apply during the period from the date hereof to the Commencement Date: 2.02, 3.05, 3.07, 3.08, 6.04, 6.05, 6.06, 6.07, 6.08, 7.01, 7.02, 7.03, 7.04, 8.01, 8.03, 8.04, 9.01, 9.02, 9.03, 9.04, 10.01, 10.02, 10.03, 10.04, 12.01, 13.01, 13.02, 13.03, 13.04, 13.05, 14.01, 14.02, 14.04, 14.06, 14.07, 14.09, 14.10, 14.11, 14.12, 14.13, 14.14, 14.15, 14.16, 14.17, 14.18, 14.19, 14.20, 14.21 and 14.22. The provisions of this Exhibit shall apply prior to the Commencement Date as well as during the Term.

2. As used in this Exhibit, (a) the words "Tenant's Work" shall mean any work that Tenant does in or to the Demised Premises, whether before or after the Commencement Date (including, without limitation, "Initial Tenant Work"); (b) the words "Initial Tenant Work" shall mean all of the work, if any, described in Paragraph 5 of this Exhibit and all of the work, if any, required by the second sentence of Section 7.05 of this Lease; and (c) the words "Landlord's Work" shall mean, to the extent not completed by the date of this Lease, the basic structure of the building (herein called the "Building") in which the Demised Premises shall be located, and all of the other work, if any, to be done by Landlord that is described in Paragraph 4 of this Exhibit and any other work that is required by any other provisions of this Exhibit to be done by Landlord. The Landlord's Work shall be substantially in accordance with plans and specifications prepared by Landlord's architect (herein called the "Landlord's Architect"). The Landlord's Work shall be deemed approved by Tenant in all respects upon the Commencement Date except for items of the Landlord's Work which are not substantially completed and as to which Tenant shall have given notice to Landlord within 30 days after the Commencement Date. The proposed locations of the buildings and other improvements in the Shopping Center are shown on Exhibit A. Notwithstanding any provision to the contrary, however, the location, type, shape, area, height and number of stories of the buildings and improvements in the Shopping Center, including, without limitation, the Demised Premises and the Building, and the nature of any occupants of any part of the Shopping Center, shall all be subject to such changes as Landlord shall, at any time and from time to time, deem to be desirable for the benefit of the Shopping Center, provided that no change of the location, shape, area or height of the Demised Premises may be made after Tenant shall have commenced the Initial Tenant Work. The Landlord's Work and the Tenant's Work shall be performed in a first-class workmanlike manner and all materials shall be of first-class quality. The Landlord's Work and the Tenant's Work shall be in compliance with the Legal and Insurance Requirements. All of the Landlord's Work shall be done by Landlord at its sole cost and expense, except that in connection with the Initial Tenant Work Tenant shall pay to Landlord on demand the sums, if any, described in Paragraph 11 of this Exhibit. The Tenant's Work and all other obligations of Tenant in this Exhibit shall be done, observed or performed by Tenant at its sole cost and expense, except that notwithstanding any provision to the contrary, in connection with the Initial Tenant Work Landlord shall have the right to do for the account of Tenant the work, if any, described in Paragraph 12 of this Exhibit and Tenant shall pay to Landlord on demand the sums, if any, described in Paragraph 12 of this Exhibit.

3. Before Tenant commences to do any Tenant's Work (and in the case of any Initial Tenant Work, within 30 days after the date hereof), Tenant shall submit to Landlord for approval four sets of plans and specifications for the Tenant's Work conforming with the provisions of this Exhibit. Landlord shall promptly review such plans and specifications and shall promptly submit to Tenant a statement of any objections thereto. Tenant shall make necessary revisions to remedy such objections and resubmit revised plans and specifications within 20 days after such statement. Such procedure shall be repeated until the plans and specifications are approved by Landlord. If any of the provisions of this Exhibit conflict with the plans and specifications for the Tenant's Work (whether or not approved by Landlord), including, without limitation, any conflict as to which work is to be done by Tenant and which work is to be done by Landlord, such conflict shall be resolved in every instance in favor of the provisions of this Exhibit. The Tenant's Work shall be substantially in accordance with the approved plans and specifications for such Tenant's Work. Tenant shall file all drawings, plans and specifications and shall pay all fees and obtain all permits and applications to comply with the Legal and Insurance Requirements in connection with any Tenant's Work. When any Tenant's Work is completed, Tenant shall also obtain (and in such cases Tenant shall furnish to Landlord) a permanent certificate of occupancy and all other approvals that are required by the Legal and Insurance Requirements for the use and occupancy of the Demised Premises. Tenant shall employ a contractor satisfactory to Landlord to do the Tenant's Work. Each contractor and subcontractor participating in the Tenant's Work shall be required to obtain approval from Landlord for using any space within the Shopping Center for storage, for handling and moving of materials and equipment and for any field office or other facilities for personnel. Tenant shall make appropriate arrangements with Landlord for temporary heat, water, electricity and other utilities and connections therefor during the period when Tenant is doing any Tenant's Work. In doing the Tenant's Work, Tenant and its contractors and subcontractors shall not at any time damage, injure or interfere with any persons or property in the Shopping Center or delay the completion of any other work in the Shopping Center, and they and each of them shall comply with all procedures prescribed by Landlord for coordination of any Tenant's Work with any other activities or work in the Shopping Center. Tenant shall not permit any union conflict to arise in connection with any Tenant's Work. Tenant shall take all reasonable steps to protect the Tenant's Work from damage or destruction and to protect all other work and improvements in the Shopping Center from and against damage arising out of the doing of any Tenant's Work. At least once a week when Tenant is doing any

Tenant's Work and more frequently as Landlord may direct. Tenant shall remove and dispose of all debris and rubbish caused by or resulting from any Tenant's Work, and upon completion of any Tenant's Work, Tenant shall remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining on any part of the Shopping Center brought in connection with, or created in the performance of, any Tenant's Work. Before Tenant commences to do any Tenant's Work which will cost more than \$50,000 (exclusive of the costs of decorating work), as estimated, at Tenant's expense, by a reputable contractor reasonably satisfactory to Landlord, Tenant shall obtain and deliver to Landlord such surety bonds and or other security as shall be satisfactory to Landlord and the lessor(s) of any ground or underlying lease(s) and the mortgagee(s) of any mortgage(s) covering the Shopping Center or any part thereof. Tenant shall make all payments when due for any Tenant's Work, whether to contractors, subcontractors or others, and shall furnish evidence satisfactory to Landlord at the completion of any Tenant's Work that such work has been completed and paid for in full and that no liens for labor or materials have been filed, or, if any have been filed, they have been discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise). When any Tenant's Work is completed, Tenant shall furnish to Landlord one set of transparent "as-built" plans and one set of specifications for such Tenant's Work prepared and sealed by Tenant's architect and a statement in writing by Tenant's architect certifying the actual cost of such Tenant's Work exclusive of the cost of trade fixtures and other personal property of Tenant.

4. To the extent not completed by the date hereof, the Landlord's Work shall include the furnishing and installing of the following: (a) structural columns and beams, (b) roof, (c) roof drains, (d) stud or masonry or a combination of stud and masonry, at Landlord's option, partitions and/or walls limited, however, to exterior walls, walls between the Demised Premises and the Common Areas, and walls between the Demised Premises and the premises of any other tenant or occupant (without lath, plaster, drywall or other wall surfaces or wall finishes and without storefront, storefront-type work, windows and doors), (e) electricity to a central switching location designated by Landlord, which electricity will be, at Landlord's option, 120/208 volts, or 277/480 volts, alternating current, adequate for a power and lighting load of 5.5 watts per square foot of Floor Space in the Demised Premises (and no power and lighting loads in excess of 5.5 watts per square foot of Floor Space in the Demised Premises will be permitted without Landlord's prior approval, and if Tenant is permitted such loads in excess of the stated maximum, Tenant shall pay to Landlord on demand in reimbursement for Landlord's additional capital costs the amount which is \$.02 for each additional one-tenth of a watt per square foot of Floor Space in the Demised Premises multiplied by the Floor Space in the Demised Premises), (f) a 3/4-inch branch water main (without a water meter) to a location designated by Landlord in the Demised Premises, but Tenant shall make all necessary applications for the supply of water, (g) a plugged 4-inch sanitary outlet at a location designated by Landlord beneath the ground floor of the Demised Premises (but Tenant shall connect to same at its own cost and expense), (h) an automatic fire sprinkler system, (i) all components of the heating, ventilating and air conditioning systems (except for the wiring of any volume box and/or heating coil or similar installation), and (j) if all or any part of the Demised Premises is on the second floor level, if any, of the Shopping Center, a troweled second floor slab.

5. To the extent not completed by the date hereof, the Initial Tenant Work shall include all work in addition to the Landlord's Work to finally complete the Demised Premises for the Permitted Uses, including, without limitation, the furnishing and installing of the following: (a) if all or any part of the Demised Premises is on the ground floor level of the Shopping Center, a troweled concrete ground floor slab, (b) all walls and partitions except for the walls and partitions to be furnished and installed by Landlord (all walls and partitions to be fire-resistant), (c) wall surfaces and wall finishes, (d) storefronts (which storefronts shall be fire-resistant), (e) security for entrances and exits (including, in the case of the "open front" portion of the storefront, roll-up grilles and/or sliding or folding glass doors), (f) ceilings (which, unless Landlord elects otherwise, shall be not more than 11 feet above the floor slab), including, without limitation, adequate non-combustible suspension systems and non-combustible acoustic tiles (but same shall not interfere with any work installed by Landlord above such acoustic tiles), (g) floor coverings and floor finishes (including recesses for special floor finishes), (h) partitions, (i) doors (including any emergency exit doors in locations, if any, designated by Landlord), (j) door frames and hardware, (k) plumbing and plumbing fixtures, including, without limitation, all lavatory fixtures, piping, valves and other appurtenances for the water supply system from the branch water main provided by Landlord, (l) hot water heater, and (m) all electrical work and electrical fixtures, including, without limitation, meter, distribution, lighting, and power panels, conduits (including utility conduits for telephone wires), outlets and outlet boxes, switches, lighting fixtures, fire protection and burglar alarms and time clocks.

6. If the Shopping Center was not substantially open for business by the date hereof, Tenant shall commence the Initial Tenant Work by the 30th day after Landlord's notice to Tenant that the Building will, within 30 days after said notice be completed to an extent that the Initial Tenant Work can, in accordance with good construction practice, be commenced, and Tenant shall complete the Initial Tenant Work within 90 days after said notice. If the Shopping Center was substantially open for business by the date hereof, Tenant shall commence the Initial Tenant Work promptly and Tenant shall complete the Initial Tenant Work within 45 days of the date hereof. Tenant shall open the Demised Premises for business upon completion of the Initial Tenant Work, except that if the Shopping Center was not substantially open for business by the date hereof and Landlord shall so request, Tenant shall not open the Demised Premises for business before the date designated by Landlord for the joint

opening of the whole or a substantial part of the Shopping Center. If the Shopping Center was not substantially open for business 9  
by the date hereof, the Commencement Date shall be the earlier to occur of (a) the 90th day after the notice referred to in the 10  
first sentence of this Paragraph, subject to extension of said date at Landlord's request until the date designated by Landlord for 11  
the joint opening of the whole or a substantial part of the Shopping Center, or (b) the day on which Tenant opens for business 12  
in any part of the Demised Premises. If the Shopping Center was substantially open for business by the date hereof, the 13  
Commencement Date shall be determined as provided in *Paragraph B of Section 1.01* of this Lease. When the Commencement 14  
Date shall have been determined, Tenant shall, upon request of Landlord, execute, acknowledge and deliver to Landlord a 15  
statement in writing and in recordable form stating on what date the Commencement Date occurred and on what date the Term 16  
shall expire, certifying that Tenant is in possession of the Demised Premises and is paying the Rent and Additional Rent, 17  
certifying that Tenant has no claims, defenses, offsets or counterclaims against Landlord, or specifying each such claim, defense, 18  
offset or counterclaim which Tenant may have, and stating the actual number of square feet of Floor Space in the Demised 19  
Premises, as certified by Landlord's Architect, and the exact amount of the Fixed Rent. Said statement, when so executed, 20  
acknowledged and delivered, will be deemed to be incorporated in and become a part of this Lease. In any event, Tenant shall 21  
also execute, acknowledge and deliver to Landlord, upon request of Landlord, an estoppel certificate in form and content 22  
satisfactory to any present or prospective mortgagee. If the Shopping Center was not substantially open for business by the date 23  
hereof and the notice referred to in the first sentence of this Paragraph is not given by the January 1st next following the date 24  
which is five years after the date hereof (subject to extensions of said date as provided in *Section 14.10* of this Lease), either 25  
party shall have the option after said date but only so long as said notice shall not have been given, to terminate this Lease upon 26  
notice to the other party, and upon such notice this Lease shall be of no further force or effect and neither party shall have any 27  
liability under this Lease to the other. 28

7. If Tenant fails or omits to make timely submission to Landlord of any plans or specifications required by the provisions 1  
of this Exhibit or to perform or complete the Initial Tenant Work or any Tenant's Work, or if Tenant in any manner damages, 2  
injures, interferes with or delays the performance of the Landlord's Work, same shall constitute a default by Tenant, and 3  
Landlord, in addition to any right or remedy it may have at law or in equity, may do any one or more of the following: 4

(a) Landlord may exercise any right or remedy provided under *Article XIII* of this Lease for an Event of Default; and/or 1

(b) Landlord may proceed with the completion of any such plans or specifications or with the completion of the Tenant's 1  
Work and such performance by Landlord shall be deemed the curing by Landlord of a default of Tenant as provided in *Section* 2  
*13.05* of this Lease and shall be governed by the provisions of said Section; and/or 3

(c) if the failure, omission, damage, injury, interference or delay would have delayed the occurrence of the Commencement 1  
Date, Landlord may require that the Commencement Date shall occur on the day when it would have occurred had Tenant 2  
not committed such failure, omission, damage, injury, interference or delay. 3

8. Tenant shall maintain the following insurance from the date hereof to the Commencement Date and during any time when 1  
Tenant is doing any Tenant's Work: (a) comprehensive general public liability insurance in respect of the Demised Premises, 2  
including contractual liability insurance insuring the indemnity set forth in *Paragraph 9* of this Exhibit, with Landlord as an 3  
additional named insured, and at Landlord's request with the lessor(s) of any ground or underlying lease(s) and the mortgagee(s) 4  
of any mortgage(s) covering the Shopping Center or any part thereof as additional named insured(s), with limits of not less than 5  
\$3,000,000 combined single limit for bodily injury or death and property damage in any one occurrence, and (b) statutory 6  
workmen's compensation insurance and statutory employer's liability insurance with limits of not less than \$100,000. Tenant 7  
shall deliver to Landlord and any additional named insured(s) certificates for such fully paid-for policies within five days after 8  
the date hereof and in any event before commencing any Tenant's Work. Tenant shall procure and pay for renewals of such 9  
insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional named 10  
insured(s) certificates therefor at least 30 days before the expiration of any existing policy. The policy of comprehensive general 11  
public liability insurance shall not contain any provisions for exclusion for explosion, collapse or underground coverage, or for 12  
any exclusion as to property in the care, custody or control of the insured. The policy or certificate of comprehensive general 13  
public liability insurance shall contain the following endorsement: 14

Includes contractual coverage for liability assumed under *Exhibit C* to Lease dated [date of Lease], between [name of 1  
Landlord], as Landlord, and [name of Tenant], as Tenant. 2

All such policies shall be issued by companies of recognized responsibility licensed to do business in the state where the Shopping 1  
Center is located, and all such policies shall contain a provision whereby the same cannot be cancelled unless Landlord and any 2  
additional insured(s) are given at least 30 days' prior written notice of such cancellation. Tenant shall have the right to provide 3  
any insurance maintained or caused to be maintained by it under blanket policies. 4

9. Tenant shall defend and indemnify Landlord and at Landlord's request the lessor(s) of any ground or underlying lease(s) and the mortgagee(s) of any mortgage(s) covering the Shopping Center or any part thereof and shall hold Landlord and such lessor(s) and mortgagee(s) harmless from and against any and all injuries, losses, claims, actions, damages, liabilities and expenses (including attorneys' fees and expenses) to persons or property arising out of or resulting from the performance of any Tenant's Work, whether or not attributable to active or passive negligence on the part of Landlord or such lessor(s) or mortgagee(s) and whether or not Landlord or such lessor(s) or mortgagee(s) participated in any wrong. No approval by Landlord or the Landlord's Architect will excuse or release Tenant from its obligations under this Paragraph 9.

10. In the event of damage by fire or other occurrence in the Shopping Center prior to the Commencement Date, the provisions of Article XI of this Lease shall apply except that if this Lease is not terminated, Landlord shall, promptly after receipt of the insurance proceeds for such damage, proceed with the restoration of the Landlord's Work in the Demised Premises and Tenant shall proceed with the restoration of the Initial Tenant Work and the restoration or replacement of its stock in trade, trade fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property of Tenant and decorations in and around the Demised Premises, and Tenant shall be entitled, subject to the rights of any mortgagee(s), to the portion of the insurance proceeds for such damage reasonably attributable to the Initial Tenant Work.

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031999

11. Items of Landlord's Work or other work of Landlord for which Tenant shall reimburse Landlord are as follows: None.

12. Items of Tenant's Work which Landlord shall have the right to do for the account of Tenant and for which Tenant shall reimburse Landlord are as follows: None

13. In addition to Tenant's storefront sign, Landlord hereby consents that Tenant may install an additional interior back-lit sign near the storefront stating "SIZES 14-28".



EM/ASHLEY STEWART  
062899

RIDER ATTACHED TO AND FORMING PART OF  
THE LEASE DATED , 1999, BETWEEN  
EASTPOINT PARTNERS, L.P.

(doing business in the State of Maryland as  
"Eastpoint Partnership Limited Partnership") AS LANDLORD  
AND LARGE APPAREL OF MARYLAND, INC. AS TENANT

1. If any of the provisions of this Rider shall conflict with any of the other provisions, printed or typewritten, of this Lease, such conflict shall be resolved in every instance in favor of the provisions of this Rider.

2. (Section 1.01A) A. If, pursuant to the provisions in Paragraph A of Section 1.01 of this Lease, the Commencement Date occurs during the period November 1 through February 28 or June 1 through July 31 (whichever is applicable, herein the "Slack Period") then, the Commencement Date shall not occur, nor shall Tenant be required to open the Demised Premises for business, until the day following the Slack Period in question. LAS

3. (Section 1.01C) Tenant or Landlord may, within 90 days of the date of this Lease, have a licensed architect measure the Demised Premises for purposes of determining the amount of Floor Space contained therein (as used hereafter, whichever of Landlord or Tenant requests the remeasurement shall be deemed the "Remeasuring Party", and the other shall be deemed the "Other Party"). Such measurement shall be done at the Remeasuring Party's sole cost and expense. If the amount of Floor Space in the Demised Premises as determined by such measurement differs from the amount in Section 1.01C of this Lease, then the Remeasuring Party shall so notify the Other Party in writing of the findings of said measurement. The Other Party shall have 30 days in which to notify the Remeasuring Party that the Other Party either agrees or disagrees with the Remeasuring Party's measurement; if the Other Party notifies the Remeasuring Party that it agrees with said measurement, then the amount of Floor Space in the Remeasuring Party's notice shall be deemed to replace the amount in said Section 1.01C. If the Other Party notifies the Remeasuring Party that it disagrees with its said measurement, the Other Party shall in its notice to the Remeasuring Party set forth the name of one impartial architect to serve as an arbitrator. The Remeasuring Party shall, within 10 days after such notice, notify the Other Party of the name of an impartial architect to serve as another arbitrator. The two persons so selected shall select a third impartial architect and the three architects so chosen shall reach a decision or decisions as to the correct amount of Floor Space in the Demised Premises as soon as practicable. The decision(s) of a majority of the architects shall be binding upon the Other Party and the Remeasuring Party and shall become effective on the date the three said architects together give notice of their decision(s) to the Other Party and the Remeasuring Party, and the amount of Floor Space in the Demised Premises according to such architects' notice shall replace the amount of Floor Space in said

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Section 1.01C. In any event, until the notice referred to in the previous sentence is given, the Demised Premises shall be deemed to contain 2,700 square feet of Floor Space.

L.A.S.

4. (Section 1.02F) Common Area Costs shall be deemed to exclude the following:

- (a) the initial cost of construction of the Shopping Center or any part thereof;
- (b) wages, salaries or other compensation paid to any executive employees above the grade of mall manager, or off-site overhead, management or administrative expenses;
- (c) brokerage fees and commissions incurred in connection with the sale or leasing of space in the Shopping Center;
- (d) such portion of any expense for which Landlord is entitled to reimbursement by insurance proceeds, condemnation awards, other tenants, or any other source above any applicable deductibles;
- (e) repairs and maintenance (including roof replacement) performed in a tenant's exclusive space and not in the Common Areas [except in cases where the item being repaired benefits the common Areas (such as, for example, the repair of an air conditioning duct in the Demised Premises which services the Common Areas)];
- (f) depreciation and amortization of debt or interest on any mortgage of Landlord or of rental under any ground or underlying lease;
- (g) reserves for future expenses;
- (h) costs and expenses of enforcing lease provisions against other tenants in the Shopping Center, including legal fees;
- (i) costs incurred due to defaults by Landlord under the terms of any lease of space in the Shopping Center or of any ground lease or mortgage to which this Lease is subordinate beyond applicable notice and grace periods to the extent such costs would not have constituted Common Area Costs if incurred by Landlord in the absence of such defaults;
- (j) costs incurred due to construction defects;
- (k) any costs incurred in connection with the removal of any Hazardous Materials from the Shopping Center;
- (l) costs incurred by Landlord which a tenant or tenants are required to repay to Landlord (other than through the contribution of a proportionate share of Common Area Costs or Real Estate Taxes) pursuant to the terms of their respective lease agreements;
- (m) overhead and profits paid to subsidiaries or affiliates of Landlord for management services (except as expressly provided herein to the contrary with respect to certain administrative expenses and except for payments to on-site managers) or materials to the extent that such overhead and profits would have been less had the services and materials been provided by unaffiliated parties on a competitive basis.

5. (Section 1.02L) Gross Sales shall be deemed to exclude

TOTAL P.03

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the following:

- (a) Bona fide, close-out or bulk sales of inventory to jobbers or wholesalers not in the ordinary course of Tenant's business;
- (b) sales to employees of Tenant or its parent company or affiliates at a discount provided Tenant makes nominal (less than two percent) or no profit on such discounted sales and provided such sales shall not exceed two percent of Tenant's aggregate Gross Sales (Excluding such discounted sales) per annum;
- (c) shipping charges separately stated;
- (d) proceeds of insurance or condemnation, if any;
- (e) the unpaid balance of any credit or check sale which is written off as uncollectible in accordance with generally accepted accounting practices provided, however, the same shall be included in Gross Sales if and to the extent that same are ever collected;
- (f) proceeds of the sale of moveable trade equipment or fixtures;
- (g) proceeds of sales from vending machines installed for the convenience of employees of Tenant;
- (h) lay-away sales, except to the extent of amounts actually received by Tenant, which shall be reported in the month in which such amount was received by Tenant;
- (i) charges for alterations to apparel sold at the Demised Premises, provided Tenant makes little or no profit on same;
- (j) refunds to customers on transactions resulting from the Demised Premises and which had been previously included in Gross Sales;
- (k) financing and credit card charges payable by Tenant to credit card companies;
- (l) finance charges on credit card sales payable to Tenant by Tenant's customers;
- (m) returns to vendors and shippers;
- (n) sums received in settlement of claims for damage or destruction to merchandise;
- (o) the exchange or transfer of inventory at no profit to Tenant between the Demised Premises and any store owned by Tenant or any parent, affiliate or subsidiary of Tenant, where such exchange or transfer is made for the convenient operation of Tenant's business and not for the purpose of avoiding a sale which would otherwise be included in Gross Sales.

6. (Section 1.02W) Real Estate Taxes shall not include any interest or penalties imposed by the assessing authority except if arising as a result of Tenant's late payment of Tenant's proportionate share thereof.

7. (Section 3.01) A. Notwithstanding anything in Section 3.01 of this Lease to the contrary, unless notified otherwise, Rent and Additional Rent shall be paid in the form of a check made payable

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to the order of First Union National Bank - Agent for Lender Account No. 2000001153569 and delivered to such bank at the following address:

If by regular mail:

Attention Capital Markets Group  
Structured Products Servicing  
GMAC COMMERCIAL MORTGAGE  
P.O. Box 601226  
Charlotte, North Carolina 28260-1226  
Ref: Eastpoint Partners, L.P.

If by overnight delivery:

GMAC COMMERCIAL MORTGAGE, Wholesale  
Lockbox/Structured Products Servicing  
1525 West W.T. Harris Blvd., Building 2C2  
Reference # 601226  
Charlotte, North Carolina 28262  
Ref: Eastpoint Partners, L.P.

8. (Section 3.02) A. All references to "calendar quarter" and "calendar year" in Section 3.02 of this Lease are hereby changed to "fiscal quarter" and "fiscal year", respectively; all references to "Short Term" in said Section 3.02 are hereby deleted; the words "December 31st" in line 12 of said Section 3.02 are hereby changed to "the last day of a fiscal year"; and the word "Full" in line 24 of said Section 3.02 is hereby deleted.

B. As used in said Section 3.02, the term "fiscal year" shall mean any 12-month period ending on a January 31st, except that the first fiscal year of the Term shall be the period from the Commencement Date through the next following January 31st; and the term "fiscal quarter" shall mean the period February 1 through April 30, the period May 1 through July 31, the period August 1 through October 31, or the period November 1 through January 31, as applicable.

C. The sentence beginning with the words "Landlord shall" in line 18 of Section 3.02 of this Lease is hereby changed to read as follows:

"Landlord shall have the right one time during each fiscal year upon at least 10 days prior notice to Tenant to inspect and audit all such books and records relating to the Gross Sales for the period in question and upon request of Landlord, Tenant each subtenant, concessionaire and licensee will produce the same at the place where Tenant maintains its records of Gross Sales for the Demised Premiss."

9. (Section 3.03) A. If the amount of square feet of occupied Floor Space in the portion of the Shopping Center owned by Landlord or ground leased to Landlord shall be less than 80% of the

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leasable Floor Space in the portion of the Shopping Center owned by Landlord or ground leased to Landlord, then for purposes of determining the denominator to be used in the fraction used to calculate Tenant's proportionate share of Real Estate Taxes, such denominator shall be deemed to be equal to 80% of the amount of square feet of leasable Floor Space in the portion of the Shopping Center owned by or ground leased to Landlord. For purposes of this Paragraph, Floor Space shall be deemed to exclude Floor Space in Major Premises.

B. If any special improvement assessment shall be levied on the Shopping Center and if Landlord shall have the option, but shall elect not to pay such special improvement assessment in installments, then for purposes of Section 3.03 of this Lease, in making the computation of Tenant's proportionate share of the Real Estate Taxes for the Shopping Center, Landlord shall be deemed to have elected to pay such special improvement assessment in installments.

C. Tenant shall be entitled to a proportionate share of any refund (or downward adjustment) of Real Estate Taxes paid during the Term or any portion thereof, less Tenant's proportionate share of Landlord's reasonable costs of obtaining same.

10. (Section 3.04) A. Tenant's proportionate share of Common Area Costs for any calendar year of the Term shall in no event exceed an amount equal to the Common Area Costs Cap for such year.

B. Landlord agrees that Tenant shall have the right, upon the conditions set forth herein, to make one inspection of Landlord's books and records relating to the Common Area Costs for each calendar year or partial calendar year during the Term. Such right may be exercised only by Tenant serving upon Landlord notice (by an authorized officer and in the manner set forth herein for the serving of notices) of its election to inspect such books and records within 60 days after Landlord's submission to Tenant of the statement referred to in line 17 of Section 3.04 of this Lease, and if Tenant fails to serve such notice timely, Tenant shall never have the right to inspect such books and records for such (partial) calendar year. Such inspection shall take place at Landlord's main office during business hours and dates specified by Landlord, which dates will be not later than 60 days after such notice from Tenant, and shall relate solely to the (partial) calendar year covered by such statement. If Tenant contends on the basis of such inspection that the Common Area Costs for the (partial) calendar year in question have been overstated, and if Landlord (a) agrees

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with such contention, Landlord shall promptly refund to Tenant the excess Common Area Costs paid by Tenant for the (partial) calendar year in question, or (b) disagrees with such contention, Landlord shall not refund any payment of Common Area Costs to Tenant and Tenant shall continue to make payments of Common Area Costs as if such inspection had never taken place, but Tenant may seek a determination by a court of competent jurisdiction. In any event, at least until the completion of such inspection, Tenant shall continue to make all payments of Common Area Costs as provided in said Section 3.04.

C. Notwithstanding anything to the contrary contained in this Lease, in no event shall any single cost incurred by Landlord be included in the calculation of both Covered Mall Costs and Common Ground Costs nor shall Tenant be required to make duplicative payment with respect to services covered by Tenant's payment of Common Area Costs under said Section 3.04.

11. (Section 3.06) A. The Marketing Charge for any calendar year of the Term shall in no event exceed an amount equal to the Marketing Charge Cap for such calendar year.

B. The Mall HVAC Charge for any calendar year of the Term shall in no event exceed an amount equal to the Mall HVAC Charge Cap for such calendar year.

12. (Section 4.01) Landlord shall not construct or install any kiosks intended for retail purposes within the portion of the Covered Mall outlined in red on Exhibit A.

13. (Section 4.02) Parking charges, if any, imposed and actually collected by Landlord, shall be applied in reduction of the portion of the Common Area Ground Costs relating to the collection of such parking charges for the period during which such parking charges are actually collected by Landlord.

14. (Article V) A. Article V of this Lease is hereby deleted in its entirety.

B. Tenant will arrange for the furnishing of, and pay for, any gas, water electricity, or any other utilities or services, used by Tenant in or for the Demised Premises.

C. The Utility Service Charge shall be

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an amount at the annual rate which is equal to the Mall HVAC Charge.

15. (Section 6.02) A. Tenant shall only be required to initially open the Demised Premises and at any time after the Commencement Date to be open for business (provided Tenant is not in default under this Lease) during such hours and days that two Major Premises and at least 50% of the balance of the Floor Space fronting on the Covered Mall (excluding all the Major Premises and the Demised Premises) (herein, the "cotenancy condition") are open for business. If the cotenancy condition is not met at any time during the Term, then Tenant shall have the right, upon 10 days prior written notice to Landlord, to pay, in lieu of Fixed Rent, two and one-half percent (2½%) of Gross Sales (herein, the "cotenancy rent"), which amount shall be paid not later than the 30th day after each calendar month in question. If the cotenancy condition continues for more than 365 days, then either Tenant or Landlord may terminate this Lease upon 30 days prior written notice to the other, and on such 30th day this Lease shall expire as if that were the date originally set forth in this Lease for the expiration of the Term. The provisions of this Paragraph shall not apply in the case of damage by fire or other casualty or by eminent domain, in which case the rights and obligations of the parties shall be as provided in other sections of this Lease. If Tenant elects to pay cotenancy rent as stated above, and Landlord elects to terminate the Lease as provided herein, Tenant may, within 15 days following the receipt of Landlord's said termination notice, revert back to paying Fixed Rent as defined in this Lease and in such event neither party shall have the right to terminate this Lease and this Paragraph shall thereupon be deemed deleted from this Lease.

B. Tenant may close the Demised Premises for the purpose of taking inventory for a maximum of two days each calendar year, or for a reasonable number of days for the making of any repairs or renovations to the Demised Premises which necessitates such closing; provided that Fixed Rent and Additional Rent shall not abate during any such period of closure.

16. (Section 6.03) The figure "10" in line 4 of Section 6.03 of this Lease is hereby changed to "two (2)".

17. (Section 6.06) A. Landlord shall give Tenant notice prior to entering the Demised Premises to make repairs, replacements, alterations, improvements or additions therein except when an emergency exists, in which event no notice will be required.

B. The words "upon prior notice" are hereby inserted after the word "times" in line 18 of Section 6.06 of this Lease.

C. If Landlord, in making any repairs,

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replacements, alterations, improvements or additions in the Demised Premises, shall materially and adversely interfere with Tenant's business in the Demised Premises, and because of such interference Tenant is forced to, and in fact, closes the Demised Premises for business to the public, the Fixed Rent and Additional Rent shall abate until the discontinuance of such material and adverse interference or until Tenant reopens the Demised Premises for business to the public, whichever occurs first.

D. No installations, alterations or replacements in the Demised Premises by Landlord shall be made except in areas above the finished ceiling, below the finished floor, within existing walls and column areas or in immaterial storage areas, and Landlord shall make reasonable efforts not to interfere with Tenant's business conducted upon or its use of the Demised Premises.

18. (Section 7.01) So long as Tenant shall otherwise comply with the provisions of Section 7.05 as if same were a remodeling, Tenant shall have the right to make non-structural, interior alterations to the Demised Premises which in any single calendar year aggregate \$25,000 or less.

19. (Section 7.03) The word "exclusively" is hereby inserted before the word "serve" in line 5 of Section 7.03 of this Lease; and the word "refurbish" in line 7 of said Section 7.03 is hereby changed to "replace worn surfaces within".

20. (Section 7.04) A. Except as permitted in Section 11.01 and Section 12.01 of this Lease, Landlord shall not change the location of the Demised Premises.

B. The period at the end of Section 7.04 of this Lease is hereby changed to a semi-colon, and the following is inserted after such semi-colon:

"provided same shall not unreasonably interfere with  
(i) Tenant's means of ingress or egress to or from the  
Demised Premises, or (ii) the view of Tenant's sign(s)  
or display window(s)."

C. The number of Shopping Center parking spaces maintained by Landlord shall be at least the minimum number required by law, any reciprocal easement agreements or other operating agreements, or as exists as of the date of this letter, whichever is greater.

D. Landlord shall not, without Tenant's prior consent, which Tenant covenants shall not be unreasonably withheld or delayed, make any changes which would materially and adversely affect the location of the Demised Premises in the Shopping Center relative to the Major Premises in existence as of the date of this Lease.



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21. (Section 7.05) Notwithstanding anything in Section 7.05 of this Lease to the contrary, the remodeling which Tenant is to perform to the Demised Premises after five years have elapsed from the Commencement Date shall include only the replacement of worn ceiling, wall and floor surfaces and finishes with new surfaces and finishes, or to provide a freshening thereof, so that the Demised Premises shall appear as when new.

22. (Section 8.02) Tenant may (a) carry the insurance described in Section 8.02 of this lease under blanket policies, with reasonable deductibles, and (b) self-insure with respect to the insurance described in subdivisions (b), (c) and (d) of the first sentence of said Section 8.02 so long as Tenant or Guarantor has assets exceeding \$10,000,000.

23. (Section 8.03) Tenant's mere use of the Demised Premises for the Permitted Uses and the mere performance by Tenant of any Tenant's Work shall not in and of itself be the basis for a default under Section 8.03 of this Lease.

24. (Section 8.04) A. Lines 11-18 of Section 8.04 of this Lease are hereby changed to read as follows:

"the Demised Premises, with the Legal and Insurance Requirements in respect of such Hazardous Materials; provided however, except as hereafter set forth in this Section 8.04, such covenant shall not apply to any injuries, losses, claims, actions, damages, liabilities and expenses arising from the acts or omissions of Landlord. Tenant hereby releases Landlord and such lessor(s) and such mortgagee(s) from all liability or responsibility to Tenant for damage or destruction to the property required to be covered by Tenant's fire and extended coverage insurance under Section 8.02 of this Lease (whether or not such damage or destruction is caused by any acts or omissions or negligence of Landlord or its employees); provided, however such release shall be in force and effect only in respect of damage or destruction covered or which should have been covered by Tenant's fire and extended coverage insurance. Tenant shall cause its fire and extended coverage insurance policy to contain a provision whereby the insurer either (a) waives any rights of subrogation against Landlord, or (b) agrees that such release by Tenant shall not invalidate the insurance, if either provision is available without any additional premium or if available with an additional premium and Landlord elects to and does pay such additional

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premium. Tenant will notify Landlord if such provision for waiver of subrogation or for granting the release without invalidating the insurance is or becomes unavailable or available only with an additional premium, and the amount of the additional premium if such provision is available only with an additional premium. The release described in the third preceding sentence shall be in effect only so long as either Tenant's fire and extended coverage insurance contains or should have contained either the provision for waiver of subrogation or for granting the release without invalidating the insurance or, if permitted by this Lease, Tenant elects to be a self-insurer in respect of the insurance which it is required to maintain under subdivision (c) of Section 8.02 of this Lease. Landlord hereby releases Tenant from all liability or responsibility to Landlord for damage or destruction to the property required to be covered by Landlord's policies of fire and extended coverage insurance (whether or not such damage or destruction is caused by any acts or omissions or negligence of Tenant or its employees); provided, however, such release shall be in force and effect only in respect of damage or destruction covered or which should have been covered by Landlord's fire and extended coverage insurance. Landlord shall cause its fire and extended coverage insurance policy to contain a provision whereby the insurer either (a) waives any rights of subrogation against Tenant, or (b) agrees that such release by Landlord shall not invalidate the insurance, if either provision is available without any additional premium or if available with an additional premium and Tenant elects to pay and does pay such additional premium. Landlord will notify Tenant if such provision for waiver of subrogation or for granting the release without invalidating the insurance is or becomes unavailable or available only with an additional premium, and the amount of the additional premium if such provision is available only with an additional premium. The release described in the third preceding sentence shall be in effect only so long as Landlord's fire and extended coverage insurance contains either the provisions for waiver of subrogation or for granting the release without invalidating the insurance and in any event, shall not apply to any property which Landlord does not insure."

B. Landlord shall defend and indemnify Tenant and hold Tenant harmless from and against any and all

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injuries, losses, claims, actions, damages, liabilities and expenses (including attorneys' fees and expenses) arising solely out of the gross negligence of Landlord or its employees in the Common Areas; provided, however said agreement to defend, indemnify and hold harmless shall be in force and effect only if Landlord's comprehensive general liability insurance contains a contractual liability endorsement covering said agreement to defend, indemnify and hold harmless. Landlord shall cause its comprehensive general liability insurance to contain a contractual liability endorsement covering said agreement to defend, indemnify and hold harmless if such endorsement is available without any additional premium or if such endorsement is available with an additional premium and Tenant elects to and does pay such additional premium. Landlord shall notify Tenant if such endorsement is or becomes unavailable or available only with an additional premium, and the amount of the additional premium if such endorsement is available only with an additional premium.

C. The following words are hereby inserted after the word "Premises" (and before the comma) in line 7 of Section 8.04 of this Lease:

"introduced by or permitted to be introduced by Tenant, its subtenants or concessionaires or their respective officers, employees, agents, customers, or invitees".

D. Notwithstanding anything to the contrary contained in said Section 8.04 of this Lease, in the event that it is determined that Hazardous Materials are contained in the Demised Premises and if same were placed there by Landlord, its agents or employees, then Landlord's sole liability shall be limited to removing, containing or controlling such Hazardous Materials at Landlord's sole cost and expense pursuant to the Legal and Insurance Requirements. In the event Landlord notifies Tenant that it must close the Demised Premises for business to the public in order for Landlord to perform any work necessary to remove, contain or control such Hazardous Materials, Fixed Rent and Additional Rent shall abate from the date Tenant closes the Demised Premises for business to the public until the date that Landlord notifies Tenant that it can again open the Demised Premises for business to the public.

25. (Section 9.02) A. The first sentence of Section 9.02 of this Lease is hereby deemed to be changed to read as follows:

"This Lease shall be subject and subordinate to any mortgage and to all renewals, modifications, replacements, consolidations and extensions thereof and to any and all advances made thereunder and the interest thereon made prior or subsequent to the date of delivery of this Lease, and Tenant shall, within 10 days of receipt of same, execute,

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acknowledge and deliver any and all documents and instruments subordinating this Lease and Tenant's interest herein."

B. The documents or instruments which Tenant shall be required to execute, acknowledge and deliver pursuant to the provisions of Section 9.02 of this Lease shall not in any event increase the Rent or Additional Rent or otherwise increase Tenant's monetary obligations under this Lease.

26. (Section 9.03) Notwithstanding any provision to the contrary contained in Section 9.03 of this lease, none of Tenant's rights under this Lease shall be decreased, and none of Tenant's obligations hereunder shall be increased, by virtue of any transfer, termination or purchase described in said Section 9.03, and the consent of any transferee or purchaser described in said Section 9.03 shall not be required for the exercise by Tenant of any of its rights under this Lease.

27. (Section 10.01) A. Tenant shall have the right, without obtaining the consent of Landlord, to assign this Lease or to sublet the entire Demised Premises to (a) any corporation then owning a majority of the voting stock of Tenant or Guarantor, if any, or (b) any corporation a majority of the voting stock of which is then owned by Tenant or Guarantor, if any, or (c) any corporation a majority of the outstanding voting stock of which is then owned by the corporation which then owns a majority of the outstanding voting stock of Tenant or Guarantor, if any, or (d) any corporation with which the original Tenant or Guarantor, if any, merges or consolidates, or (e) any corporation which purchases all or substantially all of the assets of the original Tenant; provided, however, all of the provisions of said Section 10.01, except for the requirement of Tenant's obtaining the consent of Landlord, shall apply to any such assignment or subletting.

B. Landlord's consent shall not be required in the event of any sale, issuance or transfer of capital stock in Tenant, or any related entity of Tenant, to any family members, or trust(s) for the benefit of such family members of Joseph Sitt.

C. Tenant may permit up to fifteen (15%) of the Floor Space of the Demised Premises to be occupied by concessionaires without Landlord's consent provided that the sales of such concessionaires are included in Gross Sales; the rent received from such concessionaires, however, shall be excluded from Gross Sales.

28. (Section 10.03) The following sentence is hereby added at the end of Section 10.03 of this Lease "In the event Landlord gives such notice of recapture, Tenant may withdraw such request within twenty (20) days after its receipt of Landlord's termination

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notice."

29. (Section 10.04) Subsections (a) and (b) of Section 10.04 of this Lease are hereby deleted and the following is substituted therefore: "the additional rent (s) received less the costs to relet the Demised Premises, but in no event less than the amount of rent which was to be received by Landlord."

30. (Section 11.01) A. If the Demised Premises and/or the Shopping Center is or are damaged by fire or other casualty, and neither Landlord nor Tenant terminates this Lease pursuant to the provisions of Section 11.01 of this Lease, and Landlord's restoration work is not substantially completed by the end of the 12th full calendar month following the date of such damage, then Tenant shall have the right, during the 13th full calendar month following said date only, to terminate this Lease upon notice to Landlord, in which event this Lease shall terminate as of the giving of such notice as if the date of such notice were the date set forth in this Lease for the expiration of the Term.

B. Landlord's notice to terminate under subdivisions (b) and (c) of the second sentence of said Section 11.01 shall be effective only if Landlord terminates leases of all of the other tenants in the area identified by cross-hatching on Exhibit A of this Lease.

C. If this Lease is terminated by Landlord pursuant to the provisions of Section 11.01 of this Lease (other than subdivision (d)), Landlord shall pay to Tenant, within 120 days after such termination, the amount which is equal to the cost of the Initial Tenant Work multiplied by a fraction the numerator of which shall be the number of full months from the date of such termination until the date originally set forth in this Lease for the expiration of the Term and the denominator of which shall be the number of full months from the date of such termination until the date originally set forth in this Lease for the expiration of the Term. The cost of the Initial Tenant Work shall be deemed to be the lesser of (a) the actual cost of the Initial Tenant Work (exclusive of the cost of stock in trade, trade fixtures, furniture, furnishings, removable floor coverings, equipment, signs and other personal property of Tenant) as certified in writing by Tenant's architect pursuant to the last sentence of Paragraph 3 of Exhibit C of this Lease, or (b) \$ 290,000. The provisions of this Paragraph shall not be enforceable against (i) any mortgagee, or (ii) any purchaser in a foreclosure sale or in a sale under a power of sale or any grantee of a deed in lieu of foreclosure (or any of such purchaser's or grantee's successors or assigns), or (iii) the person who was lessor under any expired or terminated ground or underlying lease (or any of such person's successors or assigns).

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31. (Section 13.01) The word "five" in line 7 of Section 13.01 of this Lease is hereby changed to the figure "10"; and the figure "10" in lines 10, 11 and 13 of said Section 13.01 is in each instance hereby changed to "20".

32. (Section 13.04) Landlord shall pay to Tenant, on demand, such expenses as Tenant may incur, including, without limitation, court costs and reasonable attorneys' fees and disbursements, in enforcing the performance of Landlord under this Lease unless Landlord contests, in a court of competent jurisdiction, the claim of Tenant and prevails in such contest.

33. (Section 14.10) Section 14.10 of this Lease is hereby changed to read as follows:

"14.10. UNAVOIDABLE DELAYS. Except for Tenant's obligations to pay Rent and Additional Rent, the time of Landlord or Tenant, as the case may be, to perform any of its respective obligations hereunder shall be extended if and to the extent that the performance thereof shall be prevented due to any strikes, lockouts, civil commotions, warlike operations, invasions, rebellions, hostilities, military or usurped power, governmental regulations or controls, inability to obtain labor or materials despite due diligence, acts of God, or other causes beyond the control of the party whose performance is required."

34. (Section 14.11) Copies of all notices sent to Tenant by Landlord shall be sent to the attention of Jeffrey Alan Klein, Esq.

35. (Section 14.12) Landlord represents that is has no dealings with any broker or agent in connection with this Lease and covenants to pay, hold harmless and indemnify Tenant from and against any and all costs, expenses and liabilities for any compensation, commissions and charges claimed by any broker or agent in respect of this Lease or the negotiation thereof with whom Landlord has had dealings.

36. (Section 14.14) The following sentence is hereby inserted after the first sentence of Section 14.14 of this Lease:

"After the date that a final judgment in favor of Tenant is docketed against Landlord and continuing until such judgment is fully paid, the equity of Landlord in and to the Shopping Center shall be deemed to include the amount, if any, by which (a) the rents actually received by Landlord from the portion of the

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Shopping Center owned or ground leased by Landlord exceeds (b) all expenses of Landlord in connection with the management and operation of the Shopping Center, including, without limitation, payments of principal and interest under any mortgage and rent payments under any ground or underlying lease."

37. (Section 14.15) The words "accruing subsequent to the date of such sale, transfer or assignment, as the case may be" are hereby inserted after the word "Lease" (and before the period) in the last line of Section 14.15 of this Lease.

38. (Section 14.16) If Tenant seeks the approval by or consent of Landlord and Landlord fails or refuses to give such consent or approval in respect of any matter where Landlord is required, either by the provisions of this Lease or by law, not to unreasonably withhold its consent or approval, and Tenant brings an action for injunction or specific performance to require Landlord to give such consent or approval, the losing party in such action shall pay to the prevailing party all costs and expenses incurred by the prevailing party in connection with such action, including, without limitation, court costs and reasonable attorney's fees and disbursements.

39. (Section 14.23) A new Section 14.23 is hereby added to this Lease, and shall read as follows:

"14.23. RIGHT OF TERMINATION. Tenant shall have the right, during the one-month period immediately following the expiration of the third lease year (as hereinafter defined) of the Term, to terminate this Lease, except that if the Gross Sales (as certified by Tenant by an authorized officer if Tenant is a corporation or by a partner if Tenant is a partnership) shall exceed \$800,000 in any lease year prior to the fourth lease year of the Term, such right of termination shall cease and expire. Such right of termination may be exercised by Tenant only by notice served upon Landlord during the aforesaid one-month period, and in the event ~~either party~~ shall so exercise its right to terminate, then this Lease shall terminate on the 120th day after the expiration of the third lease year as if that were the date originally set forth in this Lease for the expiration of the Term. If Tenant shall fail to serve such notice during the one-month period immediately following the third lease year of the Term, such party shall have forever waived such right of termination and in such event this Section

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14.23 shall thereupon be deemed deleted from this Lease. Notwithstanding the foregoing and notwithstanding the provisions of Section 3.02 of this Lease, Landlord shall have the right, prior to such 120th day after the expiration of the third lease year, to inspect and/or audit Tenant's books and records relating to the entire portion of the Term preceding the fourth lease year of the Term, and if Landlord shall correctly determine in accordance with generally accepted accounting principles that the Gross Sales for any such lease year were more than \$800,000, then Tenant's said notice to Landlord shall be deemed null and void and this Section 14.23 shall thereupon be deemed deleted from this Lease. For the purposes of this Section 14.23, the words "lease year" shall mean any 12-month period ending on the last day of the month in which an anniversary of the Commencement Date occurs."

40. (Section 14.24) If and to the extent that same do not violate any provisions of a reciprocal easement agreement or lease between Landlord and any Major Occupant(s), during the first 30 days of the Term only, Tenant shall be permitted to have one employee hand out leaflets promoting Tenant's business in the Demised Premises only, within that portion of the Common Areas that lies within three (3) feet of the lease line of the Demised Premises, provided, however, that the following conditions are observed:

1. Such employee shall behave in a first-class manner;
2. Such employee shall not approach customers or invitees of the Shopping Center who are entering or leaving any other tenant's premises, or who are window shopping;
3. Such employee shall abide by all rules, regulations and by-laws of Landlord for the Shopping Center;
4. Such employee shall not unreasonably interfere with or unreasonably impede the free flow of pedestrian traffic in the Shopping Center;

In the event Landlord receives complaints from customers of the Shopping Center or any other tenants in the Shopping Center with regard to such employee, or if in Landlord's reasonable judgement such employee poses a hazard, Tenant shall promptly comply with the oral or written directions of Landlord's mall manager with respect to



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any of the matters mentioned herein as reasonably required to remedy the infraction.

41. (Exhibit C, Paragraph 3) A. Wherever Landlord's approval is required with respect to Tenant's plans and specifications for any of Tenant's Work, said approval shall not be unreasonably withheld or delayed.

B. The sentence beginning with the words "Before Tenant commences" in line 28 of Paragraph 3 of Exhibit C of this lease is hereby deleted.

42. (Exhibit C, Paragraph 4) Subdivision (i) of Paragraph 4 of Exhibit C of this Lease is hereby deleted.

43. (Exhibit C, Paragraph 5) In addition to that described in Paragraph 5 of Exhibit C of this Lease, the Initial Tenant Work shall also include the installation of additional or replacement security gates or any other security device or system at the Demised Premises.

44. (Exhibit C, Paragraph 13) The following new Paragraph 13 is hereby added to Exhibit C:

"13. When Tenant shall have (a) furnished evidence satisfactory to Landlord that all of the Tenant's Work has been completed and paid for in full and that no liens for labor or materials have been filed, or, if any have been filed, that they have been discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise), (b) furnished to Landlord all governmental approvals and evidence of compliance with the Legal and Insurance Requirements in connection with the Tenant's Work, (c) furnished to Landlord one set of transparent 'as-built' plans and one set of specifications for the Tenant's Work prepared and sealed by Tenant's architect, and a statement in writing by Tenant's architect certifying the actual cost of the Tenant's Work exclusive of the cost of trade fixtures and other personal property of Tenant, (d) opened the Demised Premises for business, (e) executed, acknowledged and delivered to Landlord the statement and estoppel certificate referred to in Paragraph 6 of this Exhibit and any statement requested by Landlord pursuant to the provisions of Section 14.09 of this Lease, and (f)

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delivered to Landlord the fully paid for insurance policies required under Section 8.02 of this Lease, Landlord shall, as a construction allowance, offset Fixed Rent and Additional Rent for a period of 365 days commencing as of the day all of the foregoing conditions have been met."

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment"), is made as of this 1<sup>st</sup> day of October, 2009, between **THOR EASTPOINT MALL, LLC** ("Landlord"), having a place of business c/o Thor Equities, LLC, 25 West 39<sup>th</sup> Street, 11<sup>th</sup> Floor, New York, New York 10018 and **LARGE APPAREL OF MARYLAND, INC. d/b/a ASHLEY STEWART** ("Tenant"), having an address at 100 Metro Way, Secaucus, New Jersey 07094.

## WITNESSETH:

WHEREAS, by Lease dated September 13, 1999 ("Lease"), EASTPOINT PARTNERS, L.P., Landlord's predecessor-in-interest, leased to Tenant that certain retail space designated as space number 7744, consisting of approximately 3,030 square feet, in the Shopping Center known as Eastpoint Mall, 7839 Eastern Avenue, Baltimore, Maryland 21224 (the "Premises");

WHEREAS, the term of the Lease ("Term") shall expire on January 31, 2010; and

WHEREAS, Landlord and Tenant desire to extend the Term and amend the Lease in certain respects;

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) each party to the other in hand paid, and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the mutual receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Preamble. The terms of the preamble are incorporated herein by reference as though set forth at length and verbatim herein.

2. Definitions. Capitalized terms used herein but not otherwise defined shall have the same meaning ascribed to them in the Lease, unless otherwise modified herein.

3. Extended Term. The Term is hereby extended for a period of three (3) years such that the Term shall now expire on January 31, 2013 (the period from February 1, 2010 through January 31, 2013 herein referred to as the "Extended Term"). The Extended Term shall be upon all the same terms and conditions as are set forth in the Lease, except as set forth in this First Amendment.

4. Fixed Rent. Notwithstanding anything contained in the Lease to the contrary, from February 1, 2010 through January 31, 2013, the Fixed Rent shall be \$45,450.00 per year. Tenant shall pay the Fixed Rent in equal monthly installments in accordance with the Lease.

5. Additional Rent. During the Extended Term, Tenant shall continue to pay all applicable charges under the Lease, including, but not limited to, Percentage Rent, Common Area Costs, Mall HVAC Charge, Marketing Charge, Real Estate Taxes, and utilities. Tenant shall pay such charges in accordance with the Lease.

6. No Oral Modification. This First Amendment may not be modified, amended or terminated nor may any of its provisions be waived except by an agreement in writing signed by the party against whom enforcement of any modification, amendment, termination or waiver is sought.

7. Successors and Assigns. The covenants, agreements, terms, provisions and conditions contained in this First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Ratification Of Lease. Except as modified and amended by this First Amendment, all of the terms, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue to be and remain in full force and effect.

9. Complete Agreement. This First Amendment together with the Lease sets forth the entire agreement between the parties, superseding all prior agreements and understandings, written or oral.

10. Counterparts. This First Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

11. Authority. The parties hereto represent and warrant that they have the authority and all requisite approvals to enter into this First Amendment.

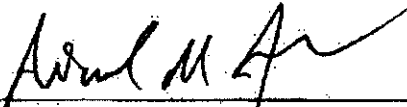
[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the date first above written.

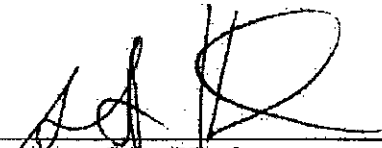
**THOR EASTPOINT MALL LLC,**  
a Delaware limited liability company

By: Thor Urban Operating Fund, L.P.,  
a Delaware limited partnership, its sole member

By: Thor Operating Fund, L.L.C.,  
a Delaware limited liability company,  
its general partner

By:   
Michael Schurer, Authorized Person

**LARGE APPAREL OF MARYLAND, INC.**

By:   
Name: Scott Hurd  
Title: Senior VP/Controller

## **ATTACHMENT 3**

Database: THOREQ

Aged Delinquencies

Page: 1

Thor Equities

Date: 10/18/2010

Time: 10:53 AM

Date: 9/22/2010

Invoice Date	Category	Source	Amount	Current	30	60	90	120
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EAST-001747 Ashley Stewart # 243

Master Occupant Id: ASH-1

Day Due: 1 Delq Day: 10

Bernadette

7744 Current

Last Payment: 10/8/2010 10,664.95

(201)319-9093

10/8/2010 TECB25 TT filed bankruptcy with jlm  
 9/21/2010 TEAG210 With JLM

5/10/2010	LAT	Late Charge	CH	657.63	0.00	0.00	0.00	0.00	657.63
5/10/2010	LAT	Late Charge	CH	21.77	0.00	0.00	0.00	0.00	21.77
5/13/2010	LEG	Legal Fees	CH	1,819.00	0.00	0.00	0.00	0.00	1,819.00
5/13/2010	LEG	Legal Fees	CH	902.00	0.00	0.00	0.00	0.00	902.00
5/27/2010	LEG	Legal Fees	CH	125.00	0.00	0.00	0.00	125.00	0.00
6/1/2010	ADV	Advertising/Marketing	CH	159.93	0.00	0.00	0.00	159.93	0.00
6/1/2010	MHV	Mall HVAC Equipment	CH	239.18	0.00	0.00	0.00	239.18	0.00
6/1/2010	W&S	Water & Sewer	CH	2.57	0.00	0.00	0.00	2.57	0.00
6/7/2010	LEG	Legal Fees	CH	1,725.59	0.00	0.00	0.00	1,725.59	0.00
6/17/2010	LEG	Legal Fees	CH	125.00	0.00	0.00	0.00	125.00	0.00
7/1/2010	ADV	Advertising/Marketing	CH	159.93	0.00	0.00	159.93	0.00	0.00
7/1/2010	MHV	Mall HVAC Equipment	CH	239.18	0.00	0.00	239.18	0.00	0.00
7/1/2010	RET	Real Estate Tax	CH	83.14	0.00	0.00	83.14	0.00	0.00
7/1/2010	W&S	Water & Sewer	CH	2.57	0.00	0.00	2.57	0.00	0.00
8/1/2010	ADV	Advertising/Marketing	CH	159.93	0.00	159.93	0.00	0.00	0.00
8/1/2010	BRT	Base Rent	CH	3,787.50	0.00	3,787.50	0.00	0.00	0.00
8/1/2010	CAM	Common Area Maintenance	CH	5,983.26	0.00	5,983.26	0.00	0.00	0.00
8/1/2010	MHV	Mall HVAC Equipment	CH	239.18	0.00	239.18	0.00	0.00	0.00
8/1/2010	RET	Real Estate Tax	CH	788.01	0.00	788.01	0.00	0.00	0.00
8/1/2010	W&S	Water & Sewer	CH	2.57	0.00	2.57	0.00	0.00	0.00
8/10/2010	LAT	Late Charge	CH	657.63	0.00	657.63	0.00	0.00	0.00
8/10/2010	LAT	Late Charge	CH	47.90	0.00	47.90	0.00	0.00	0.00
9/1/2010	ADV	Advertising/Marketing	CH	159.93	159.93	0.00	0.00	0.00	0.00
9/1/2010	BRT	Base Rent	CH	3,787.50	3,787.50	0.00	0.00	0.00	0.00
9/1/2010	CAM	Common Area Maintenance	CH	5,983.26	5,983.26	0.00	0.00	0.00	0.00
9/1/2010	MHV	Mall HVAC Equipment	CH	239.18	239.18	0.00	0.00	0.00	0.00
9/1/2010	RET	Real Estate Tax	CH	788.01	788.01	0.00	0.00	0.00	0.00
9/1/2010	W&S	Water & Sewer	CH	2.57	2.57	0.00	0.00	0.00	0.00
9/10/2010	LAT	Late Charge	CH	657.63	657.63	0.00	0.00	0.00	0.00
9/10/2010	LAT	Late Charge	CH	45.72	45.72	0.00	0.00	0.00	0.00

ADV	Advertising/Marketing	639.72	159.93	159.93	159.93	159.93	0.00
BRT	Base Rent	7,575.00	3,787.50	3,787.50	0.00	0.00	0.00
CAM	Common Area Maintenance	11,966.52	5,983.26	5,983.26	0.00	0.00	0.00
LAT	Late Charge	2,088.28	703.35	705.53	0.00	0.00	679.40
LEG	Legal Fees	4,696.59	0.00	0.00	0.00	1,975.59	2,721.00
MHV	Mall HVAC Equipment	956.72	239.18	239.18	239.18	239.18	0.00
RET	Real Estate Tax	1,659.16	788.01	788.01	83.14	0.00	0.00
W&S	Water & Sewer	10.28	2.57	2.57	2.57	2.57	0.00

Ashley Stewart # 243 Total: 29,592.27 11,663.80 11,665.98 484.82 2,377.27 3,400.40

ADV	Advertising/Marketing	639.72	159.93	159.93	159.93	159.93	0.00
BRT	Base Rent	7,575.00	3,787.50	3,787.50	0.00	0.00	0.00
CAM	Common Area Maintenance	11,966.52	5,983.26	5,983.26	0.00	0.00	0.00
LAT	Late Charge	2,088.28	703.35	705.53	0.00	0.00	679.40
LEG	Legal Fees	4,696.59	0.00	0.00	0.00	1,975.59	2,721.00
MHV	Mall HVAC Equipment	956.72	239.18	239.18	239.18	239.18	0.00
RET	Real Estate Tax	1,659.16	788.01	788.01	83.14	0.00	0.00
W&S	Water & Sewer	10.28	2.57	2.57	2.57	2.57	0.00

Grand Total: 29,592.27 11,663.80 11,665.98 484.82 2,377.27 3,400.40

Less: Proration (3288.14)

26304.13

## **ATTACHMENT 4**

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Balance Forward:	
Charges (Debit)	
Receipts (Credit)	
Prepaid:	
Net	
Security Deposits	

30,297.14	704.87
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29592.27  
<10960.45> Sept Original Rent  
7672.31 Proration 9/1-9/21/10  

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26304.13

## **ATTACHMENT 5**

# Eastpoint Mall, LLC

Eastpoint Mall, LLC  
25 W. 39<sup>th</sup> St., 11<sup>th</sup> Fl  
New York, NY 10018  
212-529-4175

May 13 2010

Ashley Stewart  
100 Metro Way  
Secaucus, NJ 07094

Professional Legal Services rendered thru March 23 10

Invoice.....41626.....\$1,819.00

Please make check payable to Eastpoint Mall  
P.O. Box 718551  
Cincinnati, OH 45271

# Eastpoint Mall, LLC

Eastpoint Mall, LLC  
25 W. 39<sup>th</sup> St., 11<sup>th</sup> Fl  
New York, NY 10018  
212-529-4175

May 13 2010

Ashley Stewart  
100 Metro Way  
Secaucus, NJ 07094

Professional Legal Services rendered thru February 10 2010.

Invoice.....18156.....\$902.00

Please make check payable to Eastpoint Mall  
P.O. Box 718551  
Cincinnati, OH 45271

# Eastpoint Mall, LLC

Eastpoint Mall, LLC  
25 W. 39<sup>th</sup> St., 11<sup>th</sup> Fl  
New York, NY 10018  
212-529-4175

June 7 2010

Ashley Stewart  
100 Metro Way  
Secaucus, NJ 07094

Professional Legal Services rendered thru February 27 2010

Invoice.....18147.....\$1,725.59

Please make check payable to Eastpoint Mall  
P.O. Box 718551  
Cincinnati, OH 45271

# Eastpoint Mall, LLC

Eastpoint Mall, LLC  
25 W. 39<sup>th</sup> St., 11<sup>th</sup> Fl  
New York, NY 10018  
212-529-4175

June 27 2010

Ashley Stewart  
100 Metro Way  
Secaucus, NJ 07094

Professional Legal Services rendered thru May 15, 2010

Invoice.....42523.....\$125.00

Please make check payable to Eastpoint Mall  
P.O. Box 718551  
Cincinnati, OH 45271

# Eastpoint Mall, LLC

Eastpoint Mall, LLC  
25 W. 39<sup>th</sup> St., 11<sup>th</sup> Fl  
New York, NY 10018  
212-529-4175

May 27 2010

Ashley Stewart  
100 Metro Way  
Secaucus, NJ 07094

Professional Legal Services rendered thru April 15, 2010

Invoice.....41720.....\$125.00

Please make check payable to Eastpoint Mall  
P.O. Box 718551  
Cincinnati, OH 45271



ATTORNEYS AT LAW

HOWARD I. ELMAN  
JOSEPH LEE MATALON  
BARBARA R. SHWEKY

YOSEF ROTHSTEIN

JEREMY C. BATES  
MICHAEL E. KRAVER  
ALEX I. RAYSKIN  
KRISTIN R. ROSENBLUM

January 13, 2011

**VIA REGULAR U.S. MAIL**

BMC Group, Inc.  
Attn: Urban Brands Claims Processing  
P.O. Box 3020  
Chanhassen, MN 55317

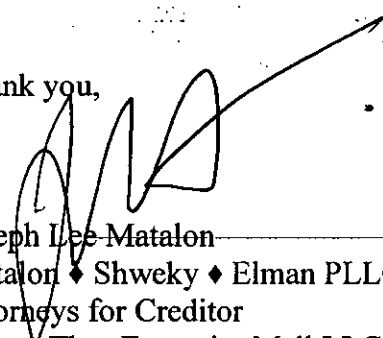
RE: Proof of Claim  
U.S. Bankruptcy Court for the District of Delaware  
Case Number: 10-13018-KJC  
Debtor: Large Apparel of Maryland, Inc.  
Creditor: Thor Eastpoint Mall LLC

Dear Sir/Madam:

Enclosed please find Original and one copy of Proof of Claim in the captioned matter.

Please provide us with a Proof of Filing. A self-addressed, stamped envelope provided for your convenience.

Thank you,

  
Joseph Lee Matalon  
Matalon • Shweky • Elman PLLC  
Attorneys for Creditor  
Thor Eastpoint Mall LLC

Enclosures

cc: BMC Group, Inc.  
(Via FedEx)